

CRIMINAL PROCEDURE LAW § 2.10; MUNICIPAL HOME RULE LAW §§ 10(1)(ii)(a)(1), 10(1)(ii)(a)(12), 33(3)(b); VEHICLE AND TRAFFIC LAW § 115-a.

The position of fire marshall may be created by local law. Upon creation of that office, the fire marshall's vehicle would be categorized as a fire vehicle under section 115-a of the Vehicle and Traffic Law.

April 26, 1995

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Informal Opinion  
No. 95-23

Dear Mr. Murray:

You have asked whether a county legislature, by resolution, may establish the position of fire marshall and, if it may, whether the fire marshall would automatically have the rights and privileges established by State law with respect to the operation of vehicles.

We have not found any State enabling legislation for the establishment of the position of fire marshall by local governments. There are a few statutory references to that office. See section 2.10 of the Criminal Procedure Law which grants to fire marshalls of specific municipalities peace officer powers and section 115-a of the Vehicle and Traffic Law which lists a vehicle operated by a county or assistant county fire marshall as a fire vehicle.

Thus, it appears that the position of fire marshall is locally established.<sup>1</sup> We believe, however, that the office and its duties must be established by local law, rather than by resolution, under the grant of powers to municipalities in the Municipal Home Rule Law. Under that grant of authority, a county is authorized to adopt and amend local laws establishing local positions and their qualifications. Municipal Home Rule Law § 10(1)(ii)(a)(1). Additionally, counties are authorized to adopt and amend local laws dealing with the government, protection, order, conduct, safety, health and well-being of

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<sup>1</sup>We have confirmed that this is true in practice.

persons or property within its borders. Id., § 10(1)(ii)(a)(12). This is the so-called grant of police power, which may be utilized to establish the position of fire marshall and define its duties. A charter county can also establish the position of fire marshall and define its duties through the enactment of a charter law. Id., § 33(3)(b). A resolution, which typically deals with matters of a temporary nature, may not establish legislation of this genre.

As indicated earlier, the establishment of the position of fire marshall by a county would automatically create rights under State law. Vehicle and Traffic Law § 115-a. The duties of the position, many in the category of law enforcement, must be established by local or charter law. A fire marshall of a particular municipality, however, may be designated as a peace officer only through action by the State Legislature adding that fire marshall to the list of peace officers delineated in section 2.10 of the Criminal Procedure Law.

As alluded to above, in response to your second question once the position of fire marshall is properly created in your county, that officer's vehicle would be designated as a fire vehicle under section 115-a of the Vehicle and Traffic Law.

We conclude that the position of fire marshall may be created by local law. Upon creation of that office, the fire marshall's vehicle would be categorized as a fire vehicle under section 115-a of the Vehicle and Traffic Law.

The Attorney General renders formal opinions only to officers and departments of State government. This perforce is an informal and unofficial expression of the views of this office.

Very truly yours,

JAMES D. COLE  
Assistant Attorney General  
in Charge of Opinions