

**BEFORE THE DELAWARE STATE
FIRE PREVENTION COMMISSION**

IN RE:)
) **ORDER**
Mid Sussex Rescue Squad)
)

A hearing was held before the Delaware State Fire Prevention Commission (the “Commission”) on March 19, 2013, after due notice to Mid Sussex Rescue Squad (“Mid Sussex”) pursuant to 16 *Del. C.* §§ 6604(4) and 6608 and Commission Regulation 708.

Pursuant to 16 *Del. C.* §6608 the following sub-sections apply to audits of volunteer fire and ambulance companies:

(a) The State Fire Prevention Commission shall promulgate regulations requiring financial audits of volunteer fire and ambulance companies and the Smyrna and Georgetown American Legion Ambulances and the Mid-Sussex Rescue Squad. The regulations shall include, but not be limited to, specifying the required types of audits, the reporting periods, procedures for reviewing the audits and the processes to be followed in the event a company fails to submit or submits an inadequate audits.

(b) The State Fire Prevention Commission shall have the authority, after a hearing, to impose a civil penalty not to exceed \$100 against any volunteer fire and ambulance companies, the Smyrna and Georgetown American Legion Ambulances and the Mid-Sussex Rescue Squad that fails to comply with any regulation promulgated pursuant to subsection (a) of this section. Each day a violation continues may be deemed a separate offense in the State Fire Prevention Commission's discretion. However, in no event shall the total penalties exceed \$5,000 per reporting period.

(c) The penalties specified in this section are in addition to and not in lieu of any other penalties provided for under this chapter.

Pursuant to Commission Regulation 708 the following sections apply to a audits of volunteer fire and ambulance companies:

4.0 Reporting Periods.

4.1 Any company whose fiscal year begins on or after January 1, 2009 must file no later than six and one half months after the close of the company's fiscal year. Reports shall be submitted annually thereafter no later than six and one-half months after the close of the company's fiscal year. The report due date will be calculated by the Commission based on the information provided by the volunteer fire and/or ambulance company as to the close of its fiscal year.

4.2 No extensions will be granted except upon a showing of hardship. Requests for a hardship extension must be made in writing prior to the report due date. The request must specify in detail the nature of the hardship. A showing of hardship requires that the lack of compliance with this regulation is due to causes beyond the company's control. The Commission's decision on the extension request shall be final.

5.0 Report Compliance Committee.

5.2.2 Fire department and ambulance companies that fail to file the mandatory financial reports will be referred to the Commission with a recommendation for a hearing before the Commission for the imposition of civil penalties as provided in 16 Del.C. §6608 and any other penalties available under the Chapter.

7.0 Sanctions for Non-Compliance.

7.1 Where the Commission has determined, upon notice and hearing, that a fire department or ambulance company failed to file or has filed incomplete reports or audits in violation of 16 Del.C. §6608, the Commission may impose a civil penalty of \$100 per day beginning on the date the report or audit was due. Each day a violation continues may be deemed a separate offense in the Commission's discretion resulting in penalties of up to \$5000 per reporting. The civil penalty is in addition to any other penalties provided for in the Chapter.

7.2 Where the Commission has determined, upon notice and hearing, that the reports or audits of a fire department or ambulance company indicate inadequate financial management, lack of appropriate

internal controls, and/or issues or trends that indicate possible financial failure of the company the Commission may require a written corrective action plan. Failure to submit a written corrective action plan may result in the imposition of a civil penalty of \$100 per day. Each day a violation continues may be deemed a separate offense in the Commission's discretion resulting in penalties of up to \$5000 per reporting. The civil penalty is in addition to any other penalties provided for in the Chapter.

7.3 Continued failure to file reports or audits or to take corrective action may also result in the Commission referring the fire department or ambulance company to other regulatory agencies for review and possible action under their governing authority, including but not limited to, the Internal Revenue Service, the Delaware Division of Revenue and the State Auditor's Office.

A quorum of the Commission members deliberated and voted. Mid Sussex was present, represented by Heather McCabe, Treasurer. Peter Jamison, Deputy Attorney General, presented the complaint. Andrew G. Kerber, Deputy Attorney General, advised the Commission.

SUMMARY OF THE EVIDENCE

Commission Chairman David Roberts opened the hearing with preliminary comments. Mr. Jamison presented Sherry Lambertson, Executive Assistant for the Commission as a witness. Ms. Lambertson was sworn and testified that the 2012 audit report for Mid Sussex was not received by the Commission until February 26, 2013. Ms. Lambertson further testified that Mid Sussex had a fiscal year end on June 30, 2012 making January 15, 2013 their report due date.

Heather McCabe, Treasurer of Mid Sussex was sworn and testified that last year was a really bad year, that she actually was in the hospital more than she was out, that she actually was in a house fire in the beginning of June where a gas stove blew up on her and she had scalding water burn most of her body, that earlier she had surgery, that the audit report was actually sent out in November but the auditor had to make a few changes because Mid Sussex went to a

payroll service last year, which required the auditor to require an additional breakdown and subsequent adjustments in Quicken, so it took a little bit longer and that at the end of December, the entire server crashed at the station, so a whole new server was put into the station, and that didn't happen until roughly about mid January. Ms. McCabe further testified that the accountant that Mid Sussex uses to prepare its reports is Richard Tull and that Mr. Tull has been preparing the audit reports for at least ten years.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission has considered the sworn testimony, the Commission's records and the exhibits entered.

Mid Sussex's statutorily mandated audit report was due on January 15, 2013. Mid Sussex submitted its proposed audit report on February 26, 2013.

Mid Sussex did not present any evidence either through testimony or exhibit that the lack of compliance with Delaware State law and the Commission's regulations was due to causes beyond Mid Sussex's control.

The Commission finds by the affirmative vote of the undersigned members, after consideration of the testimony and evidence presented that:

- 1) Mid Sussex did not timely comply with the financial audit reporting requirements as provided in 16 *Del C.* §6608 Audits of Volunteer Fire and Ambulance Companies and Commission Regulation 708 Financial Audit Regulations;
- 2) Mid Sussex appeared at the hearing after being provided timely and proper notice of the hearing pursuant to 16 *Del C.* §6604(4) and 29 *Del C.* §10122;

- 3) Mid Sussex did not present substantial evidence to support the granting of an extension pursuant to Commission Regulation 708, Section 4.2; and
- 4) The sanction for non-compliance imposed against Mid Sussex pursuant to 16 *Del C.* §6608(b) and Commission Regulation 708, Section 7.1 shall be one hundred dollars for each of the 41 days beginning on the date the report was due, January 15, 2013, through the date the report was submitted on February 26, 2013, a total of four thousand one hundred dollars (\$4,100.00).

ORDER

The Delaware State Fire Prevention Commission, having considered the matter of the audit compliance of Mid Sussex, by majority voted to sanction Mid Sussex for non-compliance pursuant to 16 *Del C.* §6608(b) and Commission Regulation 708, Section 7.1 in the amount of Four Thousand One Hundred Dollars (\$4,100.00).

IT IS SO ORDERED this 16th day of April, 2013.

DELAWARE STATE FIRE PREVENTION COMMISSION

David J. Roberts, Chairman

Alan Robinson, Vice Chairman

Bob Ricker, Commissioner

Tom DiCristofaro, Commissioner

Charles Frampton, Jr., Commissioner

Ron Marvel, Commissioner

Date Mailed: _____