



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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The Honorable Clarence E. "Bud" Phillips
Member, Virginia House of Delegates
Post Office Box 36
Castlewood, Virginia 24224

Dear Delegate Phillips:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You inquire whether volunteer fire departments may assess and charge a fee to an individual's homeowners' insurance policy or automobile insurance policy for responding to a fire emergency.

Response

It is my opinion that a volunteer fire or rescue squad lacks the statutory authority or the contractual right to bill the beneficiary's home or automobile insurance policy for responding to a call about a fire emergency.

Applicable Law and Discussion

Virginia localities are allowed to "contract with or provide for any volunteer fire-fighting or emergency medical services companies or associations in the county, city or town for the fighting of fire or provision of emergency medical services."¹ The Code provides several avenues for volunteer fire and rescue squads to seek reimbursement for expenses incurred in responding to calls for help.

Under § 32.1-111.14(B), localities are authorized to "make reasonable charges for use of emergency medical services vehicles," including charging insurers for ambulance services. To the extent a volunteer fire or rescue squad is providing *medical* or *ambulance* services, as opposed to responding to a call concerning a fire, the volunteer company may bill an insurance company for such services.

In addition, § 15.2-1716 allows localities to enact ordinances allowing for volunteer fire and rescue companies to recover expenses incurred in responding to certain calls when a conviction for specified crimes has occurred. Recovery may be through restitution following a conviction or through a separate civil lawsuit.² To the extent the individual can be reimbursed through his insurance company for

¹ VA. CODE ANN. § 27-23.6 (2009).

² VA. CODE ANN. § 15.2-1716 (2010).

these expenses, he may seek to do so. In this situation, the fire or rescue squad would not bill the insurance company. Rather, it would recover from the individual based on the court's order of restitution or from a separate civil lawsuit.

Finally, the Commissioner of Health is authorized to issue permits for emergency medical services agencies and vehicles to ensure compliance with federal regulations relating to reimbursement of ambulance services pursuant to Medicare and Medicaid.³

Aside from the few exceptions noted above, nothing in the *Code of Virginia* expressly authorizes volunteer fire and rescue squads to bill home or automobile owners, or insurance companies, for responding to routine calls for service.⁴ When the General Assembly has found it wise to authorize fire and rescue squads to recover for their services, it expressly has done so. In the absence of express authorization from the General Assembly, fire or rescue squads would have no statutory basis upon which to bill an individual's homeowners' or automobile insurance policy for responding to a fire emergency.⁵

Virginia law recognizes a cause of action for an implied contract, known as quantum meruit.⁶ Under this theory,

[w]here service is performed by one, at the instance and request of another, and nothing is said between the parties as to compensation for such service, the law implies a contract, that the party who performs the service shall be paid a reasonable compensation therefor. The remedy available to the plaintiff is an award of damages amounting to the reasonable value of the work performed, less compensation actually received for that work.^[7]

This doctrine of quantum meruit is qualified, however, in its application. The law will recognize an implied contract for services when the services were performed under circumstances that would give the beneficiary "reason to believe they were performed with the expectation of compensation."⁸ Persons who call on the assistance of volunteer fire or rescue services do not have the expectation that they are impliedly contracting for a service. Fire and rescue squads are charitable organizations, who provide their services out of a benevolent rather than a commercial motivation. "It is well established that no recovery can be had, on a quantum [m]eruit basis, for services rendered by reason of religious or charitable motives."⁹ Therefore, quantum meruit affords no basis for a fire or rescue squad billing an individual or that individual's insurance company for responding to a call.

³ VA. CODE ANN. § 32.1-111.6:1 (2009).

⁴ Some states expressly allow for such bills. See *Lawson Rural Fire Ass'n v. Avery*, 764 S.W.2d 113 (Mo. Ct. App. 1988) (discussing statute that specifically allows volunteer fire companies to charge persons who are not members for services rendered).

⁵ The Code generally contemplates that volunteer fire and rescue squads will be financed from localities, either through payments made by the locality based on each response to a call for assistance, VA. CODE ANN. § 15.2-953(D) (2010), or through property taxes, VA. CODE ANN. § 27-47 (2009).

⁶ *Mongold v. Woods*, 278 Va. 196, 203, 677 S.E.2d 288, 292 (2009).

⁷ *Id.* (internal quotation marks, alterations and citations omitted).

⁸ *Korzendorfer Realty v. Hawkes*, 211 Va. 534, 537-38, 178 S.E.2d 524, 526 (1971).

⁹ *Lewis v. Holy Spirit Ass'n for the Unification of World Christianity*, 589 F. Supp. 10, 13 (D. Mass. 1983) (citing cases).

Conclusion

Accordingly, it is my opinion that a volunteer fire or rescue squad lacks the statutory authority or the contractual right to bill the beneficiary's home or automobile insurance policy for responding to a call about a fire emergency.

With kindest regards, I am

Very truly yours,

A handwritten signature in blue ink that reads "Ken C II". The signature is stylized, with the first name "Ken" and the second name "C" being prominent, followed by "II".

Kenneth T. Cuccinelli, II
Attorney General