

North Carolina Fire Law

North Carolina Fire Law

C. Barrett Graham

CAROLINA ACADEMIC PRESS
Durham, North Carolina

Copyright © 2006
by C. Barrett Graham
All rights reserved.

Library of Congress Cataloging-in-Publication Data

Graham, C. Barrett.
North Carolina fire law / by C. Barrett Graham.
p. cm.
Includes bibliographical references and index.
ISBN 0-89089-366-7
1. Fire departments--Law and legislation--North Carolina. 2. Fire
fighters--Legal status, laws, etc.--North Carolina. 3. Fire prevention--
Law and legislation--North Carolina. I. Title.

KFN7781.G73 2006
344.75605'377--dc22

2005034310

CAROLINA ACADEMIC PRESS
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America.

to:

Sharyne, my wife;

my parents,

Ruby B. Graham

and

*John B. Graham, MD
Alumni Distinguished Professor of Pathology
Professor Emeritus
University of North Carolina-Chapel Hill
(January 26, 1918–September 25, 2004);*

and

North Carolina's Firefighters

Contents

| | |
|--|-------------|
| Preface | xiii |
| Acknowledgments | xv |
| Chapter 1 Organization and Sources of the Law | 3 |
| Federal Law | 3 |
| North Carolina Law | 7 |
| Chapter 2 The Courts System | 13 |
| Federal Courts | 14 |
| North Carolina Courts | 15 |
| The Role of the Courts | 17 |
| Miscellaneous | 18 |
| Chapter 3 Creation and Organization of Fire Departments | 21 |
| Introduction | 21 |
| Paid or Career Fire Departments | 21 |
| Volunteer Fire Departments | 23 |
| Combination Departments | 25 |
| The Role of the Volunteer | 26 |
| Chapter 4 The Authority to Act | 29 |
| Chapter 5 Investigations and Inspections | 33 |
| Basics | 33 |
| Michigan v. Tyler 436 U.S. 499 (1978) | 34 |
| Michigan v. Clifford 464 U.S. 287 (1984) | 36 |
| North Carolina | 39 |

| | |
|--|-----------|
| NCGS 15-27.2 Administrative Search and Inspection Warrants | 39 |
| Fire Investigations | 44 |
| Cause and Origin (C&O) Investigations | 45 |
| Investigation of Incendiary Events | 48 |
| Fire Inspections | 51 |
| Chapter 6 Apparatus Operations | 59 |
| Introduction | 59 |
| Rules of the Road | 59 |
| Traffic Control | 61 |
| Operator Licenses | 62 |
| Registration | 64 |
| Privately Owned Vehicles (POVs) | 64 |
| Chapter 7 Mutual Aid | 67 |
| Chapter 8 Nonprofit Corporation Operations | 71 |
| Creation | 71 |
| Membership | 72 |
| Rules, Regulations, and SOGs | 73 |
| Chain of Command | 74 |
| Meetings | 75 |
| Conduct | 76 |
| Assets | 77 |
| Corporate Dissolution | 78 |
| Distributions and Payments | 78 |
| Administrative Dissolution | 79 |
| Judicial Dissolution (NCGS 55A-14-30, together with the statutes following) | 80 |
| Merger (NCGS 55A-11-01, together with the statutes following) | 80 |
| Ultra Vires (NCGS 55A-3-04) | 81 |
| Chapter 9 Finance and Districts | 83 |
| Introduction | 83 |
| I. Acquisition of the Funding | 84 |
| Municipal and County Departments | 84 |

| | |
|---|------------|
| Volunteer Fire Departments | 85 |
| II. Spending the Funds | 91 |
| Chapter 10 Employment Law | 93 |
| Introduction | 93 |
| Hiring | 94 |
| Selection | 95 |
| Drug Testing and Searches at Work | 99 |
| Firing | 100 |
| Family and Medical Leave Act of 1993 (FMLA) | 102 |
| Wages and Hours | 103 |
| Basics | 103 |
| Federal | 104 |
| State | 107 |
| Occupational Safety and Health (OSHA) | 107 |
| Basics | 107 |
| Workmen's Compensation | 109 |
| Woodson v. Rowland 329 N.C. 330 (1991) | 110 |
| Sexual Harassment | 112 |
| Chapter 11 Benefits | 115 |
| Introduction | 115 |
| North Carolina Benefits | 115 |
| Fireman's Relief Fund | 115 |
| Appropriated Relief Fund (Fireman's Relief | |
| Fund of North Carolina) | 118 |
| State Fire Protection Grant Fund | 119 |
| North Carolina Firemen's and Rescue | |
| Squad Workers' Pension Fund | 119 |
| Volunteer Fire Department Grants (NCGS 58-87-1) | 124 |
| Volunteer Rescue/EMS Grants (NCGS 58-87-5) | 125 |
| Volunteer Safety Workers' Workmen's | |
| Compensation Fund (NCGS 58-87-10) | 126 |
| Rescue Squad Workers' Relief Fund | |
| (Chapter 58, Article 88) | 126 |
| North Carolina Death Benefit | |
| (NCGS 143-166.1, and Statutes Following) | 128 |

| | |
|---|------------|
| North Carolina State Firemen's Association Death Benefit | 129 |
| Miscellaneous | 129 |
| Federal Benefits | 129 |
| Public Safety Officers Benefit Program (PSOB) | 130 |
| Assistance to Firefighter's Grant Program | 131 |
| Chapter 12 Hazardous Materials (HAZMAT) | 133 |
| Introduction | 133 |
| North Carolina HAZMAT Law | 134 |
| Identification (Hazardous Chemicals Right to Know Act) | 135 |
| Responding (North Carolina Hazardous Materials Emergency Response Act) | 140 |
| Federal HAZMAT Law | 142 |
| Chapter 13 Unlawful Burning | 145 |
| Introduction | 145 |
| Arson (NCGS 14-58) | 145 |
| Public Buildings (NCGS 14-59) and Educational Institutions (NCGS 14-60) | 146 |
| Fire Stations, Rescue Squads, Bridges, Certain Houses (NCGS 14-61) and Other Buildings (NCGS 14-62) | 147 |
| Buildings Under Construction (NCGS 14-62.1) | 148 |
| Churches and Religious Buildings (NCGS 14-62.2) | 148 |
| Vessels (NCGS 14-63) | 149 |
| Tobacco Houses and Gin Houses (NCGS 14-64) | 149 |
| Fraudulent Burning of Dwelling Houses (NCGS 14-65) | 149 |
| Burning Personal Property (NCGS 14-66) | 150 |
| Other Buildings (NCGS 14-67.1) | 150 |
| Miscellaneous Misbehavior | 151 |
| Explosive or Incendiary Devices | 151 |
| Bomb Threats (NCGS 14-69.1, and statutes following) | 152 |
| Woods and Brush Fires | 153 |
| Chapter 14 Liability | 157 |
| Overview | 157 |
| A Short Glossary | 163 |
| Duties | 163 |
| Constitutional Rights | 164 |

| | |
|---|-----|
| Mutual Aid | 168 |
| Service Delivery | 168 |
| Apparatus Operations | 170 |
| Hazmat | 172 |
| Occupational Safety and Health (OSH/OSHA) | 174 |
| Hiring | 176 |
| Firing | 178 |
| Health Insurance Portability and Privacy Act (HIPPA) | 179 |
| Sexual Harassment | 179 |
| Corporate (Nonprofit) | 180 |
| Defenses | 181 |
| Sovereign Immunity | 182 |
| Corporate (Nonprofit) | 188 |
| General Immunity for VFDs (NCGS 58-82-5) | 190 |
| Geiger, Luhmann, NCGS 58-82-5, and NCGS 69-25.8 | 192 |
| The Good Samaritan | 193 |
| Emergency Management (NCGS 166A-14) | 194 |
| Volunteers (NCGS 1-539.10) | 194 |
| Common Law Defenses (Court-Established Rules) | 195 |
| Contributory Negligence | 196 |
| Assumption of Risk | 197 |
| Sudden Peril or Emergency | 198 |
| Acts of God | 198 |
| Age | 199 |
| The Role of Insurance | 200 |
| From a Lawyer's Viewpoint | 200 |
| Bibliography | 203 |
| Index | 205 |

Preface

To the student:

Please keep the following in mind when working with these materials.

1. This book is not intended as a detailed discussion of the law applicable to the fire service (lawyers call such books “horn-books”); rather it is an orientation and survey of guideposts for reference and further study. It consists of an overview of North Carolina and federal law.
2. Each state has its own laws and regulations governing its fire service-related activities. This means that when you cross a state line, the rules will change. The law discussed herein, for the most part, is that which is applicable only in North Carolina.
3. Legislative activities and court rulings have a continuous influence on law. Consequently, the law is subject to frequent, and often unannounced, changes. As a result, a student of law must not assume that what the law is today will remain the law forever. A serious student of a body of law must monitor it constantly and identify the changes in order to use it effectively, or, at the very least, the student must check for changes before making an important decision based upon what the law or rule “used to be.”
4. This text is intended to provide effective research techniques for both the first-time student and the supervisor.

Acknowledgments

This project represents the most recent step in an academic adventure which began in 1991 when Emmel Coggins (retired firefighter, Fire Service Instructor, regional training coordinator, and fierce advocate for North Carolina's Community College system) shanghied this lawyer/firefighter into writing a course for firefighters dealing with civil liability. Emmel, you may have created a monster. Thanks, old man, for your advice and support. Thanks are due to my wife Sharyne for her patience, support, and occasional boots to the rear, all of which combined to keep this project moving; to two distinguished professors, John B. Graham, MD, and John G. Barrett, PhD, who unhesitatingly encouraged me to pursue this project; and to my parents, who saw to it that I received a decent education, my efforts to the contrary notwithstanding.

In my wanderings through academia, one person was to have a profound influence on many of us who studied under him—the late Franklin “Frank” Butler. He taught demanding courses in English, writing, and literature at the Asheville School (where I graduated on schedule after four years and two summer schools). That which I have done correctly in this book safely can be attributed to Frank's influence. The errors are my fault entirely.

Finally, thanks to the folks at Carolina Academic Press for their assistance in this project and their patience with this rookie author and to Beverley Guldner and Marilyn Gould for word-processing assistance during the editing of this manuscript.

