

## VOLUNTEER TOWN FIRE DEPARTMENT EMERGENCY AUTHORITY

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Counties often interact with and have overlapping authority with other units of government, however, volunteer fire departments present a unique situation. Questions have arisen for several counties about the extent of volunteer fire department emergency authority, particularly with respect to their authority to compel county aid both during and after an emergency (*e.g.*, to provide equipment to assist with cleanup or teardown of structures damaged by fire). While volunteer fire departments are granted certain emergency response powers, they are not granted authority to compel county aid (either during or after an emergency). Instead, volunteer fire departments may request and utilize the aid of other fire departments through mutual aid agreements (though mutual aid agreements are voluntary and are also not mandatory). This article will provide an overview of volunteer fire department emergency response authority and why they do not have authority to compel county aid.

### ANALYSIS OF VOLUNTEER FIRE DEPARTMENT EMERGENCY AUTHORITY

Volunteer fire departments are unique entities because they possess elements of both private organizations and also of municipalities. Volunteer fire departments are organized under Wis. Stat. ch. 213, separate from the municipality that they serve, but they are also granted limited police powers and liability protections by the legislature. As such, volunteer fire departments are more akin to quasigovern-

mental organizations than fully private entities.

When wielding the state's police powers, volunteer fire departments should be viewed as a municipal corporation rather than a private entity. As creatures of the legislature, municipalities only have the powers expressly granted to them and such others as are necessary to implement those powers. This same concept applies to a volunteer fire department as it would be an illogical result of statutory interpretation to conclude that a volunteer fire department possessed greater implied powers than municipalities.

As a result, a volunteer fire department may only exercise the emergency response authority (*i.e.*, a delegation of the state's police powers) that the legislature has expressly granted under Wis. Stat. ch. 213. Importantly, the extent of a volunteer fire department's emergency response powers is provided under Wis. Stat. § 213.095. Section 213.095 grants volunteer fire department four types of emergency response authority, none of which provide authority to compel county aid. The four grants of authority are as follows.

#### WIS. STAT. § 213.095(1)

Wis. Stat. § 213.095(1) provides a volunteer fire department authority to establish order at the immediate neighborhood near a fire or first aide scene. This Subsection does not provide volunteer fire departments with authority to compel county aid, either during or after an emergency situation. Moreover,

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# Legal Issues

Relating to County Government

even if Subsection (1) could be reasonably interpreted to include post-fire management, Subsection (1) does not yield any authority over other government entities, but rather *individuals* or *companies*. These terms are limiting terms. The term “person” as defined in statute takes on a very broad reading that includes “bodies politic or corporate” (*i.e.*, governments). The Legislature would have used the broader term “person” if it intended to include counties (or other units of government) under a volunteer fire department’s authority in this regard.

## WIS. STAT. § 213.095(2)

Likewise, Wis. Stat. § 213.095(2) does not provide volunteer fire departments any authority over counties. Rather, it provides limited authority to compel

assistance for the suppression of active fires and the preservation of property exposed to fire from *residents* of the city, village or town. Again, the term “residents” is limited in nature, and does not include any authority over a municipality, county, or other unit of government.

## WIS. STAT. § 213.095(3)

Wis. Stat. § 213.095(3) also does not provide volunteer fire departments with any authority over counties. Instead, Subsection (3) only provides authority to enter property or premises and to take actions to “extinguish any fire.”

Similar to the authority provided above, Subsection (3) only provides authority during an active fire. While Subsection (3) also provides authority

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While volunteer fire departments are granted certain emergency response powers, they are not granted authority to compel county aid (either during or after an emergency).

to perform “any duties incidental thereto,” this is referring to duties incidental to the work needed to extinguish the fire. Even if this Subsection could be interpreted more broadly to include post-fire cleanup activities, there is not express authority granted over counties. Recall, that a volunteer fire department, like municipalities, only has such powers as are expressly granted or necessarily implied to carrying out those powers. There is no express reference to authority to compel county aid and there is nothing which remotely suggests such a drastic action could be implied from Subsection (3).

**WIS. STAT. § 213.095(4)**

Wis. Stat. § 213.095(4) is almost verbatim to Subsection (3), except that it applies to first aid scenes. Again, nothing in Subsection (4) suggests that volunteer fire departments have any authority over counties, and also has nothing to do with post-fire activities.

**MUTUAL AID AMONG GOVERNMENTS IS OPTIONAL; NOT MANDATORY.**

Fire departments may request mutual aid from other fire departments. Of note, however, is the fact that fire departments are only granted authority to request aid from other fire departments; not counties. Even in this instance, the fire department from which assistance is requested is not required to provide aid, but may assist at its option. Tellingly, the requesting governmental unit that receives the assistance is responsible for the personnel or equipment costs incurred by the responding agency (if the responding agency requests payment of those costs).

The requesting department cannot simply compel assistance.

Likewise, volunteer fire departments (and other units of government) may request aid during a state of emergency declared by the governor under Wis. Stat. § 323.10. Similar to the fire department mutual aid authority above, the unit of government from which assistance was requested is not required to provide aid, but may assist at its option. The requesting agency is also generally responsible for costs of personnel and equipment in this situation as well.

Because mutual aid authority is expressly provided to fire departments, it appears to exclude what would be an exceedingly broad interpretation – that Wis. Stat. § 213.095 implies authority to compel aid. If the Legislature had intended Wis. Stat. § 213.095 to provide any mutual aid authority, it would have expressly provided for it.

**CONCLUSION**

While volunteer fire departments are granted certain emergency response powers, they are not granted authority to compel county aid (either during or after an emergency). Rather, volunteer fire departments may request and utilize the aid of other fire departments through mutual aid agreements. However, even this authority only provides for voluntary mutual aid and not compelled aid.

If you have any questions about volunteer fire department emergency authority, or any other governmental law needs, please contact the Association or any member of the von Briesen & Roper Government Law Group ([www.vonbriesen.com](http://www.vonbriesen.com)). ♦