

FIRE COUNSEL NOTES



Hot Topics

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At the IAFPD Annual Conference in June of this year, a wrap up session was held entitled "Hot Topics." This column will address some of the issues which came up during that session as well as others which may be of interest to Fire Protection District Attorneys, Trustees, and Administrators as new administrative concerns for Districts.

Safety Vest Standard

The Federal Highway Administration of the U. S. Department of Transportation will have a new regulation taking effect as of November 24, 2008 regarding "worker visibility." The regulation may be found in the Code of Federal Regulations at Title 23, Part 634 (23 CFR 634.1 through 634.4). The regulation, which was adopted in November, 2006, requires, among other things, that "...responders to incidents within the highway right-of-way. . . who are exposed either to traffic (vehicles using the highway for purposes of travel). . . shall wear high visibility safety apparel" The regulation defines "high-visibility safety apparel" to mean personal protective safety clothing that will provide "conspicuity during both daytime and nighttime use." The regulation refers to ANSI/ISEA 107-2004, the "American National Standard for High-visibility Apparel and Headwear" as the standard which will meet the requirement of the regulation. Accordingly, Districts should ascertain whether the turnout gear which their firefighters currently wear at emergency incidents on highways meets this standard. A letter issued by the Federal Highway Administration in February of this year in response to a specific inquiry from a fire service organization indicates that the ANSI/ISEA 207-2006 Public Safety Vest Standard will meet the requirements for nighttime visibility and that public safety vests are being added as an option for incident responders in the next edition of the Manual on

Uniform Traffic Control Devices which will be published in 2009. Districts may want to contact the vendors from which they have purchased turnout gear to ascertain whether their present gear will meet the new federal requirements. If not, it may be necessary for safety vests or other means to be used to meet the requirement where a highway incident is involved. Districts wishing to comment on this matter can do so by emailing MUTCDFeedback@fhwa.dot.gov.

Unemployment benefits

Non career districts need to be aware that paid on call, part time, or volunteer firefighters who receive even nominal compensation are considered to be "covered" employees by the Illinois Department of Employment Security (IDES) for unemployment compensation benefit and contribution purposes. Because of this, any district which pays any form of compensation to its personnel, even though it may consider them to be "volunteers," should seriously consider filing and paying state and federal unemployment insurance contributions and taxes to avoid a substantial financial liability which some fire protection districts in Illinois have already incurred when members of their fire department have applied for unemployment compensation benefits after losing their regular job. This situation occurred because the districts were considered by the Department of Employment Security to be a "chargeable employer" even though the firefighter remained an active member of the fire department. This apparent anomaly is based on the definition of what constitutes an "emergency worker" under the federal law. If districts facing this situation have previously made an election permitted under the Unemployment Insurance Act to reimburse the State of Illinois for unemployment compensation paid to an employee when the benefits are chargeable to the District rather than pay unemployment

insurance contributions and taxes on the amounts paid to the fire department members, the district can be held liable to pay the State for any benefits paid to the unemployed firefighter. Such an election appears to have been routinely made by treasurers and accountants for many fire protection districts in order to avoid paying contributions or taxes on amounts paid to members of the fire department. While this election may be a cost savings in the short run, if the district is found to be a chargeable employer by IDES, it could create a significant financial liability for the district. Particularly as the economy enters a downturn and more fire department members lose their regular employment, trustees and administrators of fire protection districts would be well advised to check the election which they may have made with regard to unemployment insurance contributions.

Statewide Building Code

As the regular legislative session wound down, negotiations continued regarding the implementation of statewide building code. While the fire service has basically been a bystander in these negotiations, districts should be aware that adoption of a statewide building code could have ramifications with regard to responsibilities they face within their jurisdictions. As reported in a prior column, the Office of the Illinois State Fire Marshal has adopted the Life Safety Code as a statewide fire code within Illinois. Local fire departments by delegation through the Fire Investigation Act (425 ILCS 25/9) have responsibility along with the OSFM for enforcing the rules of the Life Safety Code as adopted by the OSFM. Adoption of a statewide building code will likely create issues of consistency or conflict of the new code with the provisions with the Life Safety Code. Also, under the Fire Protection District Act, districts are

authorized to adopt and enforce “fire prevention codes and standards parallel to national standards.” (70 ILCS 705/11) Many districts have exercised this authority by adopting national fire code standards within their jurisdictional territory which they administer and enforce. If a statewide building code is eventually adopted, it will be important for districts with such codes or districts or which carry out inspections by agreement with another unit of government such as a city or village, to ascertain whether or how the local code is impacted by the statewide code, which will also likely include fire prevention code components. Preliminary indications are that local codes will prevail if they are as strict as the statewide code, however, given that the impetus for the statewide code from the architectural and construction interests is for uniformity throughout the state, there is no assurance that this will be the final outcome when the process is concluded by adoption of a statewide code.

Firefighter Autopsy Protocol

Districts should be aware that the U. S. Fire Administration in March of 2008 issued a new Firefighter Autopsy Protocol. Any district which incurs the unfortunate circumstance of losing a firefighter in the line of duty or as a result of a

condition or injury attributable to service as a firefighter should be aware of this protocol. Districts should undertake to make their members aware of the protocol as well as medical personnel and the family of a deceased firefighter in the event of a firefighter death. Autopsy results can have a significant consequence in connection with the payment of federal and state death benefits.

Workers Compensation Insurance Rates

Districts should be prepared for higher workers compensation insurance rates as the result changes made by Public Act 95-316 (House Bill 928) which took effect January 1, 2008. This new law creates a rebuttable presumption that a firefighter, EMT, or paramedic who sustains a medical condition or impairment from certain specific causes is work related if the claimant has been employed for 5 years or more in the capacity of a firefighter, EMT, or paramedic. (For purposes of Workers Compensation benefits, all firefighters—career, paid on call, part time, and volunteer are considered to be employees.) As a consequence of this legislation, some providers of workers compensation coverage have already imposed additional charges on districts they serve. Commercial insurance carriers which provide

workers compensation coverage for fire protection districts will be likely at future renewals to increase their rates for such coverage to take into account this change in the law. Accordingly, districts should plan to increase their insurance tax levy to provide additional revenues for this higher cost or make other provisions to cover the additional expense in their budgets.

Fuel Costs

Readers may want to check out an article in the June 18, 2008 issue of The Wall Street Journal entitled “*Fighting Fires With Frugality*”. The article describes the efforts of several fire departments to cope with the cost of fuel for fire apparatus operation. Tactics include changing the number of vehicles responding to incidents, the frequency of trips to fill apparatus fuel tanks, changing the types of vehicles responding to particular types of incidents, changing the manner of response to calls on interstate highways and other locations in the department’s service area, and that oldest standby of the fire service, fund raising. However districts address this issue, they need to be certain that in preparing the district’s annual budget and appropriation ordinance, higher fuel costs are taken into account. ■

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