Public Records Law -- Volunteer Fire Department

Number: INFORMAL

Date: September 27, 2016

Subject:
Public Records Law -- Volunteer Fire Department

Mr. Jeff Goodman
Attorney At Law
946 Main Street
Chipley, Florida 32428

Dear Mr. Goodman:

As attorney for the Town of Wausau you have asked for assistance in determining whether records of the town's volunteer fire department relating to the charitable activities of the fire department are public records subject to inspection and copying pursuant to Chapter 119, Florida Statutes. Attorney General Bondi has asked me to respond to your letter.

After reviewing the information you have submitted, it does not appear that this is a matter upon which this office may formally comment. The Attorney General is statutorily limited to providing legal advice and opinions to governmental officers on questions of state law relating to their own official duties and responsibilities. See section 16.01(3), Florida Statutes, and Department of Legal Affairs Statement Concerning Attorney General Opinions (available as FAQ at www.myfloridalegal.com / AG Opinions). Thus, in the absence of a request from the Chief of the Wausau Volunteer Fire Department or additional information making the relationship between the Town and the fire department clearer, this office may only provide you with general information relating to the applicability of the Public Records Law to such entities as a volunteer fire department.

The case closest factually to this situation is Schwartzman v. Merritt Island Volunteer Fire Department, 352 So. 2d 1230 (Fla. 4th DCA 1977). The Merritt Island Volunteer Fire Department was a nonprofit corporation made up of citizens who volunteered to operate the county owned fire fighting equipment on Merritt Island. The volunteers also undertook a number of charitable activities to raise money including selling Christmas trees and holding chicken dinners.

A public records request was made for all of the volunteer fire department's records in an effort to settle the question of whether such an entity was subject to the Public Records Law. In response to the request, the fire department asserted that certain of its records, membership files, minutes of its meetings, and charitable activities were not "official business" and that for those purposes the department was not an "agency" subject to the act.

The Fourth District Court of Appeal disagreed and determined that the volunteer fire department was "acting on behalf of (a) public agency" and that the Public Records Law would cover an organization "entrusted with the sole stewardship over firefighting and funded in part by public

moneys."[1] The court considered a number of factors in making its determination:

"Inevitably, the present Act covers an organization entrusted with the sole stewardship over firefighting and funded in part by public moneys. The whys and wherefores of how membership is obtained with a view to firefighting expertise, the fact that the county pays $850.00 per month toward its support and supplies all the equipment, the placing of county funds in a common bank account along with the fish fry money, and the conduct of all its activities on county owned property (even if the department did raise $65,000 to help construct the building) all establish the public agency nature of the organization.

Perhaps not any one of the above factors set forth in the preceding paragraph would bring the volunteer department within the purview of the public records law, but the totality of them leads irresistibly to the conclusion that this department is subject to the Public Records Act."[2]

Thus, the court reviewed the totality of factors in making its determination. The intermingling of funds of the department into a common bank account was only one factor considered by the court and was not determinative of whether the Public Records Law was applicable.

This is the analysis which must be undertaken to determine whether the Wausau Volunteer Fire Department is subject to Florida's Public Records Law. This office has not reviewed independent information which would address the creation and extent of responsibility of the Wausau Volunteer Fire Department; however, I would note that, as the court suggested in the Schwartzman case, the segregation of certain funds by an entity "acting on behalf of (a) public agency" will not shield the records of that organization from inspection and copying under the Public Records Law.

I trust that these informal comments will be helpful to you in advising your clients and the included material from the Government-in-the-Sunshine Manual which may also be helpful.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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Enclosure: Government-in-the-Sunshine Manual (2016 ed.), pp. 60-64

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[1] Schwartzman v. Merritt Island Volunteer Fire Department, 352 So. 2d 1230, 1232 (Fla. 4th DCA 1977).

[2] Id.