

THE GOOD SAMARITAN AND THE LAW  
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ROBERT MORGAN\*

The eagerness of rescue organization members to train for, develop and provide life saving skills in emergency situations, truly has earned you the title of "Good Samaritans."

North Carolinians appreciate the services you render and the problems you face, not the least of which is the legal implications of the activities you undertake. Therefore, it is appropriate that we review some of the legal questions concerning "The Good Samaritan and the Law."

### THE LEGAL LIABILITY OF THE GOOD SAMARITAN

The North Carolina Constitution, Article I, Section 35, provides that "every person for an injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law."

This portion of the Constitution establishes our civil law, and, of course, it applies to one who is injured in an accident and receives aid from a volunteer. A long series of cases has established the general rule that one who voluntarily undertakes to aid another is held to the exercise of reasonable care under the circumstances to protect the safety of the person he aids. (Prosser, Torts, 339.)

However, the care that is reasonable in an emergency situation is only that degree of care that would be exercised by a reasonable man in a like emergency situation. Hence, one would not measure acts done under the strain and excitement of an emergency situation by the same standard as one would acts performed in the cool of a non-emergency situation.

For example, not long ago there was a train wreck, and a local rescue unit responded. A man was trapped and in immediate danger of being burned to death. He had to be removed immediately by some means.

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Members of the rescue squad used the method that they thought would free him soonest. It was not necessarily the safest way if time were not a factor. But, under the circumstances, it was the only way the volunteers could find to rescue him.

Had the victim been injured in removing him and a lawsuit brought, the Court would have taken into consideration that time was ~~the~~ the deciding factor. The Court would not say that members of the rescue squad were required to use the same techniques in every situation but would rather look to the facts in this particular rescue operation to determine if what was done was what other reasonable men would have done under like circumstances.

North Carolina and many other States have singled out the motor vehicle accident as a special case and passed "Good Samaritan" statutes which change the standard by which negligent acts are measured and consequently limit the acts from which civil damages may arise.

G. S. 20-166(d) provides that: "Any person who renders first aid or emergency assistance at the scene of a motor vehicle accident on any street or highway to any person injured as a result of an accident, shall not be liable in civil damages for any acts or omissions relating to such services rendered, unless such acts or omissions amount to wanton conduct or intentional wrongdoing."

I think it is obvious to all of us why this law was passed. It was to encourage persons passing the scene of auto accidents to stop and render assistance by removing the possibility of liability for negligence.

We see that the Legislature in North Carolina has limited liability to acts or omissions which amount to wanton conduct or intentional wrongdoing. What do we mean by "wanton conduct or intentional wrongdoing"?

Needless to say, wanton conduct goes a step beyond mere negligence. Wantonness implies intentional wrongdoing. Wanton conduct is conduct which is in "conscious and intentional disregard of and indifference to the rights and safety of others." HINSON v DAWSON, 244 NC 23 (1956).

For example, it would be wanton conduct for a member of a rescue unit to try to aid accident victims while in an intoxicated condition. Surely if some additional injury resulted from the fact that the volunteer was intoxicated, the court might well say that his action was committed in intentional disregard and indifference to the rights and safety of the victim.

You can see how the court might arrive at a similar conclusion if one of your members was participating in a rescue operation and left accident victims unattended because he was late for an important meeting of his local civic club.

You can understand, then, the kind of extreme acts for which the law of this State still holds you liable when assisting victims of auto accidents.

The North Carolina Legislature took a great step in the direction of protecting you from civil liability arising from the treatment of auto accident victims when it passed the "Good Samaritan" statute limiting your liability to intentional wrongdoing.

## B. TRAFFIC LAWS RELATING TO HORNS, LIGHTS, SPEED, RIGHT-OF-WAY

What about traveling to and from an accident? What are the laws regulating the kinds of vehicular warning equipment you may use?

### (1) Red Lights

G. S. 20-130.1 generally prohibits any person from operating a vehicle on the highways of the State while displaying red lights visible from the front of the said vehicle. There are exceptions to this prohibition, one of which applies to "vehicles of a voluntary life-saving organization that have been officially approved by the local police authorities and manned or operated by members of such organization while on official call." This is you, of course.

This section would authorize life-saving organizations to have vehicles owned by the organization equipped with red lights visible from the front of the vehicle. This section however is not broad enough to permit the use of red lights on automobiles owned by members of a voluntary rescue squad.

### (2) Sirens and Warnings

G. S. 20-125 prohibits the use of sirens on all vehicles other than those specifically exempted by the statute. The vehicles which are exceptions from the general prohibition and which are authorized or required to be equipped with "... special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles..." includes "... every ambulance used for answering emergency calls ..." but makes no particular reference to vehicles owned and operated by rescue squads.

However, it should be noted that the statute states that "... the chief and assistant chiefs of each emergency rescue squad which is recognized or

sponsored by any municipality or civil defense agency, are ... authorized to use such equipment on privately owned vehicle operated by them while actually engaged in their official duties or services. . . ."

### (3) Speed Restrictions

One area which may be of particular concern pertains to speed limit restrictions on rescue squad trucks.

G. S. 20-141 generally covers speed restrictions for the operation of motor vehicles on the highways of the State; however, under G. S. 20-145 certain exceptions are made to the general speed limitations. Although public or private ambulances when traveling in emergencies are listed as an exception to speed law limitations, one does not find vehicles of life-saving organizations and rescue squad organizations are listed specifically among the exceptions set forth in G. S. 20-145.

Therefore, under the present statutory law, rescue squad trucks are not authorized as an exception to G. S. 20-141 and consequently must comply with all speed regulations. However, ambulances belonging to rescue squads which have been certified as such pursuant to ambulance regulations and are equipped with proper warning devices are in fact private ambulances and may operate upon the highways as any other private ambulance. We should keep in mind the speed exemption does not protect the driver of any such vehicle from the consequence of a reckless disregard of the safety of others.

Moreover, G. S. 20-141(c) states that even though a rescue squad truck may be within the speed limit or even exempted from the speed limit, one must still use due care dependent upon weather or highway conditions. For example, one would not perhaps be exercising due care if one were to travel 50 miles per hour in a heavy fog.

### (4) Right-of-Way

Also G. S. 20-156, dealing with exceptions to the right-of-way, states that "The driver of a vehicle entering a public highway from a private road or drive shall yield the right of way to all vehicles approaching on such public highway." Once again public and private ambulances are included as exceptions but vehicles of life-saving organizations are not listed among the exceptions and therefore must comply with all right-of-way regulations.

Rescue squads which may have vehicles certified under ambulance regulations still have the duty to drive with due regard for the safety of all persons using the highway, nor shall the exceptions protect the driver of any such vehicle from the consequence of any arbitrary exercise of such right-of-way.

Therefore, the equipment that will be authorized upon a rescue squad vehicle is sometimes dependent upon whether the vehicle is (1) a certified public or private ambulance, (2) a rescue truck, or (3) a private vehicle of a chief or assistant chief of the rescue squad. For example, only the chief and assistant chiefs of a rescue squad may use a siren on their privately owned vehicles, as previously stated. Similarly, a rescue squad truck is not exempt from the speed restrictions while a rescue squad vehicle which falls within the definition of an ambulance when properly certified may operate upon the highways as any other public or private ambulances.

#### C. DOUBLE OFFICE HOLDING

Another area of law which may be of some interest, concerns whether a member of a rescue squad is considered a public officer. The Attorney General's Office took the view that he was not, until G. S. 20-114.1 was enacted in 1961.

This statute authorizes volunteer members of a rescue squad to divert and enforce traffic laws and ordinances at the scene of accidents in connection with their duties. Except as provided therein, rescue squads shall not be considered law enforcement officers.

No cases have construed this statute. However, this statute confers the power of arrest upon rescue squad members at the scene of an accident. Thus, this power of arrest would constitute a member of a rescue squad a public officer.

Therefore, under Article XIV, Section 7 of the North Carolina Constitution, which prohibits a person from holding two public offices at one time, it appears that a rescue squad member may not hold another public office.

#### D. ASSAULT ON EMERGENCY PERSONNEL

Of a somewhat different nature is a statute enacted by the last General Assembly which applies only to a situation in which a "declared state of emergency" exists or within the immediate vicinity in which a riot is occurring or is imminent.

G. S. 14-288.9(c) provides that in such a situation, "Any person who commits an assault upon emergency personnel (which includes rescue squad personnel) is guilty of a misdemeanor . . . . Any person who commits an assault upon emergency personnel with or through the use of any dangerous weapon or substance is guilty of a felony punishable by fine not to exceed \$10,000 or imprisonment for not more than five years, or both such fine and imprisonment."

Before this law was enacted, an assault upon emergency personnel even with a deadly weapon was only a misdemeanor unless serious bodily injury was inflicted.

#### E. WORKMEN'S COMPENSATION

As many of you are familiar, members of rescue squads are protected under our Workmen's Compensation statute, G. S. 97-2(5). G. S. 97-7 provides that all State or municipal corporations within the State must purchase insurance under Workmen's Compensation and any private employer in which there are five or more employees may purchase insurance under the Workmen's Compensation Act.

Members of rescue organizations should check and determine whether their unit was organized under authority of G. S. 160-191.11, authorizing cities and counties to expend funds for rescue squads, and are therefore covered by the Workmen's Compensation insurance of the city or county. If not, and the unit has five or more employees, they should be certain that the unit itself has purchased unemployment compensation insurance to cover its members.

Under G. S. 97-2(5), members who have suffered disabling injury or death under compensable circumstances, compensation is calculated upon the average weekly wage the member of the organized rescue squad was earning in the employment whereon he principally earned his livelihood as of the date of injury.

However, G. S. 97-2 of this same section states that executive officers of non-profit organizations do not come within the term of employee and, therefore, are not covered by Workmen's Compensation. An executive officer, however, can be brought within the Workmen's Compensation Act by specifically including such executive officer in such contract of insurance.

#### F. TERMINATION OF SERVICES

The last area of law in which you may be interested concerns when the duty of the rescue squad member to the accident victim ends. The duty to the victim generally is terminated when the emergency state of the victim has passed, when the victim has been admitted to a hospital or accepted by a qualified medical doctor or delivered into the care of one who should reasonably be capable of caring for the accident victim.

You may ask why you should really be concerned about clearing up some of these areas that now appear hazy. If you have the cooperation of law enforcement officers in your area, why should you be concerned about possible technical violations.



The answer is that should you become involved in a civil suit for injuries involved in an accident while you are rushing to an accident scene, these very technicalities will be raised and your liability might well turn upon one of these statutes.

It is to your advantage as rescue units and individuals to have your rights and limitations spelled out as clearly as possible. You should know beyond any question when you have the protection of the law and when you do not.

#### SUMMATION

In reviewing the statutes, there may be a need to look at existing laws with an eye toward clarification or revision.

For example, it appears that members of rescue squads now fall within the definition of public officers and, therefore, because of constitutional restrictions, possibly should not be holding other positions such as city councilman, county commissioner, or policeman. There seems to be no real reason for this restriction and perhaps legislation should be enacted to correct it.

The restriction might possibly be remedied by rewriting section (b) of G. S. 20-114.1 to read: "... uniformed regular and volunteer members of a rescue squad may direct traffic at the scene of accidents in connection with their duties. Except as herein provided, firemen of rescue squads shall not be considered law enforcement officers."

Notice that the statute rewritten would still allow rescue squad members to direct traffic at accidents, but would not confer upon them the power of arrest.

Another area which might merit consideration is speed and right-of-way restrictions on rescue squad trucks. If your rescue trucks have not been certified as ambulances, then the law seems to say that you may not, even under emergency conditions, exceed the speed limit or violate traffic ordinances.

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