

GENERAL MUNICIPAL LAW, ART. 10, § 209; TOWN LAW ART. 11; 16
U.S.C. §§ 1b, 1c, 459e

Absent contract or federal mandate to provide fire protection services to the Fire Island National Seashore, a fire district has no legal obligation to provide such services to the Seashore.

October 21, 2003

Jonathan David Brown Esq.
Attorney
Davis Park Fire District
737 Roanoke Avenue
Riverhead, New York 11901

Informal Opinion
No. 2003-12

Dear Mr. Brown:

You have requested an opinion as to the legal obligation of the Davis Park Fire District ("Fire District") to provide fire protection outside its boundaries to the Fire Island National Seashore ("National Seashore"),¹ which is not located within the boundaries of any fire district.

You have represented that although the Fire District has in the past provided fire protection to the National Seashore, which operates a marina and other facilities, the Fire District does not wish to continue to burden its taxpayers with the additional cost of protecting that area outside the Fire District.² You have further indicated that the Fire District and the National Seashore have failed to come to an agreement for mutual aid or some other fire protection agreement. In our view, in the

¹In 1964, Congress enacted the Fire Island National Seashore Act, which, among other things, authorized the Secretary of the Interior to establish a 26-mile area on Fire Island to be known as "Fire Island National Seashore." 16 U.S.C. § 459e, et seq. The National Park Service of the Department of the Interior is the administrative agency charged with the responsibility of managing the resources and environment of the National Seashore. Id. § 1c.

²Pursuant to General Municipal Law § 209(3), the expense incurred by the fire district in responding to a call for assistance from outside the district is to be paid by assessment against the taxable property within the district.

absence of such a contract requiring the provision of fire service or a federal mandate to provide such service, the Fire District has no legal obligation to continue to respond to alarms in or otherwise provide fire protection to the National Seashore.

We have previously opined that the governing board of a fire district may determine the extent to which its fire departments may respond to calls for assistance to locations outside the area they regularly serve. Op. Att'y Gen. (Inf.) No. 81-36. Our conclusion in that opinion derived from the language of General Municipal Law § 209(1), which provides that "[the] fire department of any . . . fire district . . . may answer calls for assistance outside the area regularly served and protected by such fire department [The] governing board of any fire district . . . by resolution may restrict such outside service . . . to such extent as it shall deem advisable." Thus, a fire department is authorized, but is not obligated, to respond to calls outside its regular service area, and the governing board of the fire district is also authorized to prohibit such service.

Neither Town Law Article 11, authorizing the creation and operation of fire districts, nor General Municipal Law Article 10, regulating firefighters, otherwise require the provision of fire service to an area not included in any fire district.

That the area outside the fire district in question is a national park does not change our analysis. We are not aware of any provision of federal law that requires a local fire district to provide fire protection service to national park land outside the district. We believe that providing fire protection for the National Seashore, either by establishing a fire department for that territory or by contracting with an adjoining fire district for the provision of fire service, is the responsibility of the National Park Service. The National Park Service has such capability; in fact, the Secretary of the Interior is authorized to "erect[] and maintain[] fire protection facilities . . . adjacent to any area of the . . . National Park System, where necessary, to provide service in such area." 16 U.S.C. § 1b(2).

We therefore conclude that, in the absence of a mandate under federal law, the Fire District is not obligated to continue to provide fire protection to the National Seashore.

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,

KATHRYN SHEINGOLD
Assistant Solicitor General
In Charge of Opinions

By: _____
MELANIE OXHORN
Assistant Solicitor General