



STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

STEVE CLARK
ATTORNEY GENERAL

(501) 371-2007

OPINION NO. 85-175

July 31, 1985

Chris Raff, Prosecuting Attorney
411 North Spruce Street
Searcy, Arkansas 72143

Dear Prosecutor Raff:

On June 12, 1985 this Office received your opinion request regarding Act 866 of 1985. I have paraphrased your specific questions as follows:

1. Is a county required to provide Workers' Compensation coverage for all of its volunteer firemen, even if only a small portion are involved in the day-to-day maintenance of the equipment?
2. Is a county required to provide Workers' Compensation coverage for its Sheriff's auxiliary law enforcement officers?

Act 866 does not require workers' compensation coverage be provided county or rural volunteer firemen but only "municipal volunteer firemen". Whether a county is required to provide workers' compensation coverage for its sheriff's auxiliary law enforcement officers depends upon the characteristics of their employment, i.e., if under the direction and control of the sheriff, whether being paid for their services, or whether responding to an emergency.

Act 866 provides in pertinent part:

SECTION 1. All municipalities and counties shall be required to provide workers' compensation coverage for their officials, employees and municipal volunteer firemen.

* * * * *

SECTION 3. This Act shall be effective July 1, 1985. Claims incurred prior to July 1, 1985, shall continue to be the responsibility of the state.

Section 3 indicates that providing workers' compensation coverage for those public employees listed in Section 1 is currently the responsibility of the State. Consequently, Act 866 has not expanded the types of public workers covered by Arkansas workers' compensation law, but only transfers responsibility for coverage of certain public employees from the State to the municipalities and counties. The State's current responsibility to provide workers' compensation coverage for public employees is codified as Ark. Stat. Ann. §12-3601 et seq., "The Public Employee Claims Compensation Act" as amended by Act 929 of 1981, and provides in pertinent part:

Section 12-3601(A) (3) Municipal Employees: Any officer or employee of the Municipalities of this State, the employees of any Board, Commission, Department, or Institution owned, operated, managed and administered by the Municipalities. Except that employees of Municipal owned hospitals and nursing homes operated, managed or administered by private management companies or enterprises, whether under a contract for management, or under a lease agreement, or under any other type of management arrangement, are not public employees within the meaning of this Act [§§ 12-3601 12-3607] and shall not be provided state fund coverage for workers' compensation benefits under the provisions of this Act.

Section 12-3601(A) (4) County Employees: Any officer or employee of the Counties of this State, the employees of any Board, Commission, Department, or Institution owned, operated, managed and administered by the Counties. Except that employees of County owned hospitals and nursing homes operated, managed or administered by private management companies or enterprises, whether under a contract for management, or under a lease agreement, or under any other type of management arrangement, are not public employees within the meaning of this Act and shall not be provided state fund coverage for workers' compensation benefits under the provisions of this Act.

Act 866 has, in effect, transferred responsibility for workers' compensation coverage for those public employees defined in §12-3601(A) subsections (3) and (4) from the State to the cities and counties. The Public Employee Claims Division of the Arkansas Insurance Department has had responsibility of administering all public employee workers' compensation claims pursuant to §12-3601(A), subsections (1) through (5). After Act 866 becomes effective the State will continue to

be responsible for workers' compensation claims for those public employees defined in Ark. Stat. Ann. §12-3601(A), subsections (1), (2) and (5).

There is no case law interpreting subsection (3) which would be helpful in determining whether your county is required to provide coverage for the type firemen or law enforcement officers in your opinion request. However, the Public Employee Claims Division has historically interpreted subsections (3) and (4) in this regard as follows:

Volunteer Firemen. Rural or county volunteer firemen have never been considered covered pursuant to subsection (4) because such departments are traditionally not owned and operated by the county. "Municipal volunteer firemen" working in departments owned and operated by the municipality have been treated as covered pursuant to subsection (3). Presumably this is why "municipal volunteer firemen" are specifically included in §1 of Act 866.

Auxiliary Officers. A Sheriff's auxiliary law enforcement officer has been considered covered if, when injured, he was acting under the control and direction of the Sheriff and (1) being paid an hourly wage or some comparable form of compensation, or (2) if responding to an emergency.

Another reason a county will probably not be required to provide coverage for its rural or county volunteer firemen is based on the fact that the General Assembly specifically mentioned only "municipal" volunteer firemen in §1 of Act 866. Under the maxim of expresio unius est exclusio alterius (the expression of one is the exclusion of the other), all other types of volunteer firemen are impliedly excluded from such coverage. Hackney v. Southwest Hotels, Inc., 210 Ark. 234, 195 S.W.2d 55 (1946), Watkins v. Wassell, 20 Ark. 410 (1959). See, also, 73 Am.Jur.2d, Statutes §211 (1974 2d Ed.).

Of course, any county or city, if it so desires, may provide coverage for any of its quasi-public employees even if not required to do so under Act 866 of 1985.

This opinion, which I hereby approve, was prepared by Assistant Attorney General David S. Mitchell.

Sincerely,


STEVE CLARK
Attorney General

JSC:DSM:jk