



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

August 30, 2007

Ms. Nancy Orr, State Fire Marshal
Office of State Fire Marshal
4760 Portland Road NE
Salem Oregon 97305-1760

Re: Private Fire-Fighting corporations
DOJ File No. 920-001-GG0662-06

Dear Ms. Orr:

You ask several questions concerning the statutory authority of private corporations acting as "fire departments" and with whom local jurisdictions contract for fire protection services. Your specific questions and our short answers are set out below, followed by supporting discussion. Because the analysis does not vary depending upon whether the private corporation is not-for-profit or for-profit, this letter refers only to private corporations acting as fire departments, as distinguished from public fire departments.

QUESTIONS AND SHORT ANSWERS

1. Are officers or employees of private corporations that act as "fire departments" assistant State Fire Marshals under ORS 476.060?

Answer: No. ORS 476.060 contains a list of persons who, by virtue of the offices they hold, are public officers. No statute similarly designates employees of private corporations as assistant State Fire Marshals.

2. Are private corporations that act as "fire departments" statutorily required to investigate and report fires under ORS 476.210?

Answer: No. ORS 476.210 applies only to public officers, not officers or employees of private corporations.

3. Can the Governor mobilize private corporations under the Emergency Conflagration Act, (ECA) ORS 476.510 to 476.610?

Answer: No. The Governor may mobilize fire-fighting forces and equipment of any governmental fire-fighting organization in this state, except governmental organizations that possess only one self-propelled pumping unit. The Governor's mobilization authority under the ECA does not extend to private corporations.

4. Are private corporations entitled to receive aid under the ECA?

Answer: The Governor may order public fire departments to assist in any county, regardless of whether a private corporation normally provides fire protection services.

5. Do private corporations have the same powers and duties as rural fire protection districts under ORS chapter 478?

Answer: No. ORS chapter 478 gives authority to "rural fire protection districts," which are units of government.

6. Are private corporations "fire protection districts" that may regulate the manufacture, sale, use, or discharge of fireworks under ORS 480.160?

Answer: No. Only public entities may regulate fireworks under ORS 480.160.

7. Can private corporations enter into formal mutual aid agreements with governmental fire departments under ORS 190.010?

Answer: No. ORS 190.010 applies only where both parties to an agreement are units of local government. A governmental body could, however, contract to provide assistance to the private fire-fighting corporation.

DISCUSSION

1. **Officers and employees of private corporations that provide fire-fighting services are not assistant State Fire Marshals under ORS 476.060.**

ORS 476.060 provides, in pertinent part:

- (1) All fire marshals in those governmental subdivisions having such officers, and where no such officer exists, the chief of the fire department of every city or rural fire protection district in which a fire department is established, the marshal or chief of police, officer of any city in which no fire department exists, and constables, if any, shall be, by virtue of the offices held by them, assistants to the State Fire Marshal without additional recompense, subject to the duties and obligations imposed by law, and shall be subject to the direction of the State Fire Marshal in the execution of the provisions of this section and ORS 476.070, 476.090, 476.150, 476.210 and 480.445.

In interpreting ORS 476.060, our goal is to ascertain the legislature's intent. The Oregon Supreme Court outlined the correct procedure for interpreting statutes in *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993). Under the *PGE* methodology, we first look at the text of the statute and its context, which includes other provisions of the same statute and related statutes.

In interpreting text, we consider statutory and judicially developed rules of construction that bear directly on how to read the text, such as the rule that “words of common usage typically should be given their plain, natural, and ordinary meaning.” *Id.* at 611. Additionally, we follow the directives of the legislature that “where there are several provisions or particulars, such construction is, if possible, to be adopted as will give effect to all.” ORS 174.010. And “where a general and particular provision are inconsistent, the latter is paramount to the former so that a particular intent controls a general intent that is inconsistent with the particular intent.” ORS 174.020(2). If the legislative intent is clear from the text and context, the search ends there. Only if the legislative intent is not clear from the text and context of the statute will we look to the legislative history to attempt to discern that intent. *Id.* at 611-612. If, after considering the text, context and legislative history, the intent of the legislature remains unclear, we may resort to general maxims of statutory construction to resolve any remaining uncertainty as to the meaning of the statute. *Id.* at 612.

ORS 476.060(1) includes only public officers as assistants to the State Fire Marshall. Specifically, ORS 476.060 refers to fire marshals within *governmental subdivisions*, chiefs of every *city* fire department, chiefs of every “rural fire protection district”^{1/} in which a fire department is established, the marshal or chief of *police*, officers of any *city* where no fire department exists, and constables. This list is specific and exclusive; it contains no suggestion that the officers listed represent a larger body that might include non-public officers. *See Springfield Educ. Ass’n v. Springfield School Dist.*, 290 Or 217, 225-26, 621 P2d 547 (1980); *England v. Thunderbird*, 315 Or 633, 638, 848 P2d 100 (1993).

Therefore, we conclude that private corporations are not subject to ORS 476.060(1) and their officers and employees are not statutory assistants of the Oregon State Fire Marshal, because they are not public officers.^{2/}

2. Private corporations are not obliged to investigate and report fires under ORS 476.210.

ORS 476.210 does not include private corporations acting as fire departments among those obligated to investigate and report fires. ORS 476.210 provides, in part:

- (1) The municipal fire marshals, fire department chiefs, constables and other officers *referred to in ORS 476.060* shall investigate the cause, origin and circumstances of each fire occurring in their respective cities, villages or townships, by which property has been destroyed or damaged, and shall make an investigation to determine whether the fire was the result of carelessness or design. The investigation shall be commenced immediately after the occurrence of the fire. The State Fire Marshal may superintend and direct the investigation if the State Fire Marshal deems it necessary.

- (2) The fire chief *of every city*, or rural fire protection district shall provide the State Fire Marshal with a full report of every fire occurring within the jurisdiction of the fire chief on a form provided or approved by the State Fire Marshal. Whenever the *fire chief of every city* under 200,000 population finds any fire is of undetermined or suspicious origin or involves a death or serious injury, the fire chief shall immediately notify the State Fire Marshal or a deputy state fire marshal and shall assemble all known facts and circumstances concerning the fire in an approved report form and shall submit such report to the State Fire Marshal, or the deputy state fire marshal assigned to the territory in which the fire originated. When evidence clearly indicates the cause of fire to be of incendiary origin, the fire chief shall also immediately notify the state, county or municipal police agency.

(Emphasis added).

ORS 476.210(1) specifically references municipal fire marshals, fire department chiefs, constables and *other* officers listed in ORS 476.060 as those required to investigate each fire occurring in their respective jurisdictions. We read this provision as incorporating officers listed in ORS 476.060 by reference. First, the officers specified — municipal fire marshals, fire department chiefs, and constables — are all listed in ORS 476.060. Second, the reference to these officers is followed by the words “and other officers listed in ORS 476.060.” The reference to “other officers” implies that the entire list refers to ORS 476.060. For the reasons expressed previously, ORS 476.060 does not include private corporations. Because ORS 476.210(1) incorporates ORS 476.060, ORS 476.210(1) does not include private fire departments.

Similarly, ORS 476.210(2) places requirements on the fire chief of every city, every rural fire protection district, or fire chief of every city with a population under 200,000 people to report fires and compile facts and circumstances of such fires. The persons listed are all public officers. Accordingly, we conclude that private corporations calling themselves fire departments are not subject to ORS 476.210(2).

3. The Emergency Conflagration Act does not give the Governor authority to mobilize private fire-fighting services.

The Emergency Conflagration Act (ECA), codified at ORS 476.510 to 476.610, governs the provision of fire-fighting assistance to a city, county or district that is experiencing a fire danger. ORS 476.520 authorizes the Governor to make aid available:

The Governor may assign and make available for use and duty in any county, city or district, under the direction and command of an officer designated by the Governor for the purpose, *any part of the fire-fighting forces and equipment of any fire-fighting organization in this state* other than an organization that possesses only one self-propelled pumping unit. The Governor may make fire-fighting forces and equipment available under this section in response to fire, a heightened danger of fire or a significant reduction in available fire-fighting resources.

(Emphasis added).

You ask whether ORS 476.520 authorizes the Governor to order private fire-fighting services to provide assistance to local jurisdictions experiencing a fire danger. Your question requires us to determine what the legislature intended “the fire-fighting forces and equipment of *any fire-fighting organization in this state * * **” to mean. Although not free from doubt, we conclude that private corporations are not included within the phrase “fire-fighting organization” in ORS 476.520. We note, however, that we do not here provide an exhaustive discussion of the Governor’s authority to direct public or private resources in response to an emergency or disaster. Other provisions of law that are not the subject of this analysis also give the Governor authority to act, in some circumstances. This analysis addresses only the ECA.

To determine that intent, we begin by examining the text and context of the provision. *PGE* at 611. The legislature did not define “organization,” so we begin by determining its ordinary meaning. The legislature enacted ORS 476.520 in 1947, Or Laws 1947, ch 112, therefore, we consult a dictionary that was in use at that time to determine the ordinary meaning of “organization.” *State v. Perry*, 336 Or 49, 53, 77 P3d 313 (2003) (“In interpreting the words of a statute enacted many years ago, we may seek guidance from dictionaries that were in use at the time.”). The pertinent definition of “organization” is “* * * any organized whole; often a body of persons organized for some end or work.” 1 *THE NEW CENTURY DICTIONARY* at 1198 (1934). Therefore, the ordinary meaning of “any fire-fighting organization” is any body of persons organized to fight fires. That definition is expansive and encompasses all private fire-fighting organizations as well as all organizations of any public body whether international, federal, state, or local. The only express limitations contained in ORS 476.520 are that the organization be “in this state” and that it possess more than one self-propelled pumping unit. It seems unlikely that the Oregon legislature would have attempted to empower the Oregon Governor to *order* the federal government to provide assistance, so the expansive definition is problematic.

The dictionary definition of a term is not necessarily always the meaning that the legislature intended, however; the context in which the term is used may demonstrate that the legislature intended a narrower meaning. *See, e.g., State v. Glaspey*, 337 Or 558, 564-65, 100 P3d 720 (2004) (rejecting dictionary definition of term for narrower meaning suggested by context); *Confederated Tribes (Siletz) v. Employment Dep’t*, 165 Or App 65, 74, 995 P2d 580 (2000) (same). We, therefore, next examine the context in which the legislature used “fire-fighting organization” to determine whether the legislature intended the expansive meaning.

Context includes other provisions of the same Act, other related statutes, and prior versions of the statute. *Krieger v. Just*, 319 Or 328, 336, 876 P2d 754 (1994). Because the legislature enacted ORS 476.520 in 1947 and we are attempting to determine the intent of the 1947 legislature we first examine other provisions of the ECA enacted in 1947.^{3/} One of those provisions in particular, ORS 476.520, raises doubt that the legislature intended the sweeping meaning of “fire-fighting organization” set out above. ORS 476.560 requires the state to reimburse *only* political subdivisions and their employees who render aid:

Whenever aid is supplied pursuant to ORS 476.520 to 476.590, the state shall reimburse *the political subdivision supplying such aid* for the compensation paid to employees supplied under ORS 476.520 to 476.590 during the time the rendition of such aid prevents them from performing their duties in the political subdivision by which they are employed and shall defray the actual traveling and maintenance expenses of such employees while they are rendering such aid. "Employee" as used herein means, and the provisions of ORS 476.520 to 476.610 apply with equal effect to, all firefighters, whether paid, volunteer or call.

(Emphasis added). No other provision of the ECA similarly requires or authorizes the state to reimburse *private* fire-fighting services or their employees who supply aid. If "fire-fighting organization" in ORS 476.520 is interpreted to include private fire-fighting services, then the Governor would be authorized to demand the services of private fire-fighting organizations, but the state would not be required to reimburse them or their employees. It seems unlikely that the legislature would have required compensation for political subdivisions and their employees but not for private fire-fighting services and their employees who render the same aid. That intention appears to be even more unlikely in the context of another statute that existed in 1947, which required individuals to render assistance in suppressing certain fires, but specifically required that those individuals receive payment for their services:

* * * Any able-bodied man refusing, without reasonable excuse, to render assistance in suppressing a grass, brush or forest fire when called upon by a regularly-appointed state fire warden shall be guilty of a misdemeanor * * *; provided that any such person so called upon for assistance shall be paid the going rate of wages for such work.

OCLA 107-206.^{4/} Read in the context of ORS 476.560 and OCLA 107-206, it appears that if the legislature had intended ORS 476.520 to authorize the Governor to demand the services of private fire-fighting corporations it would have provided for compensation to those corporations and their employees. It follows that the legislature may have made no provision to compensate private fire-fighting services and their employees, because it did not intend ORS 476.520 to authorize the Governor to demand their assistance. Instead, the legislature may have intended "fire-fighting organization" in ORS 476.520 simply to refer to the fire-fighting organizations of political subdivisions.

That interpretation is supported by other context. Several provisions of the ECA enacted in 1947 that address how the Act applied to fire-fighting organizations are directed to political subdivisions. ORS 476.530 requires "[t]he chief executive of any county, city or fire protection district or the head of any fire department of any political subdivision, including the agencies of this state" "if so ordered by the Governor," to assign and make available to any county, city or fire district "any part of the fire-fighting forces and equipment under the control of the chief executive or the head of the fire department." ORS 476.530 requires only the heads or fire chiefs of *political subdivisions* (amended after 1947 to include state agencies) to provide the fire-fighting forces and equipment under their control when ordered to do so by the Governor. ORS 476.530 further provides that, if the United States or any of its agencies makes equipment available, the equipment shall remain subject to the order of the United States or its agency in accordance with the terms and conditions upon which it is made available. That part of the

provision acknowledges that the United States government *may offer* equipment, but it does so on its own terms and conditions, which is contrary to construing “any fire-fighting organization” in ORS 476.520 expansively to include the authority to order the fire-fighting organizations of the federal government to provide aid.

Other provisions enacted in 1947 that are similarly directed only to the fire-fighting forces and equipment of political subdivisions include ORS 476.540 (providing that fire-fighting forces “of any county, city or fire district” rendering outside aid have “the same powers, duties, rights, privileges and immunities as though they were performing their duties in the political subdivision in which they are normally employed”); ORS 476.570 (authorizing counties, cities, and fire districts rendering outside aid to appoint substitute firefighters and recall off-duty firefighters); ORS 476.580 (authorizing the Governor to make orders, rules and regulations to carry out the ECA, and requiring the Governor to provide a copy of those orders only to “any county, city or fire protection district affected”).

By contrast, the only provision of the ECA that expressly refers to private fire-fighting services is ORS 476.574, which was not enacted until 1997. Or Laws 1997, ch 266 § 2. That provision merely guarantees that an employee of a private fire-fighting service who wishes to *volunteer* for service under the ECA may request a leave of absence to do so without suffering employment repercussions.

Prior versions of the statute also offer contextual support for interpreting ORS 476.520 narrowly. The provisions discussed above that are directed to the fire-fighting organizations of political subdivisions were taken substantially verbatim from the Oregon Civilian Defense Act of 1943 (OCDA). Or Laws 1943, chapter 140. The OCDA was enacted during World War II and “grant[ed] to the governor certain emergency powers” deemed necessary “because of the war in which the United States of America is engaged.” Or Laws 1943, ch 140, § 2.

Six subsections of the OCDA (section 5, subsections (g) through (l)) governed the provision of outside fire-fighting assistance and were the predecessors of ORS 476.530 through 476.560 and ORS 476.580. The OCDA did not contain any provision similar to ORS 476.520 authorizing the Governor to mobilize fire-fighting forces and equipment. Instead, subsection 5(g), the predecessor to ORS 476.530, required *political subdivisions* to make their fire-fighting forces and equipment available if the Governor ordered them to do so after declaring martial law. Or Laws 1943, ch 140, § 5(g).

The OCDA did not authorize the Governor to declare martial law; that authority came from another provision, OCLA 103-242. A question immediately arose whether the Governor could declare martial law for the limited purpose of exercising his “authority to dispatch municipally-owned fire-fighting equipment and fire-fighting forces from any location to any other location * * * without calling out the state guard and without disturbing the normal functioning of city and county governments.” 21 Op Atty Gen 262, 262 (1943). Although the Attorney General advised that the Governor could declare martial law for the limited purpose of mobilizing fire-fighting resources, ORS 476.520 may have been enacted in 1947 as a legislative response expressly giving the Governor authority to mobilize fire-fighting resources without first having to declare martial law.

In any event, the remaining subsections of the OCDA that governed the provision of outside fire-fighting assistance (section 5, subsections (h) through (l)), like their current counterparts, addressed only how the OCDA was to apply to the fire-fighting services of political subdivisions for the obvious reason that the OCDA unquestionably applied only to those entities.

After WWII had ended, the legislature sought to retain the powers granted to the Governor in the OCDA relating to sharing resources during fire. It did so by enacting the ECA, Or Laws 1947, ch 112, section 2 of which contained a general policy statement regarding the ECA:

It hereby is found and declared that many of the emergency *powers* to provide for the health, safety and welfare of the people of the state of Oregon *granted to the governor by the terms of chapter 140, Oregon Laws 1943*, were of great value to the people and that *some of such powers should be retained* to protect the public peace, health and safety and to preserve the lives and property of the people, even though the need for many of the provisions of said chapter ceased to exist upon the termination of the war emergency.

(Emphasis added). That provision provides a contextual guide to interpreting specific provisions of the ECA. *See, e.g., DLCD v. Jackson County*, 151 Or App 210, 218, 948 P2d 731 (1997), *rev den*, 327 Or 620 1998 (“* * * statements of general policy * * * can serve as contextual guides to the meaning of particular provisions of the statutes or rules, as much as any other parts of the enactment can.”). Thus the legislature’s stated intention in enacting the ECA was to *retain* certain powers granted to the Governor by the OCDA, not to increase the Governor’s powers.

Section 3 of the ECA contained several subsections, most of them taken directly from the OCDA, but also added a new subsection (l), now ORS 476.520, authorizing the Governor to mobilize the forces and equipment of “any fire-fighting organization in this state” in response to fire. Or Laws 1947, ch 112, § 3(1).⁵⁷ Construed in the light of section 2, that subsection was meant to retain, not increase the power granted to the Governor by the OCDA. As discussed above, the 1943 Act did not give the Governor power to mobilize private fire-fighting organizations, but only to order the mobilization of the fire-fighting organizations of political subdivisions. The remainder of section 3, subsections (2) through (7), recodified subsections (g) through (l) of section 5 of the OCDA. The legislature did not amend any of those provisions to address how the ECA would apply to private fire-fighting organizations or to require compensation to those organizations, nor did it add any new provisions that did so.

Read in that context, we conclude that the legislature did not intend to expand the Governors’ power to encompass the power to order private fire-fighting organizations to provide assistance; but, instead, meant “fire-fighting organizations” to refer to the organizations listed in section 3, subsection (2), i.e., the fire-fighting organizations of political subdivisions. Bolstering that conclusion is the fact that ORS 476.520 contains other broad language clearly refers to more limiting language in ORS 476.530. Specifically, ORS 476.520 authorizes the Governor to assign forces and equipment for use and duty in any county, city or “district.” The ordinary meaning of the term “district” is not limited to a fire protection district but, read in the context of ORS 476.530 and other provisions of the ECA there can be no doubt that the latter, more narrow meaning is the one intended.

In short, the context in which “any fire-fighting organization in the state” was used by the legislature strongly suggests that the legislature meant to refer to the fire-fighting organizations of political subdivisions addressed in the remainder of the statute. Although we believe that it would be appropriate to discuss legislative history in this case, there is no legislative history to shed any light on the issue. That being so, we conclude, based on reading the text in context, that ORS 476.520 empowers the Governor only to order the fire-fighting organizations of political subdivisions (including state agencies) to provide outside fire-fighting assistance.

4. The Governor has authority to provide aid to any community in Oregon under ECA.

You have asked whether private “fire departments” may receive fire-fighting assistance under ORS 476.530. That statute allows the Governor to order firefighters and fire-fighting equipment from specified public fire-fighting agencies to assist “in any county, city or fire district,” without regard to whether the fire department needing assistance is public or private.

ORS 476.530 provides:

The chief executive of any county, city or fire protection district or the head of any fire department of any political subdivision, including agencies of this state, if so ordered by the Governor, shall assign and make available for duty and use *in any county, city or fire district* under the direction and command of such officer as may be designated by the Governor for the purpose, any part of the fire-fighting forces and equipment under the control of the chief executive or the head of the fire department, provided that any equipment made available by loan, or otherwise, to any county, city or fire district or this state by the United States or any agency thereof, shall at all times be subject to the order of the United States or such agency in accordance with the terms and conditions upon which the equipment is made available.

(Emphasis added). This statute permits the Governor to order specified public officials to make fire-fighting personnel or equipment available “in any county, city or fire district.” We read the reference to “any county, city or fire district” as a description of the geographic location to which the Governor may order assistance sent, not as limitation on the type fire-fighting entity — public or private — that may receive assistance.^{6/}

Simply stated, the Governor may send help for use in any county, city or fire district, regardless of whether the county, city or fire district normally obtains fire-fighting services from a private or a public fire-fighting entity.^{7/}

5. A private corporation that provides fire protection services is not a “rural fire protection district” under ORS chapter 478.

You asked whether a private corporation that provides fire protection services has powers or duties under ORS chapter 478. We conclude it does not.

ORS chapter 478 assigns powers and duties to a "district." "District" is defined as "a rural fire protection district proposed to be organized or organized under, or subject to, this chapter." ORS 478.001(1)(d). Although this definition is somewhat unhelpful, if not circular, review of the context in which the definition appears persuades us that a "district" under ORS chapter 478 must be a public body, rather than a private corporation.

ORS chapter 478 seems to recognize three kinds of districts "organized under" its provisions: a district in existence on June 14, 1939 ("historic district"); a district established by November 22, 1957 ("grandfathered district"); and a district proposed or created under the current statutes ("modern district"). Each type of district requires (or required) a formal governmental action to be created.

Historic districts in existence on June 14, 1939, are "deemed as organized under the terms and conditions of [ORS chapter 478] and are entitled to all the benefits and clothed with all the rights, powers and duties" provided in ORS chapter 478. ORS 478.090. It is theoretically possible that at some point in the past a private corporation was organized to fight fires but, by virtue of this statute, was swept within the ambit of ORS chapter 478. That seems extremely unlikely. Both before and immediately after June 14, 1939, a rural fire protection district could be created only by a petition, with an opportunity for objection, and (sometimes) an election. Or Code Ann 1930, 46-2201 to 46-2205; Or Laws 1939, ch 347, §§ 1-7. Officers of the district are public officers, Or Code Ann 1930, 46-2206, and have the power to impose taxes. Or Code Ann 1930, 46-2210. *See* 23 Op Atty Gen 537 (1948) (discussing rural fire protection district as a "governmental agency");^{8/} 20 Op Atty Gen 302 (1941) (directors of rural fire protective district are public officers).

Districts in existence as of November 22, 1957, were "grandfathered" by statute, so long as they had been created by the process set forth in ORS chapter 478. ORS 478.002. The process required the same steps as outlined above, including a petition seeking creation of a district, an opportunity for objections and (again, sometimes) an election. ORS 478.020 to 478.070 (1952).^{9/} These entities also constituted public bodies, with the power to tax ORS 478.410, 478.430 (1952). This process remained in place, essentially unchanged, until 1971.

A modern district is created "in the manner set forth in ORS 478.010 to 478.100." ORS 478.010(1). Unfortunately, those statutes do not now specify a "manner" of creating a district.^{10/} Until 1971, ORS 478.010 to 478.100 included provisions requiring a petition to form a district, a hearing, an opportunity for objections, and an election. These provisions were repealed in 1971. Or Laws 1971, ch 727, §§ 191, 203. At the same time, the legislature amended ORS chapter 198, governing the creation of various types of special "district," to include rural fire protection districts. Or Laws 1971, ch 23, § 2(14). Currently, then, a "district" may be organized only under ORS chapter 198. *See* ORS 478.155(1) (referring to information required by ORS 198.750 or 198.835 to create a district after October 15, 1983).

From the beginning, a district created under chapter 198 has been a governmental body, initiated by petition, ORS 198.800 (1971), and established by the county court or board of commissioners, ORS 198.805 to 198.810 (1971), ORS 198.705(7) (1971). The board of the district was elected by electors within the district. ORS 478.210 to 478.221 (1971). The district has had the power to tax. ORS 478.410, 478.430, 478.450 (1971). *See also* ORS 174.116(2)(u) (including "rural fire protection district organized under ORS chapter 478" within the definition of "local service district"). The law is not significantly different today. *See* ORS 198.795 et seq.

In addition to defining district by reference to rural fire protection districts “organized” under ORS chapter 478, ORS 478.001(1)(d) includes rural fire protection districts “subject to” ORS chapter 478. Nothing in ORS chapter 478 identifies any entity as “subject to” ORS chapter 478 as distinguished from “organized under,” the chapter. Therefore, nothing in ORS chapter 478 suggests that a fire department organized privately, without the formal trappings of a petition and possible election, could exercise the authority granted to a “district” by that chapter.¹¹⁷

For these reasons, we conclude that a privately organized fire-fighting corporation cannot qualify as a “district” for purposes of ORS chapter 478.

6. A private corporation that provides fire protection services is not a “fire protection district” for the purposes of regulating fireworks under ORS 480.160.

ORS 480.100 to 480.160 govern fireworks within the State of Oregon. ORS 480.120 prohibits the sale, offering for sale, explosion, past explosion, possession, use, or exposing for sale of fireworks within this state, with some specific exceptions. Law enforcement officers enforce ORS 480.100 to 480.160. ORS 480.120(2).

State law permits the adoption of a “law or municipal ordinance” that is more restrictive than the state laws on fireworks that apply “in [a particular] city, county or fire protection district.” ORS 480.160(1).^{12/} On the other hand, no law or municipal ordinance may allow fireworks that state law prohibits. *Id.*

You ask whether the reference in ORS 480.160(1) to “fire protection district” could be read to apply to a private corporation that provides fire-fighting services, so that a private corporation could regulate fireworks. The answer is no, because ORS 480.160(1) permits only local restriction, imposed by law or by municipal ordinance. We know of no authority for any private corporation to adopt either a law or a municipal ordinance.

7. Private corporations that provide fire protection services may not enter into formal mutual aid agreements with governmental fire departments under ORS 190.010.

ORS 190.010 applies only to agreements between governmental bodies, and allows a “unit of local government * * * to enter into a written agreement with any other unit or units of local government for the performance of any or all functions and activities that [either unit of local government], its officers or agencies, have authority to perform.” For purposes of ORS 190.010, a “unit of local government” is defined as “a county, city, district or other *public* corporation, commission, authority or entity organized and existing under statute or city or county charter.” ORS 190.003 (Emphasis added).

No private corporation is a “unit of local government,” unless it is also somehow an “entity organized and existing under statute or city or county charter.” A private corporation does not become a “public corporation” by virtue of contracting with a governmental entity. Any governmental entity that wishes to contract with a private corporation for fire protection services must procure services through normal public contracting processes, and not through ORS Chapter 190.

A public fire-fighting organization could contract to provide services to a private fire-fighting corporation. ORS 478.300(1)^{13/} permits rural fire protection districts and other public bodies to provide fire-fighting services under contract to "any person. 'Person' includes * * * corporations[.]" ORS 174.100(5).

We have not specifically addressed the applicability of ORS 401.480 to determine whether that statute would provide authority for private fire-fighting corporations to enter into agreements with governmental fire departments. ORS 401.480 provides, "The state, counties and cities may, in collaboration with public and private agencies, enter into cooperative assistance agreements for reciprocal emergency aid and resources." This statute allows public entities (state, counties and cities) to enter into mutual aid agreements, but the significance of the additional authority to collaborate with public and private agencies is not clear. Nor does the statute explain what constitutes a "private agency" for purposes of ORS 401.480.^{14/}

In any case, this office cannot advise counties or cities, and any county or city official who wished to take advantage of ORS 401.480 to enter into an agreement with a private fire-fighting corporation would be entitled to seek legal advice of the attorney representing the county or city. If you would like us to explore the application of ORS 401.480, we are happy to do that. Please do not hesitate to call me if you have questions.

Sincerely,



Christine Chute
Attorney in Charge
Government Services and Education Section

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^{1/} A rural fire protection district is defined as a rural fire protection district proposed to be organized under, or subject to, ORS chapter 478. See part 4, *infra*.

^{2/} This conclusion is consistent with prior advice rendered by this office. 33 Or Atty Gen 629 (1968) (requiring volunteer firefighters to use reasonable skill and diligence on the theory that they are public officers); 33 Op Atty Gen 588 (1968) (stating that those listed in ORS 476.060 are public officers).

^{3/} Some of the provisions enacted in 1947 have been amended, but none have been amended in a way that affects our analysis, so, for purposes of brevity, we quote the present versions of the statutes enacted in 1947.

^{4/} That statute provided for the payment of wages for work required by an individual in suppressing a fire, perhaps in order to comply with Article I, section 18, of the Oregon Constitution, which provides in pertinent part that: "Private property shall not be taken for public use, nor the particular services of any man be demanded, without just compensation * * *."

^{5/} The legislature amended ORS 476.520 in 2006 to allow the Governor to mobilize fire-fighting resources in response to "fire, a heightened danger of fire or a significant reduction in available fire-fighting resources." Or Laws 2005, ch 16. Prior to 2006, the Governor was authorized to invoke the ECA only "to protect life and property against the dangers of fire."

^{6/} The Governor may designate an “officer” to direct and command the fire-fighting forces and equipment that he or she sends. This letter does not address the question whether the term “officer” presupposes that the person in command is a public official rather than an employee of a private corporation.

^{7/} Even without a Governor’s order, public fire-fighting officers may extinguish “any uncontrolled fire found to be burning in any unprotected area” if certain conditions are met. ORS 476.280(1). A city or rural fire protection district may also respond to a call for help at a “fire or public safety incident” outside the city or district limits. ORS 478.310(1). These two statutes reflect the public policy to extinguish fires without strict regard to political boundaries, probably because fires themselves do not respect these boundaries.

^{8/} The opinion also contains a more detailed description of the process in place until 1957 to create a rural fire protection district.

^{9/} Before November 22, 1957, property owners voted in the election; after that date all electors in the proposed district voted, unless 60% or more of the land was “nonresidential.” Or Laws 1957, s.s., ch 10 § 7. The 1957 special legislative session passed this change in evident response to *Peterkort v. County Zoning District*, 211 Or 188, 313 P2d 773, 314 P2d 912 (1957) in which the Oregon Supreme Court struck down a law permitting only property owners to vote in some elections.

^{10/} We recommend that you consider seeking an amendment to ORS 478.010(1) that clarifies that a rural fire protection district may be “formed in the manner set forth in ORS **chapter 198.**”

^{11/} Other organizations may be able to exercise some of the authority normally assigned to rural fire protection districts. *See, e.g.*, ORS 264.340 (permitting some domestic water districts to provide fire protection) and ORS 264.342 (permitting some domestic water districts to adopt fire prevention codes). We have not conducted an exhaustive search to determine whether there are other entities that may exercise similar authority.

^{12/} ORS 480.160(1) provides:

Nothing in ORS 480.110 to 480.165, nor in any permit issued there under, shall authorize the manufacture, sale, use or discharge of fireworks or items described in ORS 480.127 in any city, county or fire protection district in which such manufacture, sale, use or discharge is otherwise *prohibited by law or municipal ordinance*; nor shall any city, county or fire protection district authorize the sale or use of any fireworks prohibited by the provisions of ORS 480.110 to 480.165. (Emphasis added).

^{13/} ORS 478.300(1) provides:

In addition to the authority to enter into intergovernmental agreements under ORS chapter 190, a rural fire protection district or other public body as defined in ORS 174.109 may contract with any person for the purpose of affording fire fighting, protection or prevention facilities or road-lighting facilities and services, or both, to such person.

This provision does not appear to allow, on its own, a rural fire protection district to obtain fire protective services from a private corporation. But see 35 Op. Atty. Gen. 227 (1970) (opinion could be read as suggesting that ORS 478.300(1) permits district to contract out services).

^{14/} ORS 401.710(11) defines “public or private safety agency,” but that definition does not apply to ORS 401.480.