

FIRE COUNSEL NOTES



“BITS & PIECES”

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

This Fire Counsel Notes, rather than focusing on a single topic in detail, is going to cover a number of short topics that make up some of the interesting current events in the fire service these days.

Legislative Developments. There have been some additional bills passed by the General Assembly worth noting:

Public Act 104-362 (Senate Bill 711) effective August 15, 2025 made multiple changes to the Emergency Medical Services (EMS) Systems Act that will be applicable to many Districts engaged in the provision of emergency medical services. Perhaps most significant for many nonurban EMS providers will be the provision which allows a person who is not an “EMS personnel” to operate an EMS vehicle (1) if the person meets the Vehicle Code requirements for the operation of an ambulance under emergent conditions; (2) if 2 licensed EMS personnel are present; and (3) if patient’s condition necessitates all of the EMS personnel present to be involved in the care of the patient. Most significantly for nonurban districts, the statute goes on to allow the Department of Public Health to grant a waiver allowing non-EMS personnel to operate the ambulance if only one EMS personnel is present. The ability to obtain a waiver should assist departments with EMS personnel shortages and which encounter circumstances regularly when only one EMS provider is available on a call by authorizing non-EMS personnel to drive an ambulance vehicle. Another change made by this bill is to require testing of EMS candidates by the National Registry examination system and to require EMS Systems to take steps to address their EMS training program if a first attempt

failure rate of 30% or more occurs for those taking a licensure examination. The bill also permits a student enrolled in an IDPH approved course to take the EMR licensure examination after the student has completed the first 40 hours of the course. These changes are directed at increasing the number of qualified EMS personnel in the state.

Public Act 104-438 (Senate Bill 243) was passed in the Fall Veto Session and took effect January 1, 2026. It makes numerous changes to the Open Meetings Act and the Freedom of Information Act. Among the more important changes:

- A new Section 2.07 is added to OMA prohibiting the holding of a regular or special meeting on an election day.
- Section 7 of OMA, which allows remote attendance by a board member in limited circumstances, will now allow a service member on active military duty to attend a meeting under OMA remotely.
- Section 2 of FOIA has been amended to add to the definition of “person” in the Act to include “any individual acting as an agent of a corporation, partnership, firm, organization, or association.
- Section 2 of FOIA is also amended to provide that the definition of “public record” does not include “junk mail” and it adds a definition of junk mail to the law to be unsolicited commercial mail or electronic communications received, *but which are not responded to*, by an official, employee, or agent

of the public body. Note the proviso in italics. District personnel should be cautioned about responding on district computers to what is within the definition of junk mail in order to avoid converting the junk mail into a public record that must be retained and produced under FOIA.

- Section 3 of FOIA now requires that any FOIA request which is submitted electronically to a unit of government must contain the actual records request *in the body of the communication* and may not locate the request in an attachment or hyperlink. Units of government are required to notify the requester within 5 business days of the request that the request record request must be contained in the body of the electronic submission. Again, District personnel need to be cautioned about this change which is intended to avoid making the District a victim of a hack.
- Section 3 of FOIA now provides that if a unit of government has a reasonable belief that a person (rather than a bot or an AI generation) did not submit a FOIA request, the unit may require the requester to verify orally or in writing that the requester is a person and the time for the unit to respond is tolled until such verification is provided. If there is no verification within 30 days, the unit may deny the request. The information that may be required from

Continued on page 12

Fire Counsel Notes

Continued from page 10

the requester is limited and excludes the provision of personal information, private information, or identifying information. Districts should use this change in the law to avoid machine or artificial intelligence generated requests.

- Section 4 of FOIA now requires that if a unit of government has a website, it is required to post the information about the unit of government required by the Act on the website. (Note that this requirement, unlike other provisions about websites in OMA, does not limit the requirement to the use of website posting only to those sites which are maintained by a full time employee of the unit.) This means that Districts which have a website, regardless of how it is maintained, will need to post the required FOIA information on their website. It will also necessitate that Districts whose Departmental organization has a website consider whether those Departmental websites may also need to carry the FOIA posting based on the relationship between the District and Department. Districts which do not have a website must make the posting on paper at their administrative office as under prior versions of this section.
- Section 9.5 of FOIA regarding the Public Access Counselor (PAC) has been amended in Subsection (f) to provide that an officer or employee of a public body which discloses records in accordance with an opinion of the Attorney General (PAC Opinion) is immune from liability by reason of the disclosure and will not be liable for penalties under FOIA.
- Section 3 of the Local Records Act is similarly amended to define junk mail as in the amendment to FOIA and to take junk mail out of the category of materials that cannot be destroyed or disposed of by a unit of government without Local Record Act Commission approval.

Recent Litigation & Potential Litigation.

There are two recent court cases which, even though they are not yet finally

resolved, deserve noting.

- In a case arising from a house fire in Whiteside County in December 2021, a jury in November 2025 awarded a judgment of \$31.5 million against two fire officers of a municipal fire department and their municipality based on a finding of willful and wanton conduct which resulted in the death of a firefighter from another municipality's fire department who was responding to the incident under an auto aid arrangement between the departments. There has been a substantial amount of reporting about the case, including a podcast in which the firefighter's widow's attorney laid out the case made against the fire officers. An IL-OSHA Inspection Report issued in March 2022 (#1568109) figured prominently in the case as did NFPA standards. Defenses raised by the defendants under the Tort Immunity Act were not successful at trial stage based on the allegations of willful and wanton conduct by the fire officers in the conduct of the fire suppression operation. While an appeal of the verdict is likely, there are some basic points from this litigation that fire protection district trustees should give serious attention to as it relates to the administration of the district's fire department. As noted, the case relied heavily on NFPA standards and the standard operating procedures (SOPs) of the defendant department and, more importantly, on the asserted lack of adequate training on those standards and SOPs by the members of the department including the fire officer defendants. Inadequate accountability and the asserted late appointment of a safety officer on the scene were prominent criticisms. The entire fire suppression operation was compared to applicable NFPA standards and, even though those standards do not, by themselves, carry the force of law, the conduct of the operation was presented by comparison to them. Regardless of the final outcome of this tragic case, district boards need to monitor the adequacy of the operating procedures and the training of their departments on those procedures. Simply taking the position that it is the Fire Officers' responsibility

to assure adequate training and NFPA compliant departmental procedures is a recipe for liability. Boards need to be informed about training regularly and they need to confirm that SOPs are current and adequately aligned with fire service standards such as NFPA. See the IL OSHA announcement elsewhere in this issue of the Fire Call about the Ridge Incident and the IL OSHA presentation about it.

- In an entirely different type of litigation, a federal antitrust lawsuit filed in August 2025 by the City of La Crosse, Wisconsin against Oshkosh Corporation, Pierce Manufacturing, Rev Group, Inc., Rosenbauer America LLC, and the Fire Apparatus Manufacturers Association, alleges that the fire apparatus industry, following the 2008 "Great Recession," underwent a significant consolidation with many formerly independent apparatus manufacturers (E-One, KME, Ferrara, Spartan, Smeal, and Ladder Tower) being acquired by a private equity entity that ultimately became Rev Group, Inc. and that Rev Group's acquisitions, along with acquisitions by the other defendants in the case, resulted in a significant diminution in competition within the industry. It is alleged that the market for fire apparatus is now dominated by a few large players who allegedly have conspired to cooperate and control the market contrary to the antitrust laws. It is further alleged that as a result of this conduct, the price of fire apparatus has doubled and buyers have been forced to overpay for equipment, endure long delays for the delivery of apparatus, and operate with diminished fire apparatus fleets. The complaint goes on to allege that this has weakened the ability of communities to respond to emergency incidents and diverted public funds from other needs resulting in public safety being jeopardized. As yet, the court record in this case does not show a response by the apparatus manufacturers or trade association to the complaint which was filed as a class action. Because antitrust cases and class actions typically take several years to process through the court system, it will be some time

Continued on page 14

Fire Counsel Notes

Continued from page 12

before the outcome of this case is known, but it does bear watching given the changes which have occurred in recent years in connection with fire and rescue apparatus procurement. The defendants can be expected, of course, to contest the allegations in the complaint and take the position that there is strong competition present in the fire apparatus market today. Stay tuned.

- While not a litigation matter, it may become one. In a New York Times article of December 14, 2025, reporter Mike Baker examines changes in the cost of software relied upon by rural fire departments to prepare fire reports and handle other administrative tasks common in the fire service. The article reports that rural departments are seeing annual software fees going from \$795 to \$5,000 or more in some cases. The article looks at the activity of private equity firms and consolidation in the fire reporting software market focusing on ESO Solutions and its private equity owner, Vista Equity Partners. Interesting reading. Again, stay tuned.

In Closing, Some Beginning of the Year Tips. As 2026 begins, it is a good time to think about ways to administer your fire protection district more effectively and save administrative expenses (like legal fees). Here are a few tips:

- **Read your mail and read it timely.** Too often districts miss deadlines or get behind in meeting deadlines simply because no one is checking the mail (or in many cases today, email) on a consistent and regular basis. Frequently, this task is left to the fire chief who, being busy, waits until a board meeting to pass the mail or email along. Just as frequently, districts play the volunteer card to justify not tending to mail or emails when received or waiting until the one board meeting each month (or less often) to address district communications and matters. In today's world, these arguments won't play. Be sure that your district has in place an effective procedure to receive, review, and evaluate incoming

correspondence and communications so that deadlines are not missed and district action is on time.

- **Use the Calendar & Checklist.** If your district did not pull out the Annual Calendar & Checklist from the Fall 2025 Issue of the Fire Call, do that now. (It is at page 32.) Use it to determine who will do what and when during the year to meet the annual requirements. Assign a board member to each requirement even if someone else like the fire chief, district attorney, or district accountant will perform the task for the district so that the Board can monitor the completion of the required item.
- **Check Your District's Tax Levy Confirmation Report and the Tax Levy Extension Report.** Nearly all districts early in the year will receive from the County Clerk (or Clerks if the district is in multiple counties) a report which lists the amount of the district's 2025 tax levy broken down by amount and type of levy (corporate/general; rescue; liability insurance; worker's compensation; ambulance; etc. [this

will vary depending on the types of levies the district has in place]). Be sure that the amount of each levy is correct and that the authorized rate limit (if there is a rate limit) is correctly listed. **Also**, later this spring or early summer look for and check the Tax Levy Extension Report which will also be issued by the County Clerk(s) as soon as it arrives (it will usually have a reply date deadline). This critical document tells the district how much of the tax levied by the district will be included on the tax bills of district taxpayers and collected when bills are issued. If there is a significant difference between the dollar amount levied and the dollar amount extended, it is a red flag that requires immediate attention since errors, if not corrected at the time the report is issued, will likely result in lost tax revenue for the district. If the report is not clear to the district, the Board should consult with the district's legal counsel or accountant to interpret it to prevent a loss of tax revenue.

As always, take care and good luck! ■

SAWYER FALDUTO ASSET MANAGEMENT, LLC

Independent | Disciplined | Experienced

Proud to provide investment advisory services to Illinois Fire Protection Districts and of our relationships with Illinois Firefighter and Police Pension funds for many years.

For more information contact:

John Falduto, Managing Partner
jfalduto@sawyerfalduto.com
589 S. York Street
Elmhurst, IL 60126
630.941.8560

www.sawyerfalduto.com