

FIRE COUNSEL NOTES



What's Up?

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This Fire Counsel Notes column will discuss a number of real life situations involving fire protection districts which have been encountered by districts in the last several months. The focus of this article will be to update and focus attention on the issues these situations present and, hopefully, provide some guidance regarding how to address them.

Foreign Fire Tax Change to Foreign Fire Fee

Effective January 1, 2023, the foreign fire insurance tax has been re-denominated as a "foreign fire insurance license fee". This change was brought about by Public Act 102-715 (HB 1449). The state law change makes the collection of the 2% fee on premiums collected by fire insurance companies which are not chartered in the State of Illinois applicable throughout the State of Illinois. Previously, the 2% charge was a tax which required the local fire service agency (City/Village or Fire Protection District) to implement by an ordinance imposing the tax. By reason of this change, the 2% charge will be collected everywhere including in districts which have not previously adopted an ordinance imposing the charge. As a result of this change, districts will now need to select a collection agent for the fee for their district. Districts which have previously collected the charge as a tax and have used either the Illinois Municipal League (IML) or the Illinois Coalition of Local Governments (ICLG) should be receiving correspondence from those organizations regarding adoption of a resolution or an ordinance appointing the organization

to collect the district's share of the fee. If your district has been receiving the 2% charge as a tax, correspondence should have been received from the collection agent previously being used to make this conversion. Districts which have not previously collected the tax, will need to choose a collection agent for the 2% fee. This can be done by contacting either of the foregoing collection organizations directly.

Exempt Property Notification

If your district has not already done so, it should follow up with your County Supervisor of Assessments regarding maintaining the exempt status of fire district's property from real estate taxation. This is an annual requirement for all units of local government. By January 31, of each calendar year, any unit of government which owns real estate that is exempt from real estate tax is required to provide notification that the real estate remains in "exempt use". While the procedure varies from county to county as to the practice of fulfilling this requirement, if your district has not issued this notice to your County Supervisor of Assessments, it is recommended that you follow up now to confirm with that office that the district's property is tax exempt. (35 ILCS 200/15-10)

New MABAS Master Agreement

Districts which are currently members of MABAS should have received a new Master Agreement from the State MABAS Office or their local MABAS Division. This update of the MABAS Agreement was approved in October 2022 by the MABAS

Executive Board and all members are being requested to approve and sign the agreement in order to continue MABAS membership. The deadline to complete this process is January 1, 2024. Districts which desire to maintain their membership in MABAS must approve a resolution or ordinance authorizing participation in MABAS by the new agreement. The resolution or ordinance and the signed agreement must then be forwarded to MABAS either directly or through division organizations. Districts which do not approve the new agreement by January 1, 2024 will have their membership terminated in the organization.

Decennial Efficiency Committee Requirement

All units of local government which levy any type of tax [other than municipalities (cities and villages) and counties] will be required to comply this year with the "Decennial Committees on Local Government Efficiency Act" enacted by Public Act 102-1088 (Senate Bill 2789). This new law imposes a mandate on the applicable units of local government, including fire protection districts, to form a special committee to study the district's governing statutes, ordinances, rules, procedures, powers, jurisdiction, shared services, intergovernmental agreements, and interrelationships with other governmental units. The committee is to include the governing body (board of trustees) and two additional residents of the governmental unit. This committee is required to be formed no later than

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June 10, 2023 and to complete its work within 18 months from the date of the committee's formation. The committee is to prepare a written report and submit it to the County Board(s) of the county(ies) in which the district is located. Thereafter, the same process must take place every 10 years. Districts should proceed to form their committee and to document the formation in the minutes of the board meetings. The committee itself must have at least 3 meetings which must be open to the public and solicit public input at each meeting.

ARPA Funds

Some fire protection districts have been receiving funds through their county government from the federal ARPA monies which are being distributed by the federal government. The distribution of such funds to fire protection districts is not mandated by the federal law, however, in some counties, county governments are making discretionary grants in various forms to districts. The practice regarding how these funds are awarded and administered varies from county to county. In some counties, the county government requires the funds to be used for a particular purpose (such as purchasing a fire apparatus) by a date certain with the expenditure made by the county directly which on delivery then turns the equipment over to the district. In other counties, districts are required to enter into a formal "subaward" agreement in order to receive funds. In those counties where the funds are expended directly by the county on behalf of the district, time limitations on selecting equipment to be purchased have created some procurement issues for fire protection district under Section 11k of the Fire Protection District Act. Districts which enter into formal subaward agreements are cautioned to pay particular attention to the procurement rules applicable to the use of the funds including federal requirements as well as state laws, district procedures, and deadlines.

Economic Interest Statements

In 2022 a change was made in the questions on the Annual Statement of Economic Interest which is required of all fire protection district trustees and some district employees. Because of that, some fire protection district trustees chose to resign rather than complete and file the form. In reality, most of the questions can be answered in a manner which limits, to some extent, the intrusive nature of the questions. These reports are due May 1 of each year and it is recommended that trustees allow time to obtain guidance regarding the completion of the forms. (5 ILS 420/4A-105).

Proof of District Formation

In connection with some grant applications, districts are required to submit proof of the district's creation and organization. Oftentimes, the question in the grant application refers to "Articles of Incorporation". Because districts are units of government, they do not have Articles of Incorporation because they are formed by referendum under the provisions of the Fire Protection District Act (70 ILCS 705/0.01 et seq.), rather than the not for profit corporation laws. What this means is that the organizing document for a fire protection district is the court order entered following the successful referendum from the district. Districts which do not have a copy of their order of formation, it should contact the county clerk of the county in which the district is located and from which the district was formed to obtain a copy (certified) of the Order of Formation. If the county clerk is unable to provide that document (by law, the Order of Formation is filed with the county clerk), districts should contact the circuit clerk (court clerk) of the county from which the district was organized to obtain a copy. Since the formation of districts is carried out through the circuit court, the circuit clerk's office will have a file for the proceedings in which the district was formed. Because districts will often have been formed many years ago, locating this file can, in some cases, be challenging. For that reason, it is recommended that districts not having a copy of their formation order undertake to obtain one now so that when it is needed, it will be readily available. Not having the formation order may result in the

application being untimely or insufficient. (Agencies which administer grants seem not to appreciate the difference between a unit of local government like a fire protection district and a not for profit corporation which is incorporated and has articles of incorporation.)

Trustee Vacancies

District boards need to be careful in addressing vacancies on the board of trustees resulting from the resignation, death, or departure of a trustee from the district. In one recent instance, an entire elected board's simultaneous resignation resulted in the legal inability to appoint new board members. For an appointed board, when a vacancy occurs, the appointing authority (county, township, or municipality depending on the geography of the district) makes appointments to fill a vacancy for the balance of the vacating trustee's term (not for a full 3 year term). Districts need to take care when requesting that a vacancy be filled by an appointing authority by informing the appointing authority of the length of the term of the replacement and its end date. This is necessary to maintain the proper sequence of appointments so that the terms will be staggered. For elected fire protection district boards, the process is bit more complicated. In that situation, when a vacancy occurs on the elected board, the remaining elected trustees select a person to serve on the board until the next consolidated election in the district. (The Election Code provides for a Consolidated Election in April of odd numbered years at which fire protection district trustees are elected.) The replacement appointee then serves only until that election at which time a replacement trustee is elected by the voters to fill out only the remaining term (if any) of the departed trustee. Again, note that the term of the replacement trustee is not a full 6 year term unless the departed trustee's term would have ended at the time of that election. A simple example will illustrate this. If a trustee vacancy occurs 18 months into a trustee's term, the remaining board will make an appointment to fill that vacancy from the date of the departure to the next Consolidated Election which, in our

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example, would occur 24 months after the beginning of the departed trustee's term. At that election, a replacement would be elected to serve the balance of the departed trustee's term, that is, 4 years. Again, the purpose of this is to keep the terms on the proper staggered sequence. It is, therefore, very important for elected boards to be careful in making the replacement appointments and in carrying out the election process for the replacement trustee.

Pandemic Procurement Issues

As a result of the COVID 19 pandemic, numerous supply chain issues have arisen in connection with the purchase of fire, rescue, and EMS apparatus and equipment. This has resulted in extremely long delivery times and fluctuating pricing. Because of this, many districts have found it difficult to comply with the sealed bidding process mandated by Section 11k of the Fire Protection District Act. It is,

however, important for districts seeking to use a method of procurement other than sealed bidding to be certain that in doing so they remain in compliance with Section 11k. Two methods have generally been employed. The first is to use a qualified joint purchasing program which most of the apparatus manufacturers now have available for the purchase of vehicles. Joint purchasing programs, in order to meet the requirements of Section 11k, must have a competitive selection aspect as part of their process for listing items in the program. Joint purchasing may be considered akin to making a purchase from a catalog in which various vendors have developed a description and pricing for various items of fire equipment and fire apparatus. The use of this method is dependent on the sponsoring joint purchasing organization either having its own competitive selection process if it is making available only a single product in a particular category or it must have a number of manufacturers represented in a "catalog" format in which the vendors present essentially the same

product. The second approach used by some districts have used the emergency procurement exception in Section 11k. Using this exception requires a 3/4 vote of the members of the board of trustees in order to classify an expenditure as an emergency. In some cases, districts have used this method when availability of items like chassis and standard equipment that is in very limited supply is available. If a district board chooses to take this approach, it should document carefully in its minutes why the procurement is being made on an emergency basis and have a formal vote to declare the purchase to be an emergency for the reason stated.

Conclusion

The foregoing are just *some* of the recent matters involving fire protection districts that are worth noting. Hopefully, the discussion above will give some insight and guidance as to how to deal with these issues if they arise in your fire protection district. Districts should, of course, confer with their district's legal counsel to assist in addressing these issues. ■

We Respond Because You Do.

Firefighters and EMS teams are dedicated to protecting those in need; saving lives and property.

And while you protect others, we respond with **Fire & Rescue Pro**, an insurance and risk management program designed for the unique needs of Fire Protection Districts and EMS operations.

Fire & Rescue Pro is offered through Bliss McKnight, Inc. and the local independent insurance agent of your choice.



Contact us for more information or an insurance review.

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