

A Reprise: When to Call Your Lawyer and Why

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This article is an outgrowth of several legal presentations at annual conferences of the IAFFD over the years. It has evolved over time and identifies those areas where, in the author's experience, fire protection districts should contact their legal counsel, but often may not do so. A particular district's consultation with its attorney will, of course, depend on its size, its personnel, and the issues it encounters. This article is only intended as a guide to trustees, chiefs and administrators of fire protection districts regarding likely situations in which an early call to the district's legal counsel may result in significant savings in both cost and aggravation.

1. Budget and Appropriation. It is prudent to confer with the district's legal counsel as the annual budget and appropriation process occurs. While the lawyer may or may not prepare all of the budget documents, the final budget ordinance should be reviewed by counsel who should verify that all of the steps enact a valid ordinance, including public hearing, publication, and filing, have been taken.

2. Tax Levy. Because timely and accurate preparation, adoption, and filing of the district's tax levy or levies and certifications of need are critical to assure the district's financial resources, legal counsel should be consulted in the preparation of the levy ordinances and counsel should verify that all requirements have been met for a legal levy. Likewise, compliance with the Truth in Taxation Act and the Property Tax Extension Limitation Law (PTELL or Tax Caps), where and when applicable may require legal advice to assure that all requirements for a valid levy which will withstand a tax objection are met.

3. Sale of Real Estate. Whenever the district contemplates selling real estate (land and/or buildings), the district's attorney should be consulted early in the process. The Fire Protection District Act sets requirements for the manner in which real estate may be sold (either by published notice and bid procedures or by a private sale meeting statutory requirements which must be followed in order for a sale to be valid). The failure to adhere to these requirements can result in the district being unable to complete the sale and pass good title which can open the district to potential liability to a disgruntled buyer.

4. Acquisition or Purchase of Real Estate. Like-wise, whenever the district purchases real estate, the district's attorney should prepare or review any real estate sales agreement, procure and review evidence of title from the seller (by a title insurance commitment or abstract of title), and review the proposed deed of conveyance to the district and the closing documents to be certain that the district is receiving what it bargained for. Acquisition of real estate through the use of eminent domain (condemnation) powers must be handled by the district's legal counsel because it involves a court proceeding.

5. Borrowing Money. Whenever the district borrows money, the district's attorney should review any proposed loan documents before they are signed and verify that all members of the board understand and agree to the terms of the loan and any mortgage or security agreement which secures the loan.

6. Leasing. Lease purchase and municipal equipment leasing agreements are commonly used today in the purchase of large items of equipment such as fire apparatus as a substitute for a loan. Counsel should always review such documents before they are signed and confirm that the terms are acceptable to the board.

7. Purchasing. Whenever the district contemplates purchasing a major item of equipment such as a fire apparatus, the district's attorney should be consulted at the beginning of the process, including the preparation of specifications. Contracts for the purchase of any major item should be referred to counsel for review before they are signed on behalf of the district since these contracts create substantial financial liabilities for the district and contain legal terminology which can affect the rights of the district in the event of a dispute or nonperformance of the seller or the equipment.

8. Construction. The construction of a new fire station or any major improvement or repair of an existing building should be the subject of a written contract between the district and the firm doing the work for the district. Before any such agreement is signed, it should be reviewed by counsel to confirm that all legal requirements, including the prevailing wage and bonding requirements of

state law, are timely met by the district in entering into the contract.

9. Intergovernmental Agreements, Including Mutual Aid Agreements, 911 Agreements, & Dispatch Agreements. Agreements with other units of government, including mutual and automatic aid agreements, 911 agreements, and dispatching agreements should be reviewed, before they are signed, by legal counsel. While, in many cases, these agreements are issued on a "take it or leave it" basis, they do create binding commitments and can create liabilities with which the board of trustees should be comfortable before a commitment is made. For example, many 911 and dispatch agreements routinely commit the district to serve areas outside the district. In some cases, agreements of this sort also contain language which makes the district responsible for claims asserted against another unit of government.

10. Insurance. Having comprehensive insurance coverage against liabilities and casualty is important. While in most cases the district will rely on the assistance of an insurance agent or broker, it is prudent to ask the district's attorney to review any proposal for insurance coverages, including limits, to obtain counsel's advice regarding the sufficiency of the coverage.

11. Joint Ownership. The Fire Protection District Act specifically authorizes districts to own and operate equipment and facilities with other districts or units of government. Any such arrangement should be in writing and should be reviewed by legal counsel before being signed since both responsibilities and rights regarding the equipment or facility will be created by the agreement.

12. Disconnections. Whenever the district is faced with a loss of territory by another district's or municipality's annexation of territory from the district, legal counsel should be consulted immediately to verify the steps which can be taken to contest the loss which can be taken to contest the loss. Because strict time limits apply to these actions, it is important that all notices of annexation be referred to legal counsel.

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13. Annexations. Likewise, if the district desires to add territory by referendum or owner petition, legal counsel must be consulted because court procedures are required to accomplish the annexation process and it is important to verify that all steps are taken to be certain the property is, in fact, legally made part of the district including the obligation to pay taxes to support the district's operations along with all of the benefits of being part of the district.

14. Personnel and Labor Relations Matters. In any case where the disciplining or termination of a member of the fire department is contemplated or undertaken, or in any grievance proceeding regarding a serious issue, or in any collective bargaining agreement negotiations or administration, legal counsel should be consulted since an error in any of these proceedings can result in liability for the district or may deprive the district of the ability to deal effectively with the personnel issue going forward.

15. Nonroutine Document Requests. Requests for documents are common in most districts such as those for fire reports and these are routinely handled by the department. However, any unusual request, for example, for board minutes, financial records, policies, or similar items should be referred to legal counsel upon receipt for consultation and review. Because the Freedom of Information Act generally requires a response within 7 days, it is important to refer these requests upon receipt.

16. Subpoenas/Court Orders. Likewise, the receipt of a subpoena or court order of any sort, no matter how unimportant it may seem, should be referred to legal counsel to verify that no claim or other liability is being asserted against the district directly or indirectly and to assure that the district makes an appropriate response.

17. Correspondence from Another Unit of Government. Any correspondence from an agency of the federal or state government or from another unit of local government which is of a nonroutine nature, should generally be referred to legal counsel to review, and if necessary, to frame a response for the district. This is particularly true in any regulatory matter.

18. Ordinances. Whenever the district board of trustees considers adopting an ordinance

to set a policy or create a regulatory requirement on others, legal counsel should be consulted to determine that the district has the authority to adopt the ordinance and that all required steps for adoption have been taken so that the ordinance will withstand any challenge to it.

19. Elections. If the district board determines to present any matter to the voters, it is important that the district's attorney be consulted to ascertain that all requirements have been met to hold an election. Strict time limits and other requirements apply to elections and the failure to conform to the requirements may invalidate an election result.

20. Open Meetings Act Issues. Whenever a question arises regarding the board's compliance or noncompliance with the Open Meetings Act, legal counsel should be contacted to review the question.

21. Death or Serious Injury of a Fire Fighter. If a fire fighter is seriously injured or dies as a result of performing his or her duties, legal counsel should be consulted to verify that all appropriate steps are taken to provide death and injury benefits to survivors and dependents and to notify regulatory authorities.

22. Claims and Litigation. Claims which are presented to the district beyond a nominal amount should be referred to counsel for evaluation. Even where insurance coverage exists to respond to the claim, the attorney should be asked to monitor the claim and its handling by the district's insurance carrier. Whenever the district receives any type of court summons, counsel should be notified upon receipt by the district. Delay should be avoided since time limits will apply.

23. Regulatory Notices. Increasingly, other units of government have authority over various aspects of fire protection district operations. For example, the Illinois Department of Labor, the Illinois Department of Public Health, and the Illinois and Federal Environmental Protection Agencies can all issue complaints or citations or take actions which will impact the district. Accordingly, any notice from any of these or any other state or federal agency should be forwarded to legal counsel for review and action, if needed.

24. Ethics. Under the Gift Ban Act, as well as provisions of the Illinois Fire Protection

District Act and other state laws, claims of violations by trustees and employees can arise. As a threshold matter, at least, the district's legal counsel should be informed of any ethical issues which may occur regarding the conduct of a trustee or employee (including volunteers).

25. Policy Development. Prudent districts confer with legal counsel before putting into effect any significant policy which sets any type of requirement applicable to fire department operations or procedures, the public at large, or the district's personnel. Such policies can create liabilities for the district in their implementation and application. Legal counsel can initially ascertain whether the policy is one which the district has the authority to adopt and which, if implemented, will not be likely to result in claims against the district or challenges against the policy to overturn it.

26. Ongoing Regulatory Activities by the District. Efforts by the district to regulate any sort of activity by members of the public or property owners should involve the district's legal counsel except for the most routine and established forms of regulation. Any instance where a significant penalty could be imposed as part of the regulatory outcome or where the party subjected to regulation could face a significant loss or damage as the result of the regulatory action should first be reviewed with legal counsel in all but the most immediate cases.

27. Grant Applications and Awards. Most grants, including those from the federal and state governments and the private sector, involve a grant contract committing the district to comply with certain requirements as a condition for receiving the grant. It is important that any documents relating to a grant commitment should be reviewed by legal counsel to verify the terms and obligations being assumed by the district in accepting the grant.

WARNING! *The foregoing list is not exhaustive. There are other circumstances which will warrant a call to the district's legal counsel. As the old adage states—an ounce of prevention is worth a pound of cure!* ■