

The Firehouse Lawyer

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Be sure to visit firehouselawyer.com to get a glimpse of our various practice areas pertaining to fire departments, which include labor and employment law, public disclosure law, mergers and consolidations, and property taxes and financing methods, among many others!!!

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Mandatory Reporters Must Report Suspected Abuse of Children and Vulnerable Adults, or Else

Recently, the Washington Supreme Court held that an implied cause of action for negligence may be brought for failure by a mandatory reporter to report suspected abuse of a vulnerable adult, under RCW 74.34.035. *Kim v. Lakeside Adult Family Home*, NO. 91536-9 (May 12, 2016). The *Kim* court reminded us that an implied cause of action may be brought for a mandatory reporter failing to report suspected child abuse under RCW 26.44.030. This means that the public duty doctrine¹ will not absolve a fire department from liability in the event that an EMT or Paramedic² fails to report suspected abuse of a vulnerable adult or child. Your fire department can be sued for failure to report suspected abuse of vulnerable adults or children. Importantly, your fire department should be aware that mandatory reporters that report suspected abuse of children and vulnerable adults, in **good faith**, are **immune** from civil or criminal liability. *See* RCW 26.44.060 (1); RCW 74.34.050 (1). If these mandatory reporters are immune, logically, so too is their employer—you.

¹ See the following Firehouse Lawyer article discussing the “public duty doctrine”:
<http://www.firehouselawyer.com/Newsletters/December2015FINAL.pdf>

² See the following Firehouse Lawyer article discussing “mandatory reporters” of child abuse:
<http://www.firehouselawyer.com/Newsletters/v08n03mar2008.pdf>

These authorities, taken together, have a singular message: Washington law and public policy strongly favor reporting of suspected child abuse and vulnerable adult abuse. Furthermore, in effect, you could be liable if you do not report, and you are protected from liability if you do report in good faith.

When is a Donation Not an Unconstitutional Gift of Public Funds?

Recently, we were asked whether a fire commissioner's association may make a \$1600 donation to what we will call Camp Fire, which is a nonprofit organization "whose vision is to empower, inspire and support strong women leaders." The following skills are taught to females ages 16-19 at Camp Fire: (1) Live fire training; (2) using portable fire extinguishers; (3) climbing an aerial ladder; (4) search and rescue; (5) interviewing techniques; (6) rappelling; (7) fire hose handling; (8) team-building; (9) self-contained breathing apparatus use; (10) basic fire behavior; (11) CPR and First Aid Certification; and (12) basic Self-defense. The organization, which seems primarily geared toward training young females in the basics of firefighting, is funded by "generous donations, sponsorship and grants." Let's contemplate, hypothetically, that the commissioner's association wishes to donate \$1600 to Camp Fire. Is this an unlawful gift of public funds?

Washington law prohibits the unconstitutional gift of public funds:

No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation,

except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.

WASHINGTON CONSTITUTION, Art. VIII § 7. This prohibition has been analyzed on numerous occasions, but one common analysis emerges:

In determining whether a gift of public funds has taken place, the courts apply a two-part analysis. The first inquiry is whether the funds are being expended to carry out a **fundamental purpose** of government. If the answer to this question is yes, then there has been no gift of public funds. If the answer to the first question is no, then the courts will look to the consideration received by the governmental entity for the expenditure of public funds and the **donative intent** of the governmental entity in order to determine whether there has been a gift.

AGO 2003 No. 7. 2003 (emphasis added) (engaging in the two-part analysis to find that the provision of free school breakfasts did not support the fundamental purpose of providing a "basic education," but nonetheless finding no gift of public funds—no donative intent on the part of the school district); citing *CLEAN v. State*, 130 Wn.2d 782, 797-98, 928 P.2d 1054 (1996); *See Also King County v. Taxpayers of King County*, 133 Wn.2d 584, 597, 949 P.2d 1260 (1997); *City of Tacoma v. Taxpayers*, 108 Wn.2d 679, 702, 743 P.2d 793 (1987) (stating that "[O]utside of expenditures for fundamental governmental purposes, we focus on two factors to determine if a gift occurs: consideration and donative intent.").

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Based on the above, if the aforementioned donation is made to carry out the fundamental purpose of the fire service—the protection of life and property—then we need not analyze whether the commissioners' association has received consideration for this donation.

Fundamental Purpose

Under Washington law, fire districts may be formed “for the provision of fire prevention services, fire suppression services, emergency medical services, and for the **protection of life and property**.” RCW 52.04.020 (emphasis added); *See Also* AGO 1998 No. 8 (finding that bill providing for background checks of public school employees was not an unconstitutional gift, because “protecting children” in public schools is a fundamental purpose of government); *See Also King County* at 624 (reasoning that development of a major league baseball stadium is not a “fundamental purpose” of state government).

For purposes of this article, we create a “Purpose Spectrum,” based on the opinions cited in the previous paragraph: schools protecting children vs. states building stadiums. On the Purpose Spectrum, where does the donation to Camp Fire—by the fire commissioners' association—fall: closer to states building stadiums, or schools protecting children? We believe this donation falls closer to schools protecting children on the Purpose Spectrum.

To begin, Camp Fire is geared toward training young females—a drastically underrepresented class of people in the fire service—in the basics of firefighting. Admittedly, Camp Fire is not the North Bend Fire Academy, training current recruits who, upon graduation, shall be deemed

firefighters. Therefore, the training provided by Camp Fire bears a more indirect relationship to the purpose of fire districts than the background checks did to protecting children in AGO 1998 No. 8. Instead, Camp Fire is a nonprofit corporation that appears to specialize in live fire training and other basics of fire training, that just so happens to train young females who may or may not become firefighters someday. This is certainly dissimilar to the building of a baseball stadium by a state, which perhaps does not even *indirectly* support the purpose of state government—protecting the general welfare of its citizens. The intent behind Camp Fire appears to be synergistic with the intent of fire departments: to protect life and property. On the Purpose Spectrum—states building stadiums and schools protecting children—donating to Camp Fire veers closer to supporting a fundamental government purpose than not.

For the sake of a sound analysis, let us pretend that the aforementioned donation to Camp Fire *does not* further the fundamental purpose of fire departments—the protection of life and property. We now consider the second prong.

Consideration and Donative Intent

Under any ordinary concept of logic, a “donation” requires “donative intent.” In “the absence of donative intent or grossly inadequate return, the Court's review is limited to the legal sufficiency of the consideration” exchanged. *King County* at 601. Narrative evidence, such as meeting minutes and correspondence, is sufficient to demonstrate donative intent. *See King County* at 626. As for “grossly inadequate return,” the dictionary definition of “inadequate” is “[i]nsufficient; disproportionate; lacking in effectiveness or in conformity to a prescribed standard or measure,” and Washington courts

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may apply this definition in deciding whether a municipal corporation has received a “grossly inadequate return” for its investment. *See King County* at 631, quoting BLACK’S LAW DICTIONARY (6th ed.1990).

Although the AG in 2003 found that providing free breakfast to students did not support a fundamental purpose of schools, the AG further found that “[T]he [free breakfast] program is intended to improve the academic performance of students,” and therefore the school did not *intend* to confer a gift on the students. AGO 2003 No. 7. Presumably, any donation to Camp Fire would not be intended merely to improve the “leadership skills” or “job prospects” of these young females. Presumably, this donation would in fact be intended to foster diversity in the fire service by broadening the pool of females qualified to be firefighters—much like the free breakfast program was intended to “improve the academic performance of students.” Consequently, little evidence exists to demonstrate that there is donative intent here.

In lieu of donative intent or “grossly inadequate return,” the courts will review the contested governmental expenditure for legal sufficiency. *See King County* at 601. Washington courts “have been reluctant to engage in an in-depth analysis of the adequacy [roughly equal exchange] of consideration because such an analysis interferes unduly with governmental power to contract and would establish a ‘burdensome precedent’ of judicial interference with government decisionmaking.” *King County* at 597. Consequently, a “mere peppercorn” of consideration will suffice. *See Id.* In this case, the “mere peppercorn” of consideration provided by Camp Fire would be the implicit promise or potential for new female firefighters to rise through the ranks and contribute to the

diversity of the core of firefighters. This implicit promise or potential would more than likely be the “mere peppercorn” necessary to establish legally sufficient consideration.

However, no fire department—or association of fire officials—should donate to whatever cause it deems necessary. The cause must be related to the fundamental purpose of the fire service: the protection of life and property. Otherwise, an unscrupulous donation may be deemed an unconstitutional gift of public funds under Article VIII Section 7 of the Washington Constitution.

Another Municipal Roundtable Coming Up

We have been holding Municipal Roundtables on a quarterly basis, in which we discuss, as a group, issues that are relevant to fire departments and municipal corporations in general. These two-hour roundtables are free-of-charge. If your fire department is interested in us doing a roundtable at one of your headquarters or stations, please let us know and we might arrange that. We have recently presented roundtables at West Pierce Fire and Rescue Station 21 and Valley Regional Fire Authority Headquarters. We hope to do another roundtable at the end of June—as that would be our second-quarter roundtable. At these roundtables, we generally discuss what you want to discuss. The subject matter of the June Municipal Roundtable is still “up in the air.” So please do not hesitate to email us with suggested topics for discussion.

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