

West Virginia Fire Commission Response to Comments of Junior Firefighters 87-12

BACKGROUND

The Fire Commission has been given authority to promulgate this Rule, pursuant to HB2621, Regular Session 2021. The Commission is proposing this rule to set forth the procedures to certify a fire chief, deny certification, and to remove a certification.

Prior to the notice filing of this rule, the Commission received comments from one individual. Stakeholders were notified at the time of filing of the notice, and then notification was also emailed to Fire Chiefs and other fire service stakeholders individually informing them of the Notice.

During the public comment period, the Fire Commission received written comments from two individuals, each was considered by the Commission. The response is outlined as follows

1) Thomas Miller submitted comments stating the Fire Commission has no authority to control the aspects of the said employment of Volunteer Fire Departments.

Answer: The Commission voted to reject the comment as it is outside the scope of the intent of the rule.

Technical clean-up was made to the Rule.

This summarizes the topics upon which comments were made to the West Virginia State Fire Commission on the topic of the proposed rule, Junior Firefighters, 87-12.

Received

JUL 23 2021

To the member of the West Virginia State Fire Commission:

State Fire Marshal

The following Public comments on the proposed Legislative Rule(s) are of my own as well as articulations from others in the fire service who have contacted me and requested that I voice their concerns. The following public comments are respectfully submitted for the Commission's consideration on the proposed legislative rule(s).

- 1) The first comment is a criticism about how the notice of public comment was handled by DMAPS and/or the Fire Commission. Not everyone follows the activities of the Commission with rapt enthusiasm nor do they follow, nor are they familiar with, the Legislative Rule making process. By the time that many were aware that public comments were being solicited, only a week was left in the Public Comment Period. This has been perceived by many as an attempt to "hide" the Rule implementation process and is reminiscent of the past Rule(s) issue with the proposed adoption of NFPA standards. As history shows, that did not end well.
- 2) The second comment relates to the rule(s) about approving/removing fire chiefs. As most, if not all Volunteer Fire Chiefs are "employed" by IRS 501(c)(3) or (c)(4) corporations, which are regulated under the West Virginia under Chapter 31 of the West Virginia Code, there is a question as to whether or not the Fire Commission has the authority to control any aspect of said employment other than training requirements.
- 3) The third comment relates to the second comment. As the State Fire Commission requires Fire Officer II training for Chief Officers – which DOES NOT – include strategy nor tactics – nor response management specific training – but does address contract management/labor negotiations (a mostly non-applicable skill set); and, as NIMS 300 and 400, which are federal requirements, also do not address nor require such "musts" like "...calling the closest department", nor "...using the closest resource", and allows for the calling of or utilization of "special resources", then we feel that the Fire Commission is attempting to promulgate an unenforceable rule. As to other issues or perceived issues with fire chiefs, e.g. criminal background(s), etc., the proposed rule is seen as vague and potentially subject to arbitrary or capricious enforcement/action(s). The rule lack specificity and/or details on the due process action(s) and/or rights given to persons and/or organizations should this part of the rule be implemented. We would further assert and add that the liability, for both errors of omission and errors of commission as it relates to fire and/or emergency response, as well as internal fire department operations, lies solely with the fire chief and/or his or her department, including its Board of Directors. We believe that the local fire chief knows best his or her department; his or her community and its response needs; and any real or potential issues with neighboring departments. It would be quite easy to form extrapolated arguments as to what are basically judgment calls in response to most situations. We would add that if this rule is

- approved and implemented, that it should apply to career and municipal departments as well. If the Commissions says that it can't do that due to plenary authority of cities, then we would cite the Plenary authority given to departments under Chapter 31E as non-profits and their operations. Many feel that the ambiguity in the proposed rule creates too many "ifs" and bears much further discussion, including public hearings across the State.
- 4) The fourth comment relates to the issues surrounding Junior Firefighters. As stated above, the liability, for both errors of omission and errors of commission as it relates to fire and/or emergency response, as well as internal fire department operations, lies solely with the fire chief and/or his or her department, including its Board of Directors. Previous Attorney General Opinions and all of the United States Department of Labor guidance on said opinions does not exclude nor preclude Junior Firefighters from riding on fire apparatus nor riding in personal vehicles to and from emergencies. In fact, the Fire Commission specifically delegates the authority of the issuance of emergency vehicle permits to the Fire Chief. The fire department is required to have defined insurance coverage(s) for its vehicles which includes any and/or all issues related to emergency response, including coverage(s) for POVs with EV permits. In the absence of department based POV coverage(s), that responsibility falls back on the owner/driver of said POV for any and/or all action(s) that occur with said vehicle. All of the EVOC programs offered and/or required in the State address issues like (1) don't exceed the posted speed limit; (2) stop at stop signs/red lights; (3) use of seat belts; (4) defensive driving; (5) the need for SOPs/SOGs; (6) the need for a driver training program; etc. We would also point out that the documented injuries that are the genesis of this rule were the direct result of acts of willful or gross negligence on the part of the adult(s) responsible for their safety and welfare – simply put, THEY DIDN'T FOLLOW THE EXISTING RULE(S) REGULATION(S), TRAINING, OR GUIDANCE. We would further add that, although we recognize the potential for accident or injury in apparatus or vehicle response, minors under the age of 18 in West Virginia are (a) allowed to race all sorts of vehicles; (b) white water raft; bungee jump; (c) hunt with a firearm alone; (d) and basically engage in many other potentially or potentially perceived as dangerous activities. We believe that there are already rules and regulations, as well as enforcing agencies, e.g. CPS, the Department of Labor, as well as the civil tort processes, in place to address these issues. Many departments have worked hard to recruit Juniors and/or have SAFER grant programs that specifically support the use of Juniors. They provide an invaluable resource on scene in support roles and functions to manpower strapped departments. Keeping them "engaged" and "involved" is integral to retaining them as responders when they turn 18. It was pointed out in at least two (2) discussions that in many cases the Junior is a child of the person driving the vehicle and/or is working on scene under the direct supervision of their parent(s). They added, "No parent is knowingly going to want to risk getting their killed hurt or killed." But they want their kids to be engaged and involved in the community and to be a part of the broader fire department family. Many have read the proposed rule and view it as

another huge obstacle to fire department operations and the ability to recruit and retain members.

- 5) The final comment is, and I am paraphrasing and summarizing – “How can the Fire Commission keep writing rules that will hurt the morale of the West Virginia fire service and drive a wedge in our ability to recruit and retain when they can’t even keep staff due to their own agency conditions?” This comment and the following were made with others venting about: (a) Asst. Fire Marshals not following the issued guidance of the Fire Marshal with regard to masks in public or on scenes; (b) inconsistent and/or lack of enforcement of existing rule(s) with regard to equipment, training, etc. I am drafting these comments and submitting them but several that I spoke to are/were afraid of retaliation from the WV SFMO if they voiced their comments.

Respectfully submitted,

Thomas Miller