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OPINION	:	No. 86-406
of	:	<u>NOVEMBER 6, 1986</u>
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THE HONORABLE JAMES F. McMULLEN, State Fire Marshal, has requested an opinion on the following question:

Must a public utility district that provides fire protection services through a private independent fire force staffed and operated entirely by volunteers enforce the building standards and other regulations relating to fire and panic safety that have been adopted by the State Fire Marshal?

CONCLUSION

A public utility district that provides fire protection services through a private independent fire force that is staffed and operated entirely by volunteers has a duty to see that the building standards and other regulations relating to fire and panic safety that have been adopted by the State Fire Marshal are enforced within the district, either by appointing

a chief fire official of the district to enforce them or by formally requesting the Fire Marshal to assume the obligation.

ANALYSIS

The function of the State Fire Marshal is to "foster, promote, and develop ways and means of protecting life and property against fire and panic." (Health & Saf. Code, § 13100.1;¹ see generally, 7 Ops.Cal.Atty.Gen. 276, 278 (1946).) As part thereof, section 13143 of the Health and Safety Code directs that the Fire Marshal, with the advice of the State Board of Fire Services, (a) prepare and adopt "building standards" (*cf. id.*, § 18909) for approval by the State Building Standards Commission under the State Building Standards Law (Health & Saf. Code, div. 13, pt. 2.5, § 18901 *et seq.*) for inclusion in the State Building Standards Code (Cal. Admin. Code, tit. 24) and (b) adopt other rules and regulations establishing minimum requirements for the protection of life and property against fire and panic in certain buildings used by the public including hospitals, schools, theatres, etc. (19 Cal. Admin. Code, § 1.00 *et seq.*). (*Cf.* 69 Ops.Cal.Atty.Gen. 114 (1986); 64 Ops.Cal.Atty.Gen. 173 (1981); 20 Ops.Cal. Atty.Gen. 31 (1952); 15 Ops.Cal.Atty.Gen. 129 (1950); 7 Ops.Cal.Atty.Gen. 276, *supra*; see also § 13108 ["state buildings"].)

Section 13145 requires the State Fire Marshal and the Chief of any district providing fire protection services to enforce these building standards and other regulations in their respective areas:

"The State Fire Marshal, the chief of any city or county fire department or district providing fire protection services, and their authorized representatives, shall enforce in their respective areas building standards relating to fire and panic safety adopted by the State Fire Marshal and published in the State Building Standards Code and other regulations that have been formally adopted by the State Fire Marshal for the prevention of fire or for the protection of life and property against fire or panic." (Emphasis added.) (See also § 13146.3 [Chief must also annually inspect every school building within his jurisdiction to enforce fire marshal's regulations].)

Section 13146 provides for a division of authority relating to that enforcement:

"The division of authority for enforcement of building standards adopted by the State Fire Marshal and published in the State Building

¹ Unidentified section references will be to the Health and Safety Code unless context indicates otherwise.

Standards Code relating to fire and panic safety and other regulations of the State Fire Marshal shall be as follows:

"(a) *The chief of any city or county fire department or district providing fire protection services, and their authorized representatives, shall enforce such building standards and other regulations of the State Fire Marshal in their respective areas.*

"(b) The State Fire Marshal shall have authority to enforce such building standards and other regulations of the State Fire Marshal in areas outside of corporate cities and districts providing fire protection services.

"(c) *The State Fire Marshal shall have authority to enforce such building standards and other regulations of the State Fire Marshal in corporate cities and districts providing fire protection services upon request of the chief fire official or the governing body.*" (Emphasis added.)

Section 13146.5 then provides that the foregoing provisions,

"... of Sections 13145, 13146 and 13146.3 shall *so far as practicable, be carried out at the local level by persons who are regular full-time members of a regularly organized fire department of a city, county, or district providing fire protection services, and shall not be carried out by other persons pursuant to Section 34004 of the Government Code.*" (Emphasis added.)²

This opinion concerns the responsibility of enforcing the Fire Marshal's regulations in a district which provides fire protection services through arrangement with a private independent volunteer fire fighting force.

The Mariposa Public Utilities District was formed in 1947 pursuant to the Public Utility District Act of 1921 (Stats. 1921, ch. 560, p. 906; since codified as The Public

² Section 34004 provides:

"Where any duty is imposed upon a municipal officer by any law of this State or any rule or regulation adopted under the authority of any such law the governing body of a city may, by ordinance, impose such duty or a portion thereof upon such other officer of such city as is charged under the charter of that city, or by applicable general law with the performance of duties of the same character in that city. A copy of any such ordinance as adopted shall be filed with the state officer or agency which has charge of the matter to which such duty pertains.

Utilities District Act of 1953 [Pub. Util. Code, div. 7, ch. 1, § 15500 *et seq.*]) to furnish, *inter alia*, water, sewer, and fire protection to a certain geographic area surrounding the Town of Mariposa. The District has no fire personnel, regular, full-time or otherwise, nor does it operate an organized fire department. However, it does own fire apparatus and equipment and a fire hydrant system and, through a Memorandum of Understanding, it has made arrangements with a volunteer fire group, the Mariposa Public Utility District Volunteer Fire Department, for the latter to use the District's equipment "to perform fire fighting duties within the [Mariposa Public Utilities District] fire protection system." The group is staffed by part-time volunteers who are not district employees. (*Cf.* 29 Ops.Cal.Atty.Gen. 211, 212, 214 (1957).) Members of the organization receive no compensation for their services, but the District does provide liability insurance for them and, through a joint powers agreement with the County of Mariposa, pays their workmens compensation insurance. (Lab. Code, §§ 3351, 3361, 3365; *cf.* 29 Ops.Cal.Atty.Gen. 211, 212, *supra.*) It also provides their protective clothings, safety equipment and fire apparatus; their meeting place; and funding for their training. The residents of the District pay a monthly assessment to the District for fire protection.

The volunteer organization is headed by a person elected by the volunteers and is designated their "chief". He answers to the District's General Manager and Board of Directors on fiscal and business matters, but exercises full control over the volunteer fire department's operational functions such as fire suppression, emergency medical services, and fire prevention. (Compare *Bingham City Corporation v. Industrial Commission of Utah*, 66 Utah 390; 243 P. 113 (1926) cited in 29 Ops.Cal.Atty.Gen. 211, 212, *supra.*)

We are asked whether the Mariposa Public Utilities District must enforce the aforementioned building standards and other regulations adopted by the Fire Marshal since it has no chief fire official (§§ 13145, 13146) and no regularly organized fire department staffed by regular full time members (§ 13146.5). We conclude that it nonetheless has an obligation to see that the Fire Marshal's regulations are enforced within the district either by appointing a chief fire official of the District to enforce them or by formally requesting the State Fire Marshal to assume the task of their enforcement.

Section 13145 imposes a positive statutory duty (*cf.* 67 Ops.Cal.Atty.Gen. 331, 332-333 (1984)), upon both the State Fire Marshal *and* "the chief of any . . . district providing fire protection services" to enforce the former's building standards and other regulations relating to fire and panic safety. (Health & Saf. Code, § 16 ["shall" is mandatory]; *People v. McGee* (1977) 19 Cal.3d 948, 958-959; 20 Ops.Cal.Atty.Gen. 31, 36-37, *supra.*; 7 Ops.Cal.Atty.Gen. 274, 279-280, *supra.*) Section 13146 apportions that responsibility territorially and imposes the initial obligation for their enforcement in a

"district providing fire protection services", upon "the chief of [the] district".³ (*Id.*, subd.(a); *cf.* 20 Ops.Cal.Atty.Gen., *supra.*) The State Fire Marshal is vested with authority to enforce the standards and regulations in such districts only "upon request of the chief fire official or the governing body." (§ 13146, subd. (c); *cf.* 7 Ops.Cal.Atty.Gen., *supra* at 278; but see, § 13104 [duty of Fire Marshal to *aid* in enforcement].)

The Legislature's purpose for enacting these statutory provisions was to ensure that minimum fire and panic protection standards, i.e., those adopted by the Fire Marshal, be enforced with respect to all the specified buildings *everywhere* in the state either by a local fire chief or by the State Fire Marshal. (*Cf.* 20 Ops.Cal.Atty.Gen. 31, 33, 36-37, *supra*; 7 Ops.Cal.Atty.Gen. 276, 279-280, *supra.*) Needless to say, the statutes must be interpreted in such a way as to accomplish that statutory purpose. (*Cf. People v. Davis* (1981) 29 Cal.3d 814, 828; *Pacific Coast etc. Bank v. Roberts* (1940) 16 Cal.2d 800, 806; *Stewart v. Board of Medical Quality Assurance* (1978) 80 Cal.App.3d 172, 179.) As is seen in the situation presented, an unembellished literal reading of the statutes would leave a gap in their intended comprehensive enforcement of the Fire Marshal's regulations.

The Mariposa Public Utilities District is a "district providing fire protection services" within contemplation of the statutory scheme.⁴ Being such it, or rather its "chief

³ Sections 13145 and 13146(a) impose the duty of enforcing the State Fire Marshall's regulations in the area of a district providing fire protection services, on the "chief of [the] district." That designation is somewhat ambiguous. It can refer to the chief executive officer of the district, or it can refer to the district officer or employee in charge of fire protection services. That it clearly refers to the latter is seen from context: in subdivision (a) of section 13146, the personage is named along with the "chief of any city or county fire department" and in subdivision (c) of that section, he or she is referred to as "the chief fire official."

⁴ The phrase derives from 1980 amendments to the pertinent provisions of the Health and Safety Code which replaced a prior reference in sections 13145, 13146 and 13146.5 to "fire protection districts." (Stats. 1980, ch. 118, §§ 6, 7, and 9, respectively.) Although the change was described as "technical" and/or "nonsubstantive" (see Leg. Counsel's Dig. to SB 1436) and the Mariposa Public Utilities District is not a "fire protection district", the current reference nonetheless applies to it.

"Fire protection districts" are municipal corporations formed pursuant to special statute, the Fire Protection District Law of 1961 (Health & Saf. Code, div. 12, pt. 2.7, § 13801 *et seq.*) for the limited purpose of "furnishing protection to and the elimination of fire hazards in the territory within [their] boundaries." (*Firestone Tire & Rubber Co. v. Board of Supervisors* (1958) 166 Cal.App.2d 519, 529.) "Public utility districts" on the other hand, are formed under a different law, the Public Utility District Act, *supra*, and are not, strictly speaking, "fire protection districts". Nevertheless, the Public Utilities District Act clearly provides that "a [public utility] district may exercise *any* of the powers, functions, and duties which are vested in, or imposed upon, a Fire Protection District pursuant to the Fire Protection District Law" (§ 16463.5) and section 20202.4

fire official" (*cf.* fn 3, *ante*), would have the primary responsibility imposed by sections 13145 and 13146 to enforce the State Fire Marshal's regulations. And therein lies the rub, for the Mariposa Public Utilities District does not have a "chief fire official."

The volunteers who operate the "Mariposa Public Utilities District Fire Department" including *their* elected "chief" are *not* employees of the District. (*Cf.* 29 Ops.Cal.Atty.Gen. 211, 212, *supra*; and compare Health & Saf. Code, § 13808 [paid volunteers are employees of a Fire Protection District].) Section 16112 of the Public Utilities Code requires all officers of a public utilities district, other than its board of directors, "[to] be appointed by the board, [and] hold office at its pleasure" No appointment of a "fire chief" has been made in the Mariposa Public Utilities District and without that investiture, the chief of the volunteer fire department would not be the district's "chief fire official." (*Cf.* 66 Ops.Cal.Atty.Gen. 176, 180-181 (1983).)

Such a situation appears to leave a hole in section 13146's scheme of apportioning responsibility for the enforcement of the State Fire Marshal's regulations. Subdivision (a) imposes the duty of such enforcement on the "chief [fire official] of any . . . district providing fire protection services" and subdivision (b) imposes it on the State Fire Marshal "in areas *outside* of [such districts]." Who then would have the duty in a situation as we have here, of enforcing the regulations *inside* a district that does provide fire protection services but that does *not* have a chief fire official? The local person who is designated with the responsibility to enforce the regulations under subdivision (a) would be lacking and the State Fire Marshal would have no authority to enforce them under subdivision (b). As mentioned, we do not believe the Legislature ever intended such an omission from its scheme of enforcement of the fire and panic safety regulations required for high public use buildings and the statute must be interpreted in a way which avoids such omission.

of the Public Contract Code (formerly section 13463 of the Public Utility District Act) provides that a district may "acquire, construct, own, complete, use, and operate a fire department". There is nothing in the law which says that a public utility district must exercise *all* of the powers, functions, and duties of a fire protection district, and there is nothing that says that it *itself* must perform those that it does choose to exercise. The general power granted public utility districts to provide fire protection services includes the power to provide such services by any lawful method and section 20202.2 of the Public Contract Code (formerly Pub. Util. Code, § 16406) specifically provides that "a district may make contracts . . . and do all acts necessary and convenient for the full exercise of its powers". (See also, Pub. Contract Code, §§ 20201, 20204.1 *et seq.* ["bidding"]; Pub. Util. Code, § 16043 [conflict of interest in contracts].) The Mariposa Public Utilities District provides some of the incidents of its fire protection system itself (e.g., the equipment) and has made arrangements with private parties to furnish others (e.g., the manpower). It has assessed its inhabitants to pay for these fire protection services. The District would thus be a "district providing fire protection services" within the meaning of the above-quoted statutory provisions.

A public utility district may provide fire protection services without itself furnishing them directly through the operation of district owned facilities and equipment by district personnel. It may contract with others, including independently organized and separately operated private volunteer organizations, to do so. Indeed, volunteer fire protection organizations providing such fire protection for local jurisdictions has a long and established history in this state. (66 Ops.Cal.Atty.Gen. 172, 176, 180 & 180 fn. 4, *supra*; 29 Ops.Cal.Atty.Gen. 211, 212-215, *supra*.) Whether organized pursuant to statute (e.g. Health & Saf. Code, § 14825 *et seq.*) or not, a volunteer fire force can contract with a district to furnish fire protection for the area.

Where such contracts are made there is no specific requirement that a public utilities district *must* make the head of the volunteer organization a public officer. (Compare Gov. Code, § 38611 [requiring such of cities] and former Health & Saf. Code, § 14455.6 [the former County Fire Protection District Law].) It may do so (Pub. Util. Code, § 16112), but need not. But we do not believe that by taking the latter course a district can so easily avoid a responsibility to see that the Fire Marshal's regulations are enforced within its jurisdiction. As we proceed to explain, a district has a responsibility to do something to see that such regulations are enforced and we believe it is found in subdivision (c) of section 13146.

Section 13145 contemplates that *all* areas of the State are to be included in the fire protection mosaic the Legislature has painted so that there be no hiatus in protecting the public from fire and panic in fires. Indeed, at the time when the enforcement provisions of section 13145 were cast in permissive terms (Stats. 1945, ch. 1173, § 9 ["may enforce in their respective areas"], we concluded that since the purpose of the law was to clothe a public officer with power to be exercised for the benefit of the public, the permissive "may" was to be interpreted to mean "must" and the section thus imposed a mandatory duty upon the Fire Marshal *and the other officials designated therein* to enforce the former's rules and regulations (20 Ops.Cal.Atty.Gen. 31, 36, *supra*). We also said:

"In regards to the obligation of inspections, it is our opinion that the various enforcement agencies are obligated to make inspections in accordance with the personnel available. The passage of the law by the Legislature is not to be considered a useless act and if inspections are not made and compliance with the law required, the desire of the Legislature to protect the public from fire and panic in fires will not be accomplished." (20 Ops.Cal.Atty.Gen. at 37.)

Today the enforcement obligation of section 13145 is cast in mandatory terms (Stats. 1959, ch. 1891, § 1; Stats. 1965, ch. 526, § 2; *cf.* Health & Saf. Code, § 16 ["shall"]) and we therefore would not say less about its purport. Nor should we have that

be diluted by reading section 13146 in piecemeal fashion especially since the latter section read substantially the same in 1952 when we rendered our opinion. We therefore believe the combined effect of it and section 13145 still remains that of imposing a duty on "the Fire Marshal *and* the other officials designated therein [to] enforce [the subject] rules and regulations." (20 Ops.Cal.Atty.Gen. at 36.) Accordingly we conclude that the governing body of "any district providing fire protection services" must see that the Fire Marshal's building standards and other regulations relating to fire and panic safety are enforced within the district, either (1) by appointing a chief fire official of the district to assume such enforcement duties under subdivision (a) of section 13146, or (2) by formally requesting that the State Fire Marshal assume the enforcement obligation himself under subdivision (c) of that section. Where the district chooses the latter course, the duty of enforcement devolves upon the State Fire Marshal who then must undertake to enforce the standards and regulations within the district. (*Cf.* 7 Ops.Cal.Atty.Gen. 276, 279-280, *supra.*) The legislative scheme so conceived leaves no break in the enforcement of the State Fire Marshal's building standards and other regulations relating to fire and panic safety.⁵

It has been suggested, though, that section 13146.5 negates a basic obligation of a district to see to enforcement of those standards and regulations when it provides its fire protection services by arrangement with a private independent volunteer fire force. Once again, the section provides that the enforcement "*so far as practicable*, [is to] be carried out at the local level *by persons who are regular full-time members of a regularly organized fire department* of a . . . district providing fire protection services." (Emphasis added.) Based on the assumption that the section is somehow "jurisdictional" it is posited

⁵ It is to be noted that we deal with a district that does not have a "chief fire official" to enforce the Fire Marshal's regulations, and have, in such situation, perceived two duties to exist in the statutory scheme for the statutory purpose to be effected: a duty, for a district to do something to see that the regulations are enforced within its jurisdiction--to wit, to appoint a chief fire official who might enforce them or to formally request the State Fire Marshal to do the same, and then, of necessity, a concomitant duty on the part of the Fire Marshal to assume that task. However, where a district does have a chief fire official of a regularly organized fire department (see fn 5, *post*) that "necessity" is no longer necessary to effect the statutory purpose, for persons are present who can provide the enforcement on the local level. Indeed in such cases, section 13146.5 suggests a legislative direction that they carry it out. We therefore cannot similarly extrapolate a mandatory duty for the State Fire Marshal to assume the obligation of enforcement of the building standards and other regulations relating to fire and panic safety when requested by a chief fire official or governing body of a district (or corporate city) which provides fire protection services through full time members of a regularly organized fire department. Where a request is received from such a district pursuant to section 13146, subdivision (c), the Fire Marshal would have authority to enforce these building standards and other regulations, but may decline to do so. Comments to the contrary in 7 Ops.Cal.Atty.Gen. 276, 279-280, *supra*, were made at a time when section 13146.5 (Stats. 1959, ch. 1891, § 4) did not exist.

that if a district does not have a "regularly organized fire department" composed of "regular full-time members", it would not have any duty of enforcement. We do not accept the assumption and thus reject the suggestion that where a district's fire protection is provided by volunteers its basic duty of seeing that the Fire Marshal's regulations are enforced within the district is obviated.

We have seen how the Mariposa Public Utilities District is "a district providing fire protection services" which must enforce the Fire Marshal's regulations even though the manpower for those services is supplied by an independent organization composed of part-time volunteers. It is true that section 13146.5 then provides that the enforcement of the standards and regulations in the district be carried out by persons who are full-time members of a regularly organized fire department,⁶ but that statement is preceded by the qualifying words "*so far as is practicable*." That language must serve some purpose in the section lest it be mere surplusage (*cf. Fields v. Eu* (1976) 18 Cal.3d 322, 328) and we believe it casts the section not as a *sine qua non* of who is *required* to carry out the district's basic enforcement obligation, but rather as a legislative expression of those it thought best to do so and those it hoped would perform the task. The section thus does not reflect an indispensable requirement of who *must* perform the enforcement so as to say that without them there to do it, it need not be performed at all. Thus the fact that it may not be practicable for a district's volunteer fire department to carry out the statutory enforcement does not mean that the district's basic obligation to ensure it is negated. Where it proves impractical for volunteers to perform the task, the statutory scheme requires the district either appoint a chief fire official to enforce the regulations, or to make formal request of the State Fire Marshal to assume that obligation. Indeed, given the Legislature's exhortation regarding enforcement expressed in section 13146.5, the latter would be the desired course. The basic difficulty or impracticality of enforcement, however, would not *ipso facto* relieve a district from its primary obligation in that regard. To repeat what we said in 20 Ops.Cal.Atty.Gen. 31 at 37:

⁶ We could find no statutes or case law defining the "regularly organized fire department." However, the phrase "regularly organized fire department of a city, county, or district providing fire protection services" would seem to mean a city fire department, a county fire department, a fire protection district or the fire department of a public utility district because each of these entities would be organized pursuant to statutory or charter provisions. Even a fire company in an unincorporated town would be organized pursuant to statute (Health & Saf. Code, div. 12, pt. 4, § 14825 *et seq.*; 66 Ops.Cal.Atty.Gen. 176, 180 & 180 fn. 4; 29 Ops.Cal.Atty.Gen. 211, 215) and significantly, it too must enforce all fire ordinances. (§ 14842.) As a general matter, however, we would assume the reference to "regular full time members of a regularly organized fire department" means paid firemen in a formally constituted force.

"In regards to the obligation of inspections, it is our opinion that the various enforcement agencies are obligated to make inspections in accordance with the personnel available."

We therefore conclude that any public utility district that has chosen to provide fire protection services through a fire force operated by unpaid volunteers still has a primary obligation to enforce the State Fire Marshal's building standards and other regulations relating to fire and panic safety. It may fulfill this either by appointing a "chief fire official" of the district to carry out the enforcement duty or by formally requesting the State Fire Marshal to assume the same.
