

FIRE COUNSEL NOTES



"Who Do You Work For?"

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Several recent encounters with fire protection districts and their trustees have resulted in a recurring question: Who Is This Board of Trustees Working For? [Excuse the colloquial wording, I know it should be "For Whom Is This Board of Trustees Working"?] Too often, it seems, fire protection district trustees lose sight of their line of responsibility in the governance of the fire protection district which they have been appointed or elected to govern. This article is going to explore some of the circumstances when that occurs and the pitfalls which can arise when the correct focus is lost.

First, legally, who does the board work for? Under the Fire Protection District Act, Section 4 states that "A board of trustees consisting of 3 members for the government and control of the affairs and business of a fire protection district incorporated under this Act shall be created...". Section 4 then goes on to set out the various appointing authorities who will make appointments to a district board of trustees based on the geographical boundaries of the district in relation to township, municipal, and/or county boundaries. Later sections of the Act provide for methods to convert the position of trustee to one which is elected by the voters of the district or to increase the number of trustees from 3 to 5 or 7. As Section 4 makes clear, however, the trustee's responsibility is to the district. Section 6(a) of the Act confirms this authority and responsibility of the board. The district to which the trustee owes his or her responsibility (or in legal terms, his or her "loyalty"), in turn, is a unit of local

government created by a referendum of the voters to provide fire protection and rescue service and/or emergency medical services to the public in the district and which is supported by the tax revenues generated from the property taxpayers of the district. The only logical and reasonable conclusion, then, is that the trustees work for the public and the taxpayers and that is who the trustee's duty of loyalty runs. This means that the board, in making its decisions, should be guided primarily by what is best for the public it serves and the taxpayers who fund its decisions. Unfortunately, some boards seem to lose sight of this. Let's discuss the reality regarding who some boards seem to work for.

The Fire Chief

Some Boards rather obviously work for the chief of their fire department. This can go so far as the chief picking the persons to serve on the board and, for appointed boards, controlling whose name is submitted to the appointing authority. Under the Fire Protection District Act, the question of who should serve on the board of trustees is left to the discretion of the appointing authority. So long as the person meets the requirements of the Act [resident registered voter, not a felon, does not owe the district money], it is within the complete discretion of the appointing authority to pick the persons who will serve on the board. Most board appointments are made "by the presiding officer of the county board with the advice and consent of the county board" and the

practice varies widely in the state from county to county regarding the manner in which the appointment process is carried out. In some counties, the suggestions for appointments come from the other members of the board of trustees; in others, from the fire department; and in others, by the local county board member or representative. In circumstances where the appointing authority simply allows the fire chief of the district to control who will serve on the board, those persons are quite likely to view themselves as serving at the pleasure of the chief rather than the other way around as provided by the Fire Protection District Act in Section 6(b) (which states that the chief serves at the pleasure of the board). What does this mean in terms of the governance of the district? It generally means that the board becomes a "rubber stamp" for the chief and his or her demands regarding how the fire department operates in terms of level of service, personnel, policies, and spending decisions, among other things. In short, the district and the department become a "one man show." In some cases, this situation seems to be exactly what the board wants—"let the chief do it, he runs the fire department and he knows best what to do" is the common refrain when a question about this form of governance comes up. While it is undoubtedly true that the board should not micromanage the day to day operation of the fire department, abandoning responsibility for essentially all aspects of the district's

Continued on page 11

Fire Counsel Notes

Continued from page 10

operations, planning, and financial matters to the chief (or any one person) is a recipe for problems. A board's abdication of its responsibilities in this fashion can lead to decisions being made or actions being taken which are ill advised and create the risk of liability for the district or result in inadequate service to the public or misdirected usage of district resources. The point of having a board of trustees is to engage in overall administration and planning for the district. When the board goes into "rubber stamp" mode, the benefits of collective consideration and examination are lost. In the worst case, it opens the door to the potential of misappropriation of district funds or wholly inadequate service by the department to the public. This is not to say that boards should not work with their chief, seek the chief's input, and listen to the chief's advice and position on the use of district resources, but that process should be a collaborative one with the ultimate authority resting with the board to make the final decision.

The Fire Department

Perhaps just as common as the board who works for the fire chief is the one that works for the fire department. This board typically makes its decisions based on a "what do the guys want?" approach. Many parade trucks have been purchased with taxpayer money on this basis. Trustees with this attitude often justify their deference in decision making to "the fire department knows best" mantra. And while it is certainly true that department members may in many cases have knowledge about department needs based on the day to day operations of the department, allowing the department to dictate to the board will invariably lead to poor and often expensive decisions that waste or misdirect district financial resources. The response to this by boards in the volunteer setting is that if they don't do what the department wants, the members will quit and there won't be a fire department. With all due respect, if that happens, those people quitting are likely not ones that should be on the department in the first place and boards facing this situation should make a "Plan B" to address their district's needs. Career departments are not immune from this same pressure. In that setting the threat is that the fire department will go to the appointing authority or the voters to rid the district of the current board members or file for arbitration to grieve an unpopular decision. Increasingly this also means attempting to get a member of the fire department appointed or elected to the board. A discussion of the obvious conflict of interest which this will create (even though it is permitted by state statute), is beyond the scope of this article, but its clear contradiction of the board's responsibility to the public and the taxpayers as discussed above is clear.

What To Do?

The foregoing is based on several years of observation and many phone calls and emails from districts. To some extent, the foregoing situations can likely be attributed to current business and government management theory and practice in which "partners" and "stakeholders" are the operative terms of the day.

Continued on page 12

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ENERGY AT WORK

Fire Counsel Notes

Continued from page 11

Usually, these references are to particular groups or organizations which have some specific interest in a matter to be decided upon, but they may imply that the decision making body should not include the "partners" or "stakeholders" in its consideration of a matter, but also in the final decision. On its face, having an inclusive process sounds good and makes sense. Certainly, an effective board of trustees is going to seek, and listen to, the advice and input of both its fire chief and its fire department on an ongoing basis. And failing to do so can certainly and likely will lead to outcomes which are just as bad as those which can occur when the board abdicates its responsibilities. But in an effective fire protection district governance structure, this collaborative

process should be one in which the board maintains its perspective and authority regarding its responsibilities to the public and the taxpayers which the district was created to serve. Boards which may find themselves in a situation where they are not fulfilling their role in the governance of the district may want to consider how best to correct the situation. It may be that simply beginning to make decisions based on what is best for the district (its residents, property owners, and taxpayers) will lead to correction. This will mean, of course, saying "no" when warranted and, importantly, being ready to explain why it is saying "no." "Because we say so" is not going to be sufficient. Other boards may find that an open and frank discussion with the chief or department leadership will clear the air and remedy the situation, but in that case, the board needs to be ready for one or more resignations. Or, in some cases, it may pay to bring in

an outsider such as a fire department consultant to do a complete review of the district and department to identify governance and operational weaknesses and make recommendations about how to address them. Taking this last approach costs money, but it also introduces a degree of objectivity to the process that may be lacking if the district attempts to resolve the problem on a strictly internal basis. However the situation is tackled, it should be tackled. In the long run failing to do so will only lead to dysfunction and poor public service. The point of this article is not to suggest or recommend that boards govern their districts in an autocratic or dictatorial manner. Rather, it is to suggest that they keep their role in the proper perspective as they make decisions affecting the district. So, take a moment to ask yourself who you work for. ■

Important New Developments

There have been some new developments in the last several months of which districts should be aware.

GATA may impose a new Audit Requirement

Districts receiving state or federal grants may receive notification that they will be required to comply with the Grant Accountability and Transparency Act (GATA) (30 ILCS 708/1). GATA is a law which is intended to increase accountability and transparency in the use of grant funds and it is based on federal grant guidance. Some fire protection districts are now receiving correspondence indicating that they may be subject to the requirements of this law which can, in some circumstances, mandate that the district have an audit performed by a certified public accountant. The audit requirement varies by the amount of the grant, but generally will require an audit for a district receiving a grant of \$750,000 or more. Audit or financial reporting requirements of grants of lesser amount vary depending on the amount of the grant, a "Consolidated Year-end Financial Report" (CYEFR) is likely going to be required of any grant recipient. Information about GATA can be obtained from the GATA website.

Volunteer Firefighter/EMS Personnel Pay Exemption Made Permanent

Section 139B of the Internal Revenue Code provides that up to \$600 paid by districts may be excluded from income tax reporting by volunteer firefighters and emergency medical responders but as originally passed only for 2020. The recent federal COVID relief bill passed by the Congress in December included the Consolidated Appropriations Act, 2021 which has now made that exclusion permanent. Districts can pay up to \$50 per month for the number of months that a volunteer serves during the year without being required to report the payments by the district and without the volunteer being required to include the payments in his or her gross income for federal income tax purposes.

Minimum Wage Increase

Districts that pay their personnel on an hourly basis need to remember that the minimum wage in Illinois increased to \$11.00 per hour on January 1, 2021.

New Illinois OSHA Guide for Fire Departments Available

Illinois OSHA, part of the Illinois Department of Labor which enforces public employee safety requirements in Illinois, has issued a new publication, "Occupational Safety and Health Compliance Guide for Fire Departments," which sets out the enforcement and inspection process as well as discusses requirements for districts in complying with the state adopted federal OSHA regulations governing fire departments. This includes training, reporting, and equipment standards as well as inspection procedures.

All districts should obtain a copy of this guide which can be obtained on the IDOL website and will be an invaluable tool for districts to achieve and maintain compliance and prepare for an inspection. A YouTube video of an Illinois OSHA training webinar on the guide and OSHA related topics, including COVID, is also available. ■