

FIRE COUNSEL NOTES



The Seven Deadly Sins* (*Of Fire Protection District Administration)

By James S. Sinclair, IAFPD Counsel
Stobbs & Sinclair, LTD

Most everyone has likely heard of the “Seven Deadly Sins” (according to Wikipedia: pride, envy, wrath, gluttony, lust, sloth, and greed). But fire protection district trustees, chiefs, and administrators need to avoid an entirely different set of deadly sins: “The Seven Deadly Sins Of Fire Protection District Administration” which, depending on your point of view, may be more deadly than those identified by Wikipedia—at least for your fire protection district. These “Sins” are based upon certain critical areas of fire protection district administration which, for whatever reason, some fire protection district trustees seem to repeatedly “commit.” This article will identify these “Sins” and discuss how to avoid them.

The Budget Sin

For whatever reason, it seems that many district trustees have difficulty in understanding and following the steps required for annual budget and appropriation compliance. Proper preparation of the annual budget is critical because, as has been stated many times before, without a proper appropriation, the District’s treasurer has no authority to write a check to spend district funds. This is not simply an academic issue or exercise. The failure to properly adopt the budget and appropriation ordinance can lead to challenges against illegal expenditures and, potentially, claims being made against the district and trustees for improper budget compliance. The steps in preparing the annual budget

and appropriation are the same every year:

1. *Prepare a Tentative Budget and Appropriation Ordinance.*
2. *Post the Tentative Budget and Appropriation Ordinance for public inspection for at least 30 days before adopting a Final Budget and Appropriation Ordinance.*
3. *Publish in the newspaper a Notice that the Tentative Budget and Appropriation Ordinance has been posted for public inspection.*
4. *Publish in the newspaper a Notice of Public Hearing on the Budget and Appropriation Ordinance at least 30 days prior to the hearing.*
5. *Hold the Public Hearing. (It does not matter that no one shows up.)*
6. *Adopt the Final Budget and Appropriation Ordinance after making any needed changes to the Budget at a properly noticed regular or special meeting of the Board of Trustees.*
7. *File the Final Budget and Appropriation Ordinance with the County Clerk or Clerks of the County or Counties in which the District is located within 30 days of adoption.*
8. *Publish the Final Budget and Appropriation Ordinance in the newspaper within 30 days of adoption.*

All of the foregoing steps are mandatory and they must be repeated every year. The budget process must be completed within the first 3 months of the District’s fiscal year. Careful adherence to the time limit for adoption of the budget

is also critical to assure that all of the foregoing steps can be completed within the first 3 months of the fiscal year. Failure to follow or missing some of the required steps can result in a challenge to the budget or, in some cases, to the District’s tax levy. It can also be the basis for an expenditure to be challenged—especially if there is opposition to a particular expenditure such as the acquisition of a new item of equipment or fire station construction.

The Tax Levy Sin

Perhaps the greatest fire protection district administration sin is not knowing the difference between the tax levy and the budget and appropriation! The tax levy generates the funds for the budget, but it is legally distinct from the budget. Too many trustees confuse the levy and the budget. While the tax levy is an annual requirement like the budget, it is legally distinct from the budget and appropriation and, except as noted below, it generally does not require a public hearing. The tax levy (technically the “certificate of need”) must be filed by the last Tuesday in December of each year with the County Clerk or Clerks of the county or counties in which the District is located. The failure to adopt and file the tax levy timely can result in the District not receiving funds in the subsequent year for the operation of the District. Many trustees likewise confuse the applicability of the Truth in Taxation Law which applies

Continued on page 11

Fire Counsel Notes

Continued from page 10

to all fire protection districts and requires that a hearing be held on the tax levy for the current year if the proposed amount of the levy exceeds the tax extension of the prior year by more than 5%. This is commonly referred to as the “5%” or “105%” rule. It has nothing to do with the budget! Moreover, the Truth in Tax Law does not restrict a district’s levy to a 5% increase—it simply requires a public hearing on the levy and the publication of a special form of notice prior to the hearing and the adoption of the tax levy. Unfortunately, many trustees incorrectly believe that the 5% increase refers to the District’s budget rather than its tax levy. Similarly, many trustees commit the sin of confusing the Truth in Taxation Law with the Property Tax Extension Limitation Law (PTELL). This confusion seems to arise because both laws contain a reference to “5%.” If a District is subject to PTELL (all districts are not), unlike the Truth in Taxation Law, PTELL will annually place a hard dollar limit or “cap” on the District’s tax levy. The reference to 5% in PTELL is to the limitation in that law mandating that a district’s total dollar levy amount may not exceed an increase over the prior year’s tax extension amount by more than 5% or a cost of living adjustment, whichever is less. But note that the 5% under Truth in Tax and the 5% under PTELL are entirely different in their application and effect. If a District is under the PTELL limitations, having a Truth in Tax Hearing will not exempt its levy from the effects of PTELL. PTELL can only be circumvented by a referendum of the voters in the District to raise the District’s PTELL limitation. Failure to follow up on the annual tax levy is also a common tax levy sin. Each year, the County Clerk or Clerks will issue one, or possibly two, notifications to Districts regarding their tax levy. The first is typically a notification that the levies have been received and confirming the amounts of the levy or levies for review by the District. The sin here is in not carefully checking to ascertain that the County Clerk(s) has, in fact, correctly read and interpreted the District’s tax levy and certificate of needs. If there is an error in this notice, immediate steps need to be

taken to advise the County Clerk or Clerks of the correct figures. Too often, these notices are ignored or not checked against the actual tax levy documents. The second notification that Districts will typically receive from most County Clerks is the “Tax Extension Report.” This notification is, likewise, critical because it tells the District the amount of tax which will actually be “extended” based on the District’s tax levy and its equalized assessed value (EAV) for the tax year. It is critical that the Extension Report be reviewed immediately upon receipt and that it be checked to verify that the computation of the extension is accurate. Unfortunately, too often Districts fail to look at this report by the deadline in the notice or simply put it aside only to discover later that their tax receipts are significantly lower than anticipated due to an arithmetic or other error somewhere along the line in the tax extension process. If an error in an extension is not identified timely or if the notice is simply ignored, it will be too late to correct the error and tax revenues will be less than anticipated.

Financial Reporting Sins

Fire protection districts are required prepare multiple financial reports each year depending upon the level of their revenues during the year. These reports are required and, in some cases, if not properly prepared and filed timely can result in penalties being assessed against the District for noncompliance. The Annual Financial Report (AFR) is a report which must be filed every year with the Office of the Illinois Comptroller. It is filed online and is due within 180 days (not 6 months) from the last day of the District’s fiscal year. The format of the AFR is specified by the Comptroller’s Office. If the District fails to file the AFR on time, it can result in daily penalties being assessed against the District. The AFR must also be filed on paper with the County Clerk or Clerks of each County in which the District is located. Separately, the District is also required to prepare a Statement of Receipts and Disbursements (“Treasurer’s Report”). This report must be filed with the County Clerk or Clerks of each County in which the District is located within 6 months of the end of the fiscal year. It is a cash statement showing the District’s beginning cash balance at the start of

the fiscal year, the disbursements of the District’s cash by category (similar to the budget), and a listing of payment to any payee of more than \$2,500 during the fiscal year and a statement of expenditures for compensation paid by the District during the fiscal year. This report is separate from the AFR even though its timing is approximately the same. If the District is not required to do an audit, the statement must be published in the newspaper. If the District has receipts during any year of over \$850,000, it will also be required to have an audit performed of the financial records of the District by a certified public accountant (CPA). Additionally, all units of government are required to have an audit every four years regardless of level of their receipts (however, there is an exception allowing the use of the AFR if the District is below the \$850,000 threshold). If required, the audit must be performed according to generally accepted governmental accounting principles. It must also be filed with the Illinois Comptroller. If an audit is performed, the District may, but is not required to, publish a notice of the audit and its availability to the public in lieu of publishing (but not preparing) the Statement of Receipts and Disbursements. As with the budget and levy, the District trustees and administrators must adhere to the deadlines for financial reporting. Typically, this means that promptly after the fiscal year ends arrangements should be made to have the various financial reports prepared by an outside party. The sin here is in not timely acting to assure that the required reports are prepared and prepared timely

The Procurement Sin

The fourth deadly sin is failing to comply with Section 11k of the Illinois Fire Protection District Act regarding procurement. Sometimes strenuous efforts continue by districts (and some fire service vendors) to avoid the sealed competitive bidding requirements of Section 11k. Novel concepts such as seeking an “RFP” (request for proposal) are put forth as a supposed substitute for competitive bidding. These efforts do not comply with Section 11k. As a consequence, districts open themselves

Continued on page 13

Fire Counsel Notes

Continued from page 11

to potential criticism, as well as, in some cases efforts, to set aside transactions. Unless one of the applicable exceptions under 11k is followed such as a Qualified Joint Purchasing Program, districts run the risk of violating the law. Most of these circumvention efforts are directed to “brand purchasing” because of favoritism toward a particular manufacturer or supplier. Ultimately, this can lead to problems for the district even if it is only in the form of public criticism through social media and the press. While there may be certain very limited circumstances in which an emergency exception for procurement might be acceptable in the event of a serious supply chain or other constraint making compliance with 11k workable, these circumstances are going to be very limited. To avoid this sin, districts need to be familiar with the 11k requirements and follow them carefully.

The Illinois-OSHA Noncompliance Sin

The fifth deadly sin is failure to comply with and be knowledgeable of the requirements of Illinois OSHA (Illinois Department of Labor) rules governing firefighter safety. In very practical terms, Illinois OSHA is today the primary regulator of the Fire Service in Illinois. Compliance with the training; personal protective gear (PPE); and premises/equipment requirements as enforced by Illinois OSHA is critical to avoid this most deadly sin. While district boards may delegate a good deal of the compliance with the Illinois OSHA requirements, ultimately, the responsibility for compliance will fall back to the Board of Trustees as the governing body of the district. Accordingly, to avoid this sin, it is necessary for the board of trustees to monitor the adequacy of training by the Fire Department as well as the condition of personal protective gear, fire station premises, and the condition of apparatus and equipment. Firefighter safety is, today, a primary focus of responsibility for fire protection district administration which is, if not greater than, is at least equal to, the responsibility to provide adequate firefighting and

rescue capability. Failing to be aware of and verify compliance with Illinois OSHA requirements is the fifth deadly sin of fire district administration.

The Sin of Mishandling Personnel Issues

This sixth deadly sin of fire protection district administration generally falls into two overall categories: career fire departments and non-career fire departments. In career fire departments, personnel matters are largely regulated by what are frequently referred to as the “Fire Commission Rules” of Sections 16.01 through 16.18 of the Illinois Fire Protection District Act (70 ILCS 705/16.01-16.18). The rules set forth in these sections of the Fire Protection District Act govern, in large measure, along with some other provisions of state law such as the Promotions Act and the Firemen’s Disciplinary Act, govern career fire department personnel matters. If a career department is unionized and has a Collective Bargaining Agreement, provisions of the Illinois Public Labor Relations Act will likewise be applicable. In career departments, it is important for the Board of Trustees to be aware of and assure compliance with the rules of these statutory requirements in order to avoid mishandling personnel issues such as discipline and discharge or labor bargaining matters. In the non-career setting, boards often incorrectly assume that the same rules apply to non-career firefighters as career firefighters, which is typically not the case. Rather, non-career departments are typically governed by concepts of due process and nondiscrimination imposed by laws such as the Illinois Human Rights Act. In practical terms, the most frequent sinning in this area occurs when boards and fire chiefs fail to comply with their own rules as set out in department bylaws or personnel policies in carrying out discipline or membership matters in the non-career setting. Another frequent area of sinfulness is failure to understand and properly apply the federal Fair Labor Standards Act, especially as it may apply to part-time and volunteer firefighters who receive some form of compensation from the district. Just because the label “volunteer” is placed on a department’s firefighter members, it does not mean that

the district will not be subject to laws and requirements such as Fair Labor Standards Act and the Illinois Human Rights Act. In order to avoid this sin, therefore, is necessary for district boards to take care in administering personnel matters.

The OMA & FOIA Sins

The last and perhaps the most frequently occurring sin in fire district administration is the failure to comply with laws relating to transparency and accountability: the **Open Meetings Act** and **Freedom of Information Act**. Both of these laws are the primary source of district board procedures and governance. Understanding the rules of the Open Meetings Act, such as those relating to posting the Board’s regular meeting schedule; posting agendas for all meetings; providing proper notice of special meetings; avoiding illegal meetings occurring by informal communications between board members; failing to properly document meetings with minutes and attempting to circumvent the rules regarding closed (“executive”) sessions of the Board are primary examples of the big OMA sins. Likewise, the Freedom of Information Act (FOIA) is a frequent source of downfall for fire protection districts. In addition to failure to comply with the strict time limits and limitations on exceptions regarding compliance with FOIA, districts seem consistently to seek to resist producing records due to animosity toward the requestor even though compliance is clearly required by FOIA. These efforts are misplaced in that they not only run directly contrary to the law’s requirements, but they also create the impression that the district has something to hide by its efforts to resist producing records. Both of these laws (OMA and FOIA) have the potential to create penalties for districts for noncompliance. Beyond that, noncompliance often results in additional expense and effort in addressing complaints against the district for failure to comply. No good can come from this sin.

Hopefully, your district does not and has not committed the foregoing deadly sins in fire district administration, but if it has, now is the time to “fess up” and cease “sinning”! Good luck! ■