

(c) When there is no threat of fire, but Department of Forestry personnel have been dispatched to the scene of an emergency declared pursuant to the California Emergency Services Act?

2. May the Department of Forestry provide rescue, first aid and emergency medical services to the public within a local fire jurisdiction (city, county or district) as part of a contract to provide fire protection service?

3. May the Department contract with a local agency of government to provide such agency with mobile paramedic service as part of its contract to provide overall fire protection service?

CONCLUSIONS

1. (a) The Department of Forestry may provide rescue, first aid and emergency medical services to the public in “state responsibility areas” when the emergency includes fire which is threatening resources. The type and extent of such emergency service lies within the sound discretion of the Director of Forestry.

(b) The Department of Forestry may provide rescue, first aid and emergency medical services to the public in “state responsibility areas” when fire or the threat of fire is present, but there is no threat to resources.

(c) If so directed by the Governor or the State Director of Emergency Services, the Department of Forestry may provide rescue, first aid and emergency medical services when there is no threat of fire, but Department of Forestry personnel have been dispatched to the scene of an emergency declared pursuant to the California Emergency Services Act.

2. The Department of Forestry may provide rescue, first aid and emergency medical services to the public within a local fire jurisdiction (city, county or district) as part of a contract to provide fire protection service.

3. The Department of Forestry may contract with a local agency of government to provide such agency with mobile paramedic service as part of its contract to provide overall fire protection service.

ANALYSIS

I. THE BASIC AUTHORITY OF THE DEPARTMENT OF FORESTRY TO PROVIDE RESCUE, FIRST AID AND EMERGENCY MEDICAL SERVICES

Under policies established by the State Board of Forestry, the Director of Forestry is charged with the duty of preventing and suppressing “forest fires” in “state responsibility areas.” (See generally, Pub. Res. Code, § 730–743; 4101–4135.)¹ In 55 Ops. Cal. Atty. Gen. 45, 47 (1972) we summarized the duties of the then Division, now Department, of Forestry as follows, adding by footnote caveats to the generalizations set forth. We stated.

“In general, the California Division of Forestry, under the State Forester, [now Director of Forestry] provides for suppression, protection, and prevention of ‘forest fires’ as opposed to structural fires on such state responsibility areas. § 4111–4119; 5 Ops. Cal. Atty. Gen. 69 (1945). Again, generally speaking, structural protection and responsibility for fires occurring on lands not classified as state responsibility areas is primarily that of the federal or local agency as the case may be. § 4125; 5 Ops. Cal. Atty. Gen. 69 (1945); 28 Ops. Cal. Atty. Gen. 190, 196–198 (1956); *Policies of the State Board of Forestry*, division II, part 2, chapter 2, subchapters 1–5, pp. 12–18.4.⁵ While numerous fire laws (including § 4423) are contained in Public Resources Code and other Codes (see *Laws Relating to Fires and Firemen*, State Fire Marshall, 1966), and the State Forester or his agent is charged with the duty of enforcing these laws (§ 4119), local agencies are not pre-empted or precluded from adopting fire prevention requirements which are more restrictive than state statutes to meet local conditions. § 4117; 28 Ops. Cal. Atty. Gen. 190, 197–198 (1956).”

In note 5 we further stated:

⁵“The above generalizations are subject to qualification because of the variety of circumstances and statutes which may come to bear in any situation. For example, suppression or control of a structural fire may be

¹ “ ‘Forest fire’ means a fire burning uncontrolled on lands covered wholly or in part by timber, brush, grass, grain, or other flammable vegetation.” (Pub. Res. Code. § 4103.)

“ ‘State responsibility areas’ means areas of the state in which the financial responsibility of preventing and suppressing fires has been determined by the board [of Forestry] pursuant to Section 4125, to be primarily the responsibility of the state.” (Pub. Res. Code, § 4102.)

required to protect grasslands, brushlands, or timberlands, as when such a fire threatens to spread or cause a “forest fire.” In addition, the code contains provisions for counties to assume responsibility for prevention and suppression of fires on state responsibility areas (§§ 4129–4135), and for the state to enter into cooperative agreements for fire prevention and suppression with the federal government, counties, cities, districts, and other persons or agencies. §§ 4141–4142. It should be additionally pointed out that complex problems of contractual protection and mutual aid both under general powers and the California Emergency Services Act may arise under particular circumstances. See e.g., Health & Saf. Code §§ 13804–13805, 13852(g), 13879, and 13941; and Gov. Code §§ 55600–55609, 55632 and 8615–8619.”

Accordingly, absent some special circumstances such as a “cooperative agreement,” the Department of Forestry is limited by statute to fire protection as to nonstructural (resources) fires on specially designated lands throughout the state.²

Rescue, first aid and emergency medical service rendered to fire victims would seem to be a usual component of fire protection and fire suppression services. We have all seen pictures of “firemen” rescuing persons from burning buildings, or rendering first aid or resuscitating victims at the scene of a fire. Furthermore, the presence of a police or fire ambulance at the scene of a fire is a common sight. However, unlike laws relating

² More specifically, sections 4126 and 4127 of the Public Resources Code provide:

“The board shall include within state responsibility areas all of the following lands:

(a) Lands covered wholly or in part by forests or by trees producing or capable of producing forest products.

(b) Lands covered wholly or in part by timber, brush, undergrowth, or grass whether of commercial value or not, which protect the soil from excessive erosion, retard runoff of water or accelerate water percolation, if such lands are sources of water which is available for irrigation or for domestic or industrial use.

(c) Lands in areas which are principally used or useful for range or forage purposes, which are contiguous to the lands described in subdivisions (a) and (b).” (§ 4126.)

“The board shall not include within state responsibility areas any of the following lands.

(a) Lands owned or controlled by the federal government or any agency of the federal government.

(b) Lands within the exterior boundaries of any city.

(c) Any other lands within the state which do not come within any of the classes which are described in Section 4126.” (§ 4127.)

Counties may also contract with the state to assume responsibility for all fire protection within the county, including those in “state responsibility areas.” (Pub. Res. Code § 4129.)

to other fire protection agencies,³ the laws specifically relating to the powers and duties of the Department of Forestry are silent as to whether the department may provide rescue, first aid or emergency medical services to the public, that is, those members of the public who are fire victims. We are thus presented with the question whether, despite such “silence,” the department may provide these services, and under what circumstances.

The Department of Forestry divides the state into administrative districts and a supervising forest officer is appointed for each district. (Pub. Res. Code, § 4112.) Such supervising district officers “under the . . . director [of Forestry] have charge of the firefighting system and men in such districts, and are charged with the duty of preventing and extinguishing forest fires *and with the performance of such other duties as may be required by the director.*” (Pub. Res. Code § 4113, emphasis added.) The Department, which is under the supervision of the director, is charged with the following general duties respecting fire protection:

“The department, in accordance with a plan approved by the board, shall do all of the following:

- (a) Provide fire prevention and firefighting implements and apparatus.
- (b) Organize fire crews and patrols.
- (c) Establish observation stations and other necessary structures.
- (d) Employ men to effect the plan.
- (e) Construct and maintain telephone lines and provide such other means of communication as are necessary to prevent and extinguish forest fires.” (Pub. Res. Code, § 4114.)

The intensity of the protection for the various lands in state responsibility areas is determined by “plan” by the Board of Forestry. (Pub. Res. Code, § 4131.) Such “plan” is

³ See e.g., Gov. Code, §§ 25369.5 (county fire department, rescue and first aid service) and 55640 (county rescue and resuscitator services); Health & Saf. Code, §§ 13853, 15854 (fire protection districts, ambulance service, and rescue and first aid services). See also Health and Safety Code, §§ 1480–1485 (county mobile intensive care paramedic program). Interestingly, our research disclosed no statutes specifically providing that cities may provide rescue, first aid or emergency medical services as an adjunct to fire or police protection. See, however, Atty. Gen. Unpub. Op. I.L. 75–117, city could establish ambulance service in competition with private ambulance service under its general police powers. (See Cal. Const., art XI, § 7.)

the predicate for the allocation of the budgeted funds for fire protection (Pub. Res. Code, §§ 4130, 4132.)

Despite the “silence” in the Public Resources Code regarding the power of the Department of Forestry to provide rescue, first aid and emergency medical services, there are several statutes where the Legislature has indicated that such functions are the normal extensions of fire protection services, and included therein. Thus, section 217 of the Health and Safety Code provides that “[a]ll ocean and public beach lifeguards, and firemen in this state shall be trained to administer first aid, including, but not limited to, cardiopulmonary resuscitation.” “Firemen” is defined in the section to include officers and employees of a “fire protection or fire fighting agency of the State of California.” Even prior to the inclusion of the definition of the term “firemen” for purposes of this section, this office concluded that state forestry service personnel who were predominantly employed in forest fire work fell within the section. We stated:

“ . . . Although it might be argued that forest fire fighters are less likely to encounter insured persons in the course of their duties, the Legislature made no distinction between urban and rural fires. . . .” (51 Ops. Cal. Atty. Gen. 124, 127 (1961).)

In Attorney General’s Unpublished Opinion I.L. 76–54, we stated the obvious with respect to section 217 of the Health and Safety Code, that the section constituted a “statutory authorization” for any of the entitles named in the section to “render medical first aid assistance to injured parties.” (*Id.*, at p. 3.)

Additionally, a similar provision is found in section 219 of the Health and Safety Code with respect to “emergency medical services.” That section provides for the training and certification of “emergency medical technicians,” and provides in part that

“(a) The director [of Health Services] may develop, or prescribe standards for and approve, an emergency medical technician training and testing program for the Department of California Highway Patrol, *Department of Forestry*, and other public safety agency personnel, upon the request of, and as deemed appropriate by, the director for the particular agency. . . .”

This section is a clear legislative recognition that emergency medical services beyond first aid are an appropriate extension of the fire protection services.

Finally with respect to code provisions, Government Code section 850.8 recognizes that “rescue” services are a necessary incident of fire protection. Thus, that section, which is part of the California Tort Claim Act, provides authorization for such

“rescue” on the part of the Department of Forestry personnel for medical treatment. It provides:

“Any member of an organized fire department, fire protection district, or other firefighting unit of either the State or any political subdivision, *any employee of the Division of Forestry*, or any other public employee when acting in the scope of his employment, may transport or arrange for the transportation of *any person injured by a fire, or by a fire protection operation, to a physician and surgeon or hospital* if the injured person does not object to such transportation.” (Emphases added.)

(*Cf.*, Gov. Code, § 50086 relating to immunity of persons summoned to aid local agency in search and rescue operations.)

In addition to the foregoing code provisions relating to first aid and rescue service, several opinions of this office are of aid in demonstrating the fact that emergency medical and rescue services are essentially a component of fire protection services. Thus, in 2 Ops. Cal. Atty. Gen. 529 (1943) this office concluded that the authority of a county to operate county hospitals included the power to operate ambulance services to transport persons to the hospital in emergency cases. (See also 12 Ops. Cal. Atty. Gen. 262 (1948).) Such opinion demonstrates that medical and “rescue” operations may in appropriate circumstances be considered a necessary incident of another primary public power or duty. In Attorney General’s Unpublished Opinion I.L. 67–128 we took a similar approach. In that opinion we were asked whether a Community Services District formed pursuant to Government Code section 61000 *et seq.* could provide ambulance service. Emphasizing that community services districts perform many of the functions of cities, including police and fire protection, this office stated:

“*We have concluded that the maintaining of an ambulance service is an ‘important matter of health and welfare,’ 12 Ops. Cal. Atty. Gen. 262, 263 (1948), and that the statutory power to provide such service need not be express but may be implied where it may be said that the Legislature was acquainted with the peculiar needs for such service; 12 Ops. Cal. Atty. Gen. at 263; 2 Ops. Cal. Atty. Gen. 529, 530 (1943). The providing of emergency care is a proper municipal purpose and is an exercise of the police power of municipalities; Jardine v. City of Pasadena, 199 Cal. 64, 68, 71 (1926).” (Id., at p. 2, emphases added.)*

(a) Based upon the foregoing code sections and opinions of this office, we conclude that the Department of Forestry may provide rescue, first aid and emergency medical service to the public in “state responsibility areas” as an incident of its fire

protection services when the fire is threatening resources, that is, when the fire is clearly of the type which falls within the duty of the department to control and extinguish. The type or level of such services would appear to fall within the sound discretion of the director of the department based upon budgetary considerations and local conditions such as the ability of other agencies to provide or supplement such services.

(b) The second facet of question number one is whether the Department of Forestry may provide rescue, first aid and emergency medical services to the public in “state responsibility areas” when fire or the threat of fire is present, but there is no threat to resources. Examples given were a burning vehicle, structure or industrial operation. We conclude that the department may do so.

Although it might be urged that the department’s rescue, first aid and emergency medical services are only incident to its own fire fighting mission, and accordingly no power to render such aid exists absent a “resource” fire, we believe such a construction of the law would be too narrow and in contravention of declared legislative policy with respect to the rendition of emergency medical service.

First of all, the fact that no “resource” fire is present would not alter the fact that the departmental personnel would normally be at the scene of the fire or threat of a fire while acting within the scope of their duty to *protect* resources in “state responsibility areas.” Accordingly, their presence would be within the scope of their employment. This being the case, we believe that sections such as sections 217 and 219 of the Health and Safety Code, *supra*, should be construed as granting authority to render rescue, first aid and emergency medical services as required. Otherwise, we would reach the absurd result that departmental personnel would have to leave the injured unattended, perhaps even to die, until such time as the fire became “their fire,” or until personnel from the primary fire agency arrived to render aid. Statutes, however, should not be construed to render such absurd consequences. (*In re Eric J.* (1979) 25 Cal. 3d 522, 537.)

Furthermore, the Health and Safety Code is presently replete with legislation disclosing an express legislative policy that emergency medical services shall be provided to the fullest extent possible throughout the state. Some of this legislation has been directed at the rendition of such services by policemen, firemen and other public safety officers of both state and local agencies. Thus sections 1799.100–1799.108 provide special immunity from tort liability to both an individual and his employing agency to encourage the provision of emergency medical services at the scene of *any* medical emergency. For example, section 1799.106 of the Health and Safety Code provides:

“In addition to the provisions of Section 1483 of this code and of Section 1714.2 of the Civil Code and in order to encourage the provision of emergency medical service by firefighters, police officers or other law enforcement officers, EMT-I, EMT-II, or EMT-P, a firefighter, police officer or other law enforcement officer, EMT-I, EMT-II, or EMT-P who renders emergency medical services at the scene of an emergency shall only be liable in civil damages for acts or omissions performed in a grossly negligent manner or acts or omissions not performed in good faith. A public agency employing such a firefighter, police officer or other law enforcement officer, EMT-I, EMT-II, or EMT-P shall not be liable for civil damages if the firefighter, police officer or other law enforcement officer, EMT-I, EMT-II, or EMT-P is not liable.”

(See also, generally, Health & Saf. Code, § 1750, *et seq.*, state and local emergency medical care programs: “[i]t is the policy of the State of California that people shall be encouraged and trained to assist others at the scene of a medical emergency.” Health & Saf. Code § 1797 *et seq.*, “Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act.”)

Accordingly, we conclude that not only has the Legislature authorized Department of Forestry personnel to render rescue, first aid and emergency medical services at the scene of *any* medical emergency within their capabilities, but that the Legislature encourages and expects them to do so.

(c) The third and final facet of question number one presents the question whether the Department of Forestry may, when its personnel have been dispatched to the scene of an emergency pursuant to the California Emergency Services Act, provide rescue, first aid and emergency medical services to the public.

The California Emergency Services Act is contained in section 8550 *et seq.* of the Government Code. Under that Act the Governor may declare that a “state of emergency” exists (Gov. Code, § 862 5), which may be caused by conditions *other than fire*, including flood, storm, epidemic, riot or earthquake (Gov. Code, § 8558). In order to mitigate the effects of an emergency, the Governor is empowered to “[u]se and employ any of the property, services, and resources of the state as necessary to carry out the purposes of the act. (Gov. Code, § 8570, subd. (c); see also, generally, Gov. Code, §§ 8627, 8628, 8586–8587, 8595–8596, 8649.)⁴ As a general proposition, the Governor’s powers with

⁴ For example, Government Code section 8628 provides:

“During a state of emergency the Governor may direct all agencies of the state government

respect to a state of emergency will be exercised by the Office of Emergency Services and its director. (Gov. Code, §§ 8586–8587.)

From the foregoing, it is evident that, if so directed by the Governor or the State Director of Emergency Services, the Department of Forestry may provide rescue, first aid and emergency medical services when there is no threat of fire, but Department of Forestry personnel have been dispatched to the scene of an emergency declared pursuant to the California Emergency Services Act.

2. PROVISION OF RESCUE, FIRST AID AND EMERGENCY MEDICAL SERVICES TO THE PUBLIC IN LOCAL JURISDICTIONS PURSUANT TO CONTRACT

The second question presented is whether the Department of Forestry may provide rescue, first aid and emergency medical services to the public within a local fire jurisdiction (city, county or district) as part of a contract to provide fire protection service. We conclude that the department may provide such services either under the provisions of section 4142 of the Public Resources Code or the Joint Exercise of Powers Act, Government Code section 6500 *et seq.*

Section 4142 of the Public Resources Code provides:

“The department may, with the approval of the Department of General Services, enter into a cooperative agreement upon such terms and under such conditions as it deems wise, for the purpose of preventing and suppressing forest fires or other fires in any lands within any county, city, or district which makes an appropriation for such purpose.”

In answering question number one above, we have demonstrated that the Legislature has considered rescue, first aid and emergency medical services a component of fire protection service. (See again, Health & Saf. Code, §§ 217, 219; Gov. Code, § 850.8 and code provisions and authorities collected at footnote 3, all *supra.*) Accordingly, section 4142 of the Public Resources Code would grant to the department authority to provide the

to utilize and employ state personnel, equipment, and facilities for the performance of any and all activities designed to prevent or alleviate actual and threatened damage due to the emergency, and he may direct such agencies to provide supplemental services and equipment to political subdivisions to restore any services which must be restored in order to provide for the health and safety of the citizens of the affected area. Any agency so directed by the Governor may expend any of the moneys which have been appropriated to it in performing such activities, irrespective of the particular purpose for which the money was appropriated.”

questioned services as part of a contract to provide a local fire agency with fire protection services “under such conditions as it deems wise.”

Additionally, the Joint Exercise of Powers Act permits any state agency to contract with any other governmental agency or entity to provide the latter with any services which both have the power to provide within their own jurisdictions. (See Gov. Code, §§ 6500, 6502, 6506, 6508; 57 Ops. Cal. Atty. Gen. 107 (1974); 53 Ops. Cal. Atty. Gen. 324, 327 (1970); 14 Ops. Cal. Atty. Gen. 72 (1949).) Accordingly, the Joint Exercise of Powers Act would constitute an alternate source of authority for the Department of Forestry (with any requisite approval of the Director of General Services, Gov. Code, § 6501) to provide rescue, first aid and emergency medical services as part of a contract to provide a local fire agency with fire protection services.

3. PROVISION OF MOBILE PARAMEDIC SERVICE TO A LOCAL AGENCY BY CONTRACT

The third question presented is whether the Department of Forestry may contract with a local agency to provide mobile paramedic service as part of its contract to provide overall fire protection service.

Sections 1480 through 1484 of the Health and Safety Code provide a pilot program for counties, whereby counties may train and certify mobile intensive care paramedics to care for the injured at the scene of an emergency, during transport to a general acute care hospital, and while at the hospital until responsibility is assumed by the hospital staff.⁵ This program was first established in 1970 (Stats. 1970, ch. 421) and has a

⁵ Section 1481 of the Health and Safety Code provides:

“As used in this article:

(a) ‘Mobile intensive care paramedics’ means personnel who have been trained in the provision of emergency cardiac and noncardiac care in a training program certified by the county health officer of the county giving certification or a certified training program in another county that has been evaluated and approved by the county health officer of the county giving certification, and who pass the performance and written examinations required for certification by the officer as qualified to render the services enumerated in this article in the county giving such certification.

(b) ‘Mobile intensive care nurse’ means a registered nurse who has been certified by a county health officer as qualified in the provision of emergency cardiac care and noncardiac care and the issuance of emergency instruction to mobile intensive care paramedics.

(c) ‘Mobile intensive care units’ means any emergency vehicles staffed by mobile intensive care paramedics or mobile intensive care nurses and equipped to provide remote intensive care or cardiac care to the sick or injured at the scene of the medical emergencies or during transport to general acute care hospitals.

current expiration date, unless further extended by the Legislature, of January 1, 1982 (Health & Saf. Code, § 1484). The law contemplates that counties may train public employees of *any* public agency to become “mobile intensive care paramedics,” including specifically fire protection districts. (Health & Saf. Code, § 1481.3; see also Water Code, § 71680, Mun. Water Districts may establish fire protection service and ambulance and mobile intensive care paramedic service.)

In our view, the provision of mobile intensive care paramedic service by a fire agency would constitute merely a component of its rescue, first aid and emergency medical service. Accordingly, since the Department of Forestry and local fire agencies are empowered to perform the latter services, the analysis with respect to question three would be the same as for question two, leading to the conclusion that the Department of Forestry may provide “mobile intensive care paramedic service” as part of a contract to provide overall fire protection service under either section 4142 of the Public Resources Code, *supra*, or the Joint Exercise of Powers Act, *supra*.

(d) ‘Emergency department’ means any department or separate area within a general acute care hospital which is staffed and equipped to provide emergency medical care of the sick or injured.”

The specific duties of “paramedics” are set forth in section 1482, which will disclose emphases upon cardiopulmonary resuscitation and emergency care.