

ATTORNEY GENERAL

his retirement application.

Therefore, it is our conclusion that Stanley I. Galinn, and Mrs. Albertine M. Pautot and Mrs. Elizabeth A. Payton, the beneficiaries named in the retirement applications of Albert Galinn and Charles L. Payton, respectively, are the proper beneficiaries, and the payments by you should be governed accordingly.

Very truly yours,  
ARTHUR J. SILLS  
*Attorney General*

By: RICHARD NEWMAN  
*Law Assistant*

---

July 21, 1964

MR. ROGER H. McDONOUGH  
*State Librarian*  
Department of Education  
State House Annex  
Trenton, New Jersey

MEMORANDUM OPINION—NO. 5

Dear Mr. McDonough:

We have been asked whether or not volunteer fire companies are subject to the provisions of the Destruction of Public Records Act, N.J.S.A. 47:3-15, *et seq.* Specifically, you ask whether volunteer fire companies which receive financial support from municipalities are subject to the "Destruction of Public Records Act (1953)".

It is our opinion that such volunteer fire companies are subject to the Act:

The definition section of Chapter 410, Laws of 1953 (N.J.S.A. 47:3-16) provides in part as follows:

"As used in this act, except where the context indicates otherwise, the words 'public records' mean any paper, written or printed book, document or drawing, map or plan, photograph, microfilm, sound-recording or similar device, or any copy thereof which has been made or is required by law to be received for filing, indexing, or reproducing by any *officer, commission, agency or authority of the State or of any political subdivision thereof*, including subordinate boards thereof, or that has been received by any such officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, in connection with the transaction of public business and has been retained by such recipient or its successor as evidence of its activities or because of the information contained therein." (Emphasis supplied).

## FORMAL OPINION

The critical inquiry, therefore, is whether a volunteer fire company comes within any of the above mentioned categories.

The relationship between a volunteer fire company receiving appropriations from a municipality and that municipality has been set forth by our Supreme Court in *Schwartz v. Stockton*, 32 N.J. 141 (1960). Although the Court in that case discussed the status of a volunteer fire department in the context of municipal immunity from liability, the views set forth therein are pertinent here. The court states, at pp. 150-152:

“\*\*\* It is only the larger and more densely settled centers that can afford or have the need for a full-time complement of fire-fighters, compensated and supplied entirely at municipal expense. But the need for some fire protection exists everywhere and the volunteer company supplies that need where a municipal department is not feasible. While such organizations are independent, incorporated as associations not for pecuniary profit (R.S. 15:8-1 *et seq.*), and frequently supply their own buildings and apparatus, they may, and generally do, have definite relationships with municipal governing bodies, at least through annual appropriations to them for equipment and maintenance, thereby giving them a kind of semi-official status. This relationship is particularly spelled out in the township law (R.S. 40:149-4 to 15, inc.), whereby the township committee is empowered, among other things, to contract financially with volunteer companies ‘for the purpose of extinguishing fires,’ the company to be under township supervision and control and ‘considered as doing public fire duty.’ R.S. 40:149-8. While the borough law, pertinent here, does not contain the same detailed provisions, it does expressly authorize the annual appropriation of sizeable sums of money to aid borough volunteer fire companies or those in adjoining municipalities habitually responding to fires therein and to pay for group life and other insurance for the benefit of company members. R.S. 40:47-27 and 28, as amended. L. 1945, c. 47 (N.J.S.A. 40:47-30.1 and 30.2). We have no doubt a borough has the same right as a township to make its annual appropriation on a contractual basis, as *Stockton* did here, despite the absence of express statutory authority, either by virtue of the broad general powers delegated to all municipalities to enact measures necessary and proper for the preservation of the public safety and welfare (R.S. 40:48-2) or by implication from the express power to appropriate moneys in aid of the fire company. *Cf. Green v. City of Cape May*, 41 N.J.L. 45 (Sup. Ct. 1879).

“Moreover, the Workmen’s Compensation Law covers volunteer firemen doing public fire duty (N.J.S.A. 34:15-43) and each governing body is required to procure insurance to assure payment of such benefits (N.J.S.A. 34:15-74). *Cf. Brower v. Township of Franklin*, 119 N.J.L. 417 (Sup. Ct. 1938), decided before section 43 was amended to its present broad form. Of special significance is the legislative declaration in *section 43* that ‘[e]very active volunteer fireman shall be deemed to be doing public fire duty under the control or supervision of any \*\*\* governing body\*\*\* within the meaning of this section \*\*\* if the fire company of which he is a member receives contributions from, or a substantial part of its expenses or equipment are paid for by, the municipality \*\*\*.’ (Emphasis added) It

ATTORNEY GENERAL

is, therefore, clear that Stockton's annual 'contractual aid' payment to the fire company is actually carrying on a governmental activity or function by an authorized method rather than a proprietary arrangement." *Cf. Cuna v. Bd. of Fire Com'rs Avenel*, 42 N.J. 299 (1964).

The language singled out for emphasis by the Supreme Court signifies clear recognition by that court of the "semi-official" status of certain volunteer fire companies and indicates that any such company should be considered an "agency" or "authority" of a municipality, a "political subdivision" of the State within the terms of N.J.S.A. 47:3-16. The criteria established in the *Stockton* case for determining whether a volunteer fire company enjoys "semi-official" status must be met, however, in order for the Destruction of Public Records Act to be applicable, *i.e.*, the municipality must contribute substantially to the expense and equipment of the volunteer fire company.

Therefore, volunteer fire companies which receive substantial municipal financial support are subject to the provisions of the "Destruction of Public Records Act."

Very truly yours,  
ARTHUR J. SILLS  
*Attorney General*

By: HOWARD H. KESTIN  
*Deputy Attorney General*

July 22, 1964

HONORABLE ROBERT A. ROE  
*Commissioner*, Department of  
Conservation & Economic Development  
Trenton, New Jersey

MEMORANDUM OPINION — NO. 6

Dear Commissioner Roe:

You have requested our opinion as to whether the provisions of R.S. 23:3-22 concerning revocation of licenses following second convictions may be applied to a license for commercial fishing in the Atlantic Ocean issued by the Division of Fish and Game pursuant to R.S. 23:3-47.

For the reasons expressed herein, we are of the opinion that the provisions of R.S. 23:3-22 do not apply to a license issued pursuant to R.S. 23:3-47.

R.S. 23:3-22 provides:

"If a person shall, within 5 years after conviction of any violation of the fish and game laws of this or any other State or of any provision of the State Fish and Game Code of this State, be again convicted of another