

THE UNIVERSITY of TENNESSEE 
INSTITUTE for PUBLIC SERVICE

MUNICIPAL TECHNICAL ADVISORY SERVICE

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Joshua M. Sanders, BS, CFEI
Lieutenant, Division of Fire Prevention
Williamson County Fire/Rescue
508 West Main Street
Franklin, Tennessee 37064

Dear Joshua:

You asked if your department should grant commissioned peace officer status to the department's fire investigators for conducting fire and arson investigations. As the MTAS fire consultant, I have included below the relevant information from Tennessee Code Annotated that covers the commissioning of fire investigators, and attached a presentation for training and a standard operating procedure. As a former fire chief for the City of Germantown who had commissioned fire investigators, I have provided my personal perspective and experience.

Tennessee Code Annotated (TCA) provides authority for the fire chief to commission fire investigators per the following sections.

TCA 68-102-149(b)

It is hereby made lawful for municipal fire investigators who have been authorized by the chief of the municipal fire department or the director of fire services to conduct investigations relative to the cause and origin of fires and/or arson investigations to carry a pistol or side arm while on active duty in order to protect their own lives and to effectuate the purposes of their responsibilities in investigating cases of arson or suspected arson. For the sole purpose of being able to carry a pistol, such investigators shall comply with the requirements of 39-17-1315(a).

TCA 39-17-1315

(a)(1) Any law enforcement officer, police officer, bonded and sworn deputy sheriff, director, commissioner or retired law enforcement officer who is bonded and who, at the time of receiving the written directive, has successfully completed and, except for a law enforcement officer who has retired in good standing as certified by the chief law enforcement officer of the organization from which the officer retired, continues to successfully complete on an annual basis a firearm training program of at least eight (8) hours duration, full-time employee of the Tennessee emergency management agency in the performance of the employee's duty, or any other officer or person authorized to carry handguns by

this, or any other law of this state, may carry such handguns at all times pursuant to a written directive by the executive supervisor of the organization to which the person is or was attached or employed, regardless of the person's regular duty hours or assignments; however, a copy of the written directive shall be retained as a portion of the records of the particular law enforcement agency which shall issue the directive. Nothing herein shall prevent federal officers from carrying firearms as prescribed by federal law.

At a minimum, the fire department must do the following to comply with the law.

- The fire chief must prepare a written directive stating who shall be able to carry a firearm and where and when these individuals are authorized to wear it. The authorized individual may not carry the firearm while off-duty unless the fire investigator's "executive supervisor" has given the investigator a "written directive" that the investigator may carry off-duty.
- The individual authorized to carry a firearm should sign the written directive, should receive a copy, and the signed copy should become part of the fire department's permanent records.
- Any individual carrying or wearing a pistol shall have had a minimum of an eight-hour firearms training program before carrying the pistol and shall complete an eight-hour training program on an annual basis thereafter.

From my personal experience as a fire chief who commissioned and supervised fire and arson investigators, I offer the following observations and recommendations.

The commission provided by TCA 68-102-149(b) is a local commission, not a POST commission. Therefore, the duties and powers that accompany a POST certified law enforcement officer do not extend to a fire investigator commissioned under TCA 68-102-149(b). This may or may not be a critical point for your organization, as the intent of TCA 68-102-149(b) is to provide personal protection for the fire investigator while performing his duties, not to make the investigator a police officer. Here are some recommendations.

- Before commissioning any investigators, meet and discuss your plan with the local police chief(s) and sheriff(s) that may be affected by fire investigators working in their jurisdictions
- Coordinate the required "firearm training program of at least eight (8) hours duration" with the local police department or sheriff's department. That department may offer to provide the training for you, which will be a plus.
- Provide instruction on the use of deadly force and shoot/don't-shoot training
- The fire department or police department should issue the duty firearm and authorized duty ammunition. The police department did this for Germantown, which meant the fire investigators and police officers used the same weapon,

magazines, holsters, and ammunition. This simplified training and could be important in a hostile fire situation since everything was interchangeable.

- Fire investigators should shoot the same qualifying course of fire as used by the local law enforcement agency for their officers
- Fire investigators should follow the same firearm qualifying schedule used by the local law enforcement agency, which may be semi-annual or quarterly
- Your SOP for the use of deadly force should mirror the police or sheriff's department's deadly force policy
- Your commissioned investigators should be bonded
- You should issue the investigators bullet resistance vests
- Provide a wallet card permit for each investigator with the relevant TCA information and authorization to carry a firearm
- Provide a lockable gun safe for the investigator's home, fire department vehicle, and office. If the fire investigator does not have a take home vehicle, the investigator should wear or carry the firearm while traveling to and from work to maintain custody and security of the firearm.

If you wish to provide arrest powers to your fire investigators, you can do so under TCA 68-102-127(b). TCA 68-102-127(b) is separate from TCA 68-102-149(b), so to provide a fire investigator with both arrest powers and a commission to carry a firearm the fire chief must grant two separate authorizations.

68-102-127(b)

Municipal fire investigators who have been authorized by the chief of the municipal fire department or the director of fire services to conduct investigations relative to the cause and origin of fires and/or arson investigations shall also have police powers and shall have the right to make arrests when necessary to preserve the laws of this state or their respective municipalities relative to cases of arson or suspected arson.

As Germantown's fire chief, I granted my fire investigators both arrest powers and the authority to carry a firearm, but I cautioned them that they were not police officers and if they thought there would be an arrest they should request the assistance of a police officer, as police officers have training and experience in proper arrest procedures. We had excellent cooperation with the police department, and the police chief assigned a detective to work alongside our fire investigators on fire and arson investigations.

If you desire POST certification for investigators, they will have to complete a training curriculum that includes many police skills (accident investigation, for example) that a fire investigator will not need. It is possible that even if they complete a POST certified training course the POST Commission may not award POST certification and arrest powers since a fire investigator is not a police officer. A local commission with required firearms training to meet TCA, and additional training on probable cause, the force continuum, the liability that accompanies the use of deadly force, shoot/don't-shoot training, arrest powers, civil rights, and other related topics may be sufficient for your department's needs.

The decision to commission fire investigators is not an easy one, and once commissioned, the department incurs a greater risk for liability. Support from, and continued cooperation with, local law enforcement authorities is crucial for a successful program. Establishing good policies and procedures and providing initial and ongoing training on these policies is essential. The use of a firearm is a perishable skill, so ongoing range training is necessary for investigators to be competent and confident in their ability to handle, draw, and use a pistol. Well-documented training builds skills and abilities and lays a foundation for a good defense should a fire investigator be involved in a shooting situation.

I commend you and your city for all of your efforts to improve fire protection for the community. Please let me know if you have further questions or if MTAS may be of further assistance.

Respectfully Yours,



Dennis Wolf
Fire Management Consultant

cc Kevin Lauer, CTAS Fire Management Consultant
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