

36 Tex. Prac., County And Special District Law § 31.5 (2d ed.)

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County And Special District Law
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Part V. Public Health and Welfare
Chapter 31. Fire Protection

§ 31.5. County fire marshal

West's Key Number Digest

- West's Key Number Digest, [Counties](#) 🔑61
- West's Key Number Digest, [Counties](#) 🔑85
- West's Key Number Digest, [Counties](#) 🔑92

Legal Encyclopedias

- [C.J.S., Counties § 97](#)
- [C.J.S., Counties § 125](#)
- [C.J.S., Counties § 127](#)
- [C.J.S., Counties § 133](#)

All counties are authorized, but not required, to provide for a “County Fire Marshal,” pursuant to a 1951 law.¹ The statute authorized the commissioners court “at its option” to establish the office of county fire marshal for a period of time (as originally expressed) “not to exceed the term for which the members of said [commissioners] court are elected.”² The county fire marshal may be furnished an office, equipment, transportation, assistance, and compensation.³ The fire marshal, his assistants and employees, are not liable for any official acts or omissions except for cases of “gross negligence or willful malfeasance” in office.⁴

The duty of the county fire marshal is to immediately

investigate the cause, origin, and circumstances of each fire that occurs within the county but outside the municipalities in the county and that destroys or damages property.⁵

Legislation concerning the county fire marshal has concerned the scope of his inspection authority and the collection of inspection fees. Legislation in 1989 expanded the inspection authority to include appurtenances, fixtures, and real property within two hundred feet of any structure.⁶ The commissioners court may authorize a fee to be assessed against owners of commercial property subject to fire inspection, and against the owner of a single-family residence if the fire inspection is requested.⁷

In 2001, emergency services districts were authorized to create the office of “district fire marshal.”⁸

The county fire marshal must keep statistical information and information regarding circumstances of the origin of a fire and estimated amount of loss. This information was specifically declared by the statute to be “accessible and open for inspection.”⁹ However, much of the fire marshal's investigation is declared by the statute to be confidential and not subject to compulsory disclosure.

The county fire marshal has the power of subpoena and may administer oaths to any persons who appear as a witness before him.¹⁰ He may also require the production of books, papers, and other documents concerning matters under his investigation. Persons who refuse to testify or produce documentary evidence before the fire marshal are subject to a \$25 fine.¹¹ The “investigation or examination” may be conducted in private.¹² The fire marshal's investigation is comparable to that of a grand jury. All persons except those being questioned may be excluded from the examination and witnesses may be ordered not to communicate with each other until they have been questioned by the fire marshal.¹³

The county fire marshal's prerogative to refuse to produce records of his investigation has been upheld by the supreme court.¹⁴ In the cited case the Harris County Fire Marshal had been ordered confined by the district court for refusing to produce records of a fire investigation and for refusing to answer questions. The fire marshal statute provides that no action on the part of the fire marshal shall affect the rights of a policyholder or any insurance company with respect to a loss by reason of any fire so investigated; nor may the result of the investigation be given in evidence upon trial of any civil action upon the policy.¹⁵

The litigation in *Pruitt* arose when an insurance company refused to pay a fire claim on the basis that the fire was intentionally caused by the owner. The owner sought to depose the fire marshal and to subpoena his files regarding his investigation. The fire marshal did release information regarding the cause of the fire and the property loss, but refused to produce other information. The supreme court held that the law means what it says: the fire marshal's investigation and information is not subject to disclosure and such information is not allowed to affect a fire policyholder or an insurance company in any litigation. Only the basic factual information regarding the fire is required to be made public. The court stated that the public policy behind the disclosure prohibition is “preventing interference with the fire marshal's duty of crime detection and law enforcement,” which is similar to the law enforcement exception of the Texas Open Records Act.¹⁶ The supreme court seemed to consider it significant that the investigation in question was still active, and thus disclosure would interfere in the fire marshal's duties. However, the statute does not speak in terms of active or inactive investigations, but provides that the result of any investigation is not admissible in trial.

The county fire marshal takes the official oath of office and may be required to post an official bond in an amount determined by the commissioners court. He is prohibited from having any interest in the sale of fire prevention equipment or fire insurance coverage.¹⁷

The county fire marshal is authorized to enter buildings for purposes of conducting investigations and to order the owner or occupants of any structure which constitutes a fire hazard to rectify it. Persons who fail to comply with the orders of the fire marshal are subject to being adjudged guilty of contempt—classified as a Class B misdemeanor.¹⁸

The county fire marshal has the authority to enforce all state and county regulations pertaining to fire, and he is authorized to “coordinate the work of the various fire-fighting and fire prevention units in the county.”¹⁹ However, he does not have independent authority within the city limits of any incorporated municipality. He may take actions within the city only when so requested by the municipality.²⁰

Although the county fire marshal is authorized to coordinate the work of the sundry fire prevention agencies within the unincorporated areas of the county, the attorney general has defined some limitations to this authority.²¹ The fire marshal does not have the authority to require volunteer fire departments to meet minimum operating standards, although he may designate specific areas as primary service zones for a volunteer fire department. The fire marshal has no authority over the granting of charters to volunteer fire departments nor may he effect the transfer of real property from one volunteer fire department to another. Furthermore, the attorney general stated that the fire marshal has no authority to supervise or coordinate the activities of a rural fire prevention district or a fire department established by a water district.

In 2002, legislation was approved authorizing the adoption of “rules and procedures” by the commissioners court to govern county fire marshal investigations.²² Other aspects of the office of county fire marshal were adjusted in this legislation, including, for example, the authority of a county fire marshal to assist rural fire prevention districts or EMS districts.²³

In 2003, the county fire marshal was granted access to criminal history record information kept by the Department of Public Safety for job applicants.²⁴

In 2009, the county fire marshal was vested with authority to approve siren-operated systems to open up gates at gated communities or apartment complexes.²⁵

In 2011, the attorney general declared that volunteer assistant fire marshals are not, and cannot be, reserve peace officers.²⁶

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Footnotes

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1 [V.T.C.A., Local Government Code §§ 352.011 to.023](#) (originally applicable to counties of 600,000+; amended in 1953 to 350,000+; amended in 1967 to extend to all counties).

2 See now, [Id., § 352.011\(b\)](#) (two-year term). Presumably, this phrase meant that the county fire marshal could not appointed for a term that extends past any of the current terms of members of the commissioners court. The Local Government Code clarified that the fire marshal serves a two-year term, as did commissioners in 1951.

3 [Id., § 352.011\(a\)](#). Legislation enacted in 1997 permits a county to exempt vehicles of the county fire marshal's office from required identification. [V.T.C.A., Transportation Code § 721.005\(b\)\(1\)\(H\)](#).

4 [V.T.C.A., Local Government Code § 352.020](#).

5 [Id., § 352.013](#).

6 [Id., § 352.016\(b\)](#).

7 [Id., § 352.016\(c\), \(d\)](#).

8 [V.T.C.A., Health and Safety Code §§ 775.101 et seq.](#)

9 V.T.C.A., Local Government Code § 352.014. The quoted language regarding accessibility was deleted
in 1989 with the adoption of the Local Government Records Act.
10 Id., § 352.015.
11 Id., § 352.021.
12 Id., § 352.017(a)(1).
13 Id., § 352.017(a)(2), (3).
14 Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977).
15 V.T.C.A., Local Government Code § 352.018.
16 551 S.W.2d at 709; see, V.T.C.A., Government Code, ch. 552 (Texas Open Records Act), discussed
at §§ 10.41 to 10.44.
17 V.T.C.A., Local Government Code § 352.012(b).
18 Id., § 352.022.
19 Id., § 352.019(b).
20 Id., § 352.019(c), (d); Op. Tex. Att'y Gen. No. MW-508 (1982) (fire marshal is required to conduct
arson investigation within a city when requested; county-owned facilities subject to municipal fire
codes).
21 Op. Tex. Att'y Gen. No. MW-375 (1981).
22 V.T.C.A., Local Government Code § 252.013(b).
23 V.T.C.A., Local Government Code § 352.019(b).
24 V.T.C.A., Government Code § 411.1237.
25 V.T.C.A., Local Government Code § 352.1145.
26 Op. Tex. Att'y Gen. No. GA-853 (2011) (Smith County).

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