

December 6, 1973

OPINION LETTER NO. 361
Answer by letter-Klaffenbach

Honorable Max Bacon
Representative, District 148
1447 East Kearney
Springfield, Missouri

Honorable George J. Donegan
Representative, District 146
1714 East Meadowmere
Springfield, Missouri



Gentlemen:

This letter is in response to your opinion request in which you ask whether volunteer fire fighters have bona fide police duties enabling them to receive deputy sheriffs' commissions. It is also our understanding that such volunteer firemen are members of a purely private association not connected with any political subdivision of this state.

You also stated:

"Greene County volunteer fire fighters are called on to fight fires in the county and to assist civil defense personnel in dealing with other emergencies. They are dispatched out of the Greene County Sheriff's office. Most often these fires occur on private property. This necessitates entry onto private property, including entry into buildings and areas enclosed by fences, often without permission of the owner. There are times during fires that it is necessary for the fire fighters to control crowds and traffic in the vicinity of the fire. It is often necessary to go through private property other than that on which the fire is

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located to get to the location of the fire, and on occasions permission to do so has been denied by the owner. In connection with their duties they are at times subject to being physically accosted."

We find no statutes giving such volunteer associations any police powers except for Section 307.175, RSMo, which authorizes volunteer firemen to use special vehicle sirens and warning lights under certain circumstances.

Sheriff's deputies in second class counties are appointed under the authority of Section 57.220, RSMo, which provides:

"The sheriff, in a county of the second class, shall be entitled to such a number of deputies as the judges of the circuit court shall deem necessary for the prompt and proper discharge of the duties of his office, provided however, such number of deputies appointed by the sheriff shall not be less than one chief deputy sheriff and one additional deputy for each five thousand inhabitants of the county according to the last decennial census. Such deputies shall be appointed by the sheriff, but no appointment shall become effective until approved by the judges of the circuit court of the county. The judges of the circuit court, by agreement with the sheriff, shall fix the salaries of such deputies. A statement of the number of deputies allowed the sheriff, and their compensation, together with the approval of any appointment by the judges of the circuit court shall be in writing and signed by them and filed by the sheriff with the county court."

Further Section 57.270, RSMo, provides:

"Every deputy sheriff shall possess all the powers and may perform any of the duties prescribed by law to be performed by the sheriff."

In our Opinion No. 97, 1968, to Burlison, this office held that there is no distinction between part-time deputies and full-time deputies if the appointments are made pursuant to Section 57.220. However, we also held in Opinion No. 299, 1972, to

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Wampler, that special or emergency deputy sheriffs may be appointed for a period not exceeding thirty days under the provisions of Section 57.119, RSMo, and "honorary deputy sheriffs' commissions" are not authorized under either section. We also noted in Opinion No. 169, 1973, to White, that appointments as peace officers cannot be used as a subterfuge for the purpose of permitting the carrying of concealed weapons.

Further, in Opinion No. 373, 1969, to Weier, we held that salaries of all deputies appointed under Section 57.220, RSMo, should be at least in a nominal amount to comply with the provisions of that section.

Thus, it appears that voluntary firemen may be appointed part-time deputy sheriffs under the provisions of Section 57.220 if the appointments comply with the provisions of that section and after being so appointed, possess the powers of the sheriff under whom they hold office.

For your complete information we are enclosing copies of the opinions cited.

Yours very truly,

JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 97
2-6-68, Burlison

Op. No. 299
11-21-72, Wampler

Op. No. 169
6-11-73, White

Op. Ltr. No. 373
9-11-69, Weier