

# COMMISSIONERS' CORNER



## New Column

Editor's Note: The Commissioner's Corner is a new column of *The Fire Call* that will address issues relevant to Board of Fire Commissioners and will be authored by attorneys and others with legal experience in this area.

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**T**he hiring, discipline and retention of highly qualified firefighters are among the most significant issues addressed by Fire Districts. For obvious reasons, effective performance by qualified personnel is central to the needs of communities served by fire districts. Only by hiring and retaining the most qualified individuals can a Fire District fulfill the needs of their communities.

As local populations increase, and development expands, the framework for the hiring and retention of firefighters often becomes more complex. Historically, fire departments often operated either on a volunteer basis or with paid-on-call firefighters and firefighters/paramedics. Over time, a statutory framework was developed for the swearing in, or commissioning, of professional firefighters pursuant to specific guidelines. While the hiring of commissioned firefighters has become more commonplace, it is by no means universal. In fact, most recent published estimates from the Office of the State Fire Marshall indicate that a substantial majority of Illinois fire protection districts are staffed entirely by non-commissioned fire personnel.

Therefore, the goal of this column, in future issues of *Fire Call*, will be to identify and highlight relevant issues, case law developments, and potential pitfalls both for districts currently commissioning fire personnel, and those districts which may be moving in that direction. While the framework for Fire Commissioners is based in statute, there are also a considerable number of case law precedents which affect

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the execution of the statutory guidelines for Boards of Commissioners. Therefore, with regard to the establishment of a Board of Commissioners, firefighter testing and commissioning, disciplinary and discharge issues, and other matters, we will look at both the relevant statutory sections as well as significant cases clarifying, explaining, or evaluating the statutory framework.

In general, it is clear that a Fire District is not required to employ commissioned firefighters, and therefore not all districts are required to have a Board of Fire Commissioners. For those Districts which seek to establish a full-time, commissioned, professional firefighter force, the basic Fire Commission requirements are set forth in the Fire Protection District Act, and specifically in Sections 16.01 through 16.18 of the Act. As will be further discussed in subsequent issues, the reasons for moving toward a full-time commissioned firefighter force may be numerous. Districts may find that, only with a full-time commissioned staff can they meet the needs of current populations within the District. Some Districts may find it effective to have a more established framework for dealing with issues of hiring, retention, promotion, and discipline of

firefighters. Also, some Districts may find that the development of a full-time commissioned firefighting force may represent an actual cost savings over the continual provision of overtime, not to mention the scheduling hassles, for "part-time" firefighters stretched to their limits.

In general, the decision to appoint a Board of Fire Commissioners, and therefore to become subject to the provisions of Sections 16.01 through 16.18, lies within the discretion of the Board of Trustees. Once the Board of Trustees of a District determines that it is advisable to establish a full-time commissioned force of firefighters, the Board of Trustees, pursuant to Section 16.01 of the Fire Protection District Act, appoints a Board of Fire Commissioners. Initially, many Districts, particularly smaller Districts, will often determine that the appointment of a separate Board of Fire Commissioners is not necessary. By statute, a separate Board of Fire Commissioners is required only where a District employs 12 or more full-time firefighters. Otherwise, the Board of Trustees may, in its discretion, act as a Board of Fire Commissioners pursuant to the statute. In essence, this decision to "wear two hats" may

provide ease of operation for the Trustees, acting as Fire Commissioners, but may also carry certain procedural and logistical aspects, as will be further explored in this column.

Regardless of whether the Board of Trustees acts as Fire Commissioners under the statute, or whether a separate Board of Fire Commissioners is established, rules should be developed for effectively dealing with issues affecting the Board of Commissioners, the procedures for commissioning firefighters, and the treatment of commissioned personnel. Section 16.05 of the Fire Protection District Act states that the Board shall make rules to carry out the intention of the fire commission statutory procedures. It is not an overstatement to say that Fire Commission Rules are mandatory for the effective operation of the Fire Commission. As will be pointed out in future columns, Fire Commission decisions may become a magnet for litigation. To the extent that Commissioners are making decisions affecting the livelihood of professional firefighters, making selections between similar

candidates for job positions, and making the determinations about career paths for commissioned firefighters, the stakes can be high. Therefore, a Fire Commission will want a set of rules upon which to rest their decision making process. At the very least, the rules should set procedures for the application process for commissioned job positions, the requirements for applicants for commissioned positions, the testing process,

the development of eligibility rosters, the process of promotion within the department, and procedures for disciplinary proceedings.

Overall, it can be readily seen that the decision to establish a full-time commissioned Fire District is a serious undertaking. The goal of this column will be to discuss some of the issues that may arise and how a Fire District can effectively meet the challenges that arise. ■

John P. Fassola practices in the areas of litigation defense and insurance defense, with a specific concentration in medical negligence defense and workers' compensation defense. His jury trial experience also includes auto liability defense and municipal defense. Mr. Fassola earned his undergraduate degree from Northern Illinois University and earned his Juris Doctor degree from the University of Illinois College of Law, graduating with honors in 1992. He was admitted to the Illinois Bar in 1992, and has subsequently gained admission to the United States District Court for the Central District of Illinois, the Northern District of Illinois, the Northern District of Indiana, and the Seventh Circuit Court of Appeals. He became associated with Power & Cronin in 1995 and became a partner with the firm in 2002. Mr. Fassola can be contacted at [john.fassola@powercronin.com](mailto:john.fassola@powercronin.com).

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