

# FIRE COUNSEL NOTES



## 2020: A New Decade--More Changes, More Challenges!

By James S. Sinclair  
IAFPD Legal Counsel

**W**elcome to 2020! As the year begins, fire protection districts are (as usual) confronted with several legislative and other changes that will impact fire service administration and many of those changes will prove to be challenging. This article will highlight some of the more significant items for district trustees and administrators to consider as a new decade begins.

### Weed or Booze—The Same or Different?

Elsewhere in this issue you will find an informative article by John Motylinski and David Livingstone on the new legislation effective January 1, 2020 legalizing the recreational use of marijuana in Illinois. (Public Act 101-27) Most districts will likely need to update and revise their drug and alcohol policies to take this new development into account. While legal opinions differ on the scope of authority for a fire protection district to limit the use of marijuana by firefighters while off duty (which will likely be an issue addressed by court decisions or by further legislation), it will be important for all districts to examine the policies currently in place regarding alcohol and drugs and make modifications to those policies as needed in recognition of the legalization of recreational marijuana.

### Workplace Transparency

Similarly, the enactment of the Workplace Transparency Act in 2019 (Public Act 101-221) mandates changes in policies

prohibiting harassment. All districts should already have in place such policies based on legislation which took effect in 2018, but those policies will need to be updated to include some new mandatory provisions. The policies will now need to include required annual training for all members of the fire department (Section 10 of the new law). There is also a requirement for districts (like all employers and covered entities) to annually report any adverse administrative or judicial decisions concerning harassment against the district. The Illinois Department of Human Rights has jurisdiction over most of the provisions of this new law, and it will be required to provide an on-line program which meets the annual training requirement. At the time this article is being prepared, the Department indicates informally that this training should be available sometime in the next few months. Districts should consider utilizing this training when it is available since doing so will meet the law's requirements regarding content of the training. While districts will be free to provide alternative training programs which meet the content requirement, using the state program should give a higher level of assurance that the training will be considered sufficient in the event of a claim or review of the district's compliance with the law's requirements. The training requirements can be found at 775 ILCS 5/2-109. The training and reporting requirements have been added to the IAFPD Annual Calendar & Checklist. Districts need to be

certain to maintain documentation of the completion of training by all members of the fire department including members of the board of trustees and nonsworn personnel.

### 2015 Life Safety Code

Beginning January 1, 2020, the Office of the State Fire Marshal has put into effect the 2015 version of the Life Safety Code (NFPA 101) throughout the state under the authority of the Fire Investigation Act (425 ILCS 25/9). The adoption of the 2015 LSC replaces the 2000 code which was previously in effect. Local fire officers who are charged under the Act with the investigation of fires are also required to enforce within their district the Life Safety Code as adopted by OSFM. Districts should confirm that their fire chiefs and fire officers are aware of this change and of their responsibilities under the Act. OSFM is making information available on its website including training opportunities. Under Section 11m of the Fire Protection District Act (70 ILCS 705/11m) district fire chiefs have authority to address code violations in their district by referring violations to their county State's Attorney if corrective action is not taken.

### New Minimum Wage & Overtime Rules

For those districts which pay their personnel on an hourly basis (and cannot treat them as volunteers under the U.S. Department of Labor "bright line" 20%

*Continued on page 11*

## Fire Counsel Notes

Continued from page 10

rule), the minimum wage in Illinois for hourly pay rose to \$9.25 per hour on January 1, 2020. Districts whose personnel are considered employees covered by the Fair Labor Standards Act need to adjust their rate of pay to be compliant and avoid a violation of the minimum wage requirements and back pay complaints. Districts which pay their fire officers a salary will now be subject to new overtime rules, also effective January 1, 2020. If the annual salary of such officers is below \$35,568, overtime will now have to be paid under the Fair Labor Standards Act (FLSA) if the officer works more than 40 hours in any week. (This assumes that the FLSA "bright line" 20% exception is not applicable to allow classification of the officer as a volunteer.) Officers whose salary exceeds the \$35,568 threshold may continue to treat the chief's position as one which is "exempt" and not subject to the FLSA overtime rules.

### Illinois OSHA Inspections

Several districts have recently been subject to inspections by Illinois OSHA (Illinois Department of Labor). These inspections are based on the federal OSHA standards adopted in Illinois which include, as to fire department operation, the fire brigade, training, SCBA, breathing air, hazardous materials, confined space, blood borne pathogens, and personal protective gear requirements as well as standards which are generally applicable to other employers relating to buildings, facilities, and vehicles. These inspections are generally unannounced (unless a request for a voluntary inspection is made). IL-OSHA has issued information concerning fire department inspections which can be obtained from the agency's website. (Also, see page 21 of the 2019 Fire Call for a listing of the most common violations.) Districts need to review their compliance with the applicable standards and make adjustments as may be needed to be prepared for an inspection.

### "Gender Neutral" Restroom Signage

Public Act 101-165 effective 1/1/20 will now require all single occupancy restrooms in fire stations to be labelled as "gender neutral." Districts with such restrooms will need to change signage on the restrooms in their stations which may have previously had gender designated signage. (This signage requirement does not apply to multiple occupancy restrooms.)

### Joint Purchasing & Section 11k Compliance

Under legislation passed last summer (Public Act 101-139) through the efforts of the Association's Legislative Committee, Section 11k of the Fire Protection District Act (70 ILCS 705/11k) has been amended to allow districts to make purchases in excess of \$20,000 through a qualified joint purchasing program in lieu of using sealed competitive bids solicited by a newspaper notification. Districts undertaking to use a joint purchasing program should verify that the program qualifies under Section 11k. This includes a requirement that the program use a price competitive solicitation process as part of the program. Programs which cannot demonstrate that vendors are actually competing in submitting proposals to a joint purchasing program for inclusion should not be used by districts as these will not qualify to exempt the district from using sealed bidding as generally required by Section 11k.

### Downstate Article 4 Pension Fund Investment Consolidation

Districts with career (full time) firefighters are required by Article 4 of the Pension Code to provide a pension for those members. Public Act 101-610 which was approved by the Governor in early January provides for the consolidation of the investment assets of downstate Article 4 pension funds. While local district pension boards will continue to operate at this time to handle the award of benefits, over the next 30 months all local fund

assets will be transferred and pooled at the state level to be administered by a new state board which will own and control the investment of the assets. The theory behind this consolidation is that the state pool will generate a significantly higher return on the invested assets. Whether this proves out is an open question. Separate records are supposed to be maintained for each fund in the pool so that the assets of strong funds will not be used to support weaker funds. The new law also reduced the training requirements for pension fund trustees to reflect the removal of the investment function from the local level. The Act provides for a 30 month transition period.

### Volunteer Responder Incentive Protection Act

At the federal level, a new law will exempt from federal income tax any property tax-based incentives (which Illinois does not have at this time) and up to \$600 in other incentive payments (such as stipends, point payments, call out pay etc. which many volunteer departments pay based on participation etc.) for the year 2020. **This is only a one year benefit at this time.** Whether it will continue to apply after 2020 will depend on further legislative action by the Congress. There are bills introduced in both the House of Representatives and the Senate to extend the law. (H.R. 1241/S. 1210)

### Updated Annual Calendar & Checklist

The 2020 Calendar & Checklist was sent out by the Association with its dues notice last fall and all member districts should have one. There have been several changes. As in the past, it is important for each Board to review the list of matters to be accomplished and the timeline for doing so. Boards also need to take time to determine who will be responsible for each item on the checklist and verify completion of each item as the year progresses.

**As Stated at the Beginning--Welcome to 2020! ■**