



FIREHOUSE LAWYER

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Joseph F. Quinn, Editor

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Planning and Professionalism

This month's lead article is prompted by two seemingly unconnected and unrelated events. First, the Firehouse Lawyer was privileged to be invited to the first annual Fire Forum, sponsored by the Pierce County Fire Chiefs Association on June 19 and 20, 1998. The forum, facilitated by Dr. John A. Granito, a well-known fire protection consultant, was an attempt on the part of the Fire Chiefs Association to gather chiefs and commissioners, and other interested parties related to the fire protection field in Pierce County, to envision the future of the fire service in Pierce County over the next several years.

The second, seemingly unrelated event, was a column written in the "On Scene" publication, which is the monthly newsletter of the International Association of Fire Chiefs. In May, the president's column written by Richard A. Marinucci, Chief of the Farmington Hills (Michigan) Fire Department, prompted this author to spend some time thinking about certification and career development of fire chiefs.

While these two disparate threads may seem totally unrelated, I believe chief officer certification is essential to enhance professionalism in the fire service, and to planning the future of fire service not only in this county, but all across Washington State and the United States. Enhanced professionalism is absolutely required to keep up with the challenges facing the fire service.

The chief officer certification program, identified by president Marinucci when he took office, was envisioned to provide a certification program for chief fire officers for the enhancement of professionalism, to provide a career development path for junior officers, and could be used to establish minimum criteria or bench marks. We look at it this way: If you were a lay person unfamiliar with the fire service and someone asked you whether there should be minimum

criteria, to consider a person qualified to be a fire chief in an American fire department, your answer would have to be yes. Anyone can see that there should be minimum qualifications, educational or experience requirements, and indeed certification before a person should be placed in the difficult administrative and leadership position of fire chief in any significant fire department. We make this statement because it is evident that the complexities of modern society (where there are so many rules and regulations that every administrator practically needs a lawyer joined to them at the hip in order to do their job) affect fire departments.

During the Fire Forum, the facilitator did an excellent job of bringing the parties back time and again to the complexities of our modern society, and how

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they absolutely necessitate long range planning on the part of fire departments. During the Fire Forum, those assembled had the opportunity to identify the top issues facing their department, or departments throughout our county over the next 10 to 20 years. The issues were many and varied. The issues required complex negotiating, analytical, technical and interpersonal skills, or the problems to be faced over that period of time would never be solved.

Indeed, one of the issues identified by the parties was the development of leadership, through use of mentoring programs, and the like. The point was made that over the next 3 to 5 years, many of the chiefs would be retiring from public service and the concern was expressed that there is no formal training and education program for promotion to fire chief from within. Some of the districts of course consider external candidates (from outside the department) when a fire chief's job comes open. Yet, there are no criteria for deciding when or whether the fire chief's position will be filled without external solicitation of applicants.

It is evident to the Firehouse Lawyer, just from my day-to-day practice, that the modern day fire chief even in a smaller

department with few, if any, paid employees, needs a diverse array of skills, knowledge, and ability to cope with complex management problems.. Many departments are better off with a skilled administrator in the chief executive position, rather than someone with technical fire skills who has advanced through the ranks of firefighter and other ranks to the rank of fire chief. Most departments are better served either by having a non-fire service administrator, or by making sure the fire chief possesses those other skills that are so essential to successful administration. How does a department ensure that a fire chief will have and maintain those other skills?

I propose that all departments participate in some sort of leadership academy or training so that they can assure themselves there will be a "pool of eligibles" who are adequately educated, trained, and skilled to handle the complex administrative and supervisory tasks that are so prevalent in fire departments today. If that takes a mentoring program accomplished on a county or regional basis, then so be it. If departments are so small that there is not time for the fire chief to be the mentor, then cooperative arrangements need to be made between fire departments, with mentors loaned from one department to the other. Similarly, it would be very feasible for a county fire

chiefs association, or large departments, to sponsor leadership academies so that over an intense period of a few days annually candidates would have the opportunity to take classes from experts in the field to develop their higher level skills. It may well be, as pointed out at the Fire Forum, that pay and benefits are so good for shift workers at the higher ranks that a fire chief might actually have to take a cut in pay to accept one of these management positions. That issue also needs to be addressed. Realistically, however, we would point out that the physical rigors and demands of the firefighter position become in many cases very difficult as they get more mature; they might well choose to transition into management or other nonphysical tasks. While there may be other motivators besides pay and benefits, it may be necessary to make sure that the pay hierarchy or pay scale is adequate to attract top candidates. Availability of National Fire Academy and Regional Fire Academy classes or schools should also be taken into account. However, these academies have already been made available and perhaps they are not enough. We believe the county or regional fire leadership

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academy would be a welcome addition to the possible options for those who wish to take part in a program.

That is where a certification process comes in. According to President Marinucci's column, the Canadian fire chiefs and the California fire chiefs previously did some good work in developing a draft program. A committee of IAFC is apparently taking that to a new level and in the near future, there may well be a draft certification program available. It is our opinion that local fire chiefs' associations, local fire commissioners' associations, and the state associations for both chiefs and commissioners should follow closely the work of that committee. Ultimately, professionalism in the fire service, and good master planning directed to delivering top quality fire service and emergency medical service in a complex world will only be achieved if it is made into a top priority. That is my opinion. I hope the fire chiefs who read this column agree.

Public Bid Laws - Several Traps For The Unwary

In a continuing seminar series, I will be presenting a seminar on public bidding statutes on June 25, 1998 at the Gig Harbor Fire Department. The following article is a summary of some of the statutes of the State of Washington highlighted during that seminar. We felt it might be worth repeating some of that material here in the Firehouse Lawyer. Many of these statutes are not referred to very often or are somewhat obscure.

The primary public bidding statutes for fire districts in Washington are RCW 52.14.110 and RCW 52.14.120. The first statute requires formal sealed bidding for contracts for work on fire stations or other buildings where the estimated costs exceed \$2,500.00. The statute also requires formal sealed bidding if the purchase of materials, supplies or equipment exceeds \$4,500.00. While there is a small works roster process allowed by other statutes if the estimated amount for each of the above respective types of purchases is between that statutory threshold and the amount of \$10,000.00, we have found that very few fire districts have opted to adopt a small works roster process, as they are difficult to maintain. We have prepared a resolution for a fire district to adopt a small works roster process, if any fire district in Washington should so desire. The second statute, RCW

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52.14.120 provides the procedure for advertising.

The definition of "public work" is really quite broad and includes not just original construction of buildings or improvements but also alterations or repairs. While the definition of "public work" does not include ordinary maintenance, a trap for the unwary is the existence of RCW 39.12.020. That statute is a prevailing wage law and requires that the prevailing wage rate in the area be paid not only on public works but also on maintenance performed pursuant to a contract on any public building. Thus, if an air conditioning or heating contractor desired to obtain a written service contract with your fire district to maintain several fire stations for a year or two, that contract would probably be subject to the public bidding laws, but would also be subject to the prevailing wage law, which should not be overlooked.

An often overlooked new statute added in 1996 is RCW 39.04.270, which applies to electronic data processing and telecommunication systems. When these two types of technologies are purchased by

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municipalities, the concept of formal sealed bids has given way to negotiation. The acquisition method must be “both competitive and compatible with the needs of the municipality.” The statute sets forth the method of obtaining proposals. It definitely does not require an award to the lowest responsible bidder, as would be required under some more typical public bid laws. In fact, this statute states that “the award shall be made to the qualified bidder whose proposal is most advantageous to the municipality with price and other factors considered.” This is actually quite liberal and modern language recognizing that price is not the answer to everything. I expect we will see more flexible bid laws like this one developed in the future.

Another often overlooked statute is RCW 39.06.010 which prohibits political subdivisions (like fire districts) from executing contracts with unregistered or unlicensed contractors. Such a contract would be null and void. Also, did you know that a competitive bid violation, in addition to other remedies, gives rise to a civil penalty of not less than \$300.00, if it is found to have been willfully or intentionally done? RCW 39.30.020 so provides and adds that the violator may be held liable for consequential damages suffered by the municipality. This drives home

the point that it is good to be careful if you are a municipal officer charged with the duty of working on contracts that should be competitively bid.

Another obscure statute is RCW 39.30.045, which allows municipalities to purchase supplies, materials or equipment at auctions conducted by various agencies or even private parties. While the statute allows purchase at auction “if the items can be obtained at a competitive price,” we recommend good documentation of what competitive prices are in your area to protect yourself from an adverse audit finding.

Another little known statute is RCW 39.30.060, which requires a municipality to require all bidders to name subcontractors whose subcontract amount would be more than 10% of the bid price, if the overall contract is valued at in excess of \$100,000.00.

Since the issues and problems arising from various public bid statutes in Washington can be exceedingly complex, we advise all fire districts to consult with legal counsel whenever they are dealing with a purchase of materials, supplies or equipment or any work on a fire station or other building, whether it be a remodel, repair, or new construction. Even contracts that are below the public bid law threshold may have legal

ramifications or require a contract in writing. This article merely scratches the surface of some of the kinds of issues that can arise, and is intended to highlight a few of the more obscure statutes. We did another seminar in October of 1997, which dealt with several other common issues. Either set of seminar materials, from June 1998 or October 1997 may be obtained by contacting the Firehouse Lawyer in accord with instructions contained elsewhere in this edition. For a moderate price to cover shipping and handling, we will provide these seminar materials.

SOP's and Resolutions

This article lists and describes briefly the most generally applicable SOPs and Resolutions I have developed or reviewed in recent years for special purpose districts. There are a lot more, but many are special or unique to the district in question. Feel free to ask if I have a particular policy on a specific topic even if it is not on this list. Those items without a price are free; a small copying and mailing charge may **SOP's and Resolutions (continued)**

be imposed, especially if multiple policies are requested.

1. Safety SOPs (operating instructions) to comply with WAC 296-305 vertical standards in WA, approximately 170 pages, cost \$100.
2. SOP Book—"Policies and Procedures for Fire Districts," Chapter 1—"Commissioners," approximately 50 pages, cost \$50.
3. SOP Book—"Policies and Procedures for Fire Districts," Chapter 2—"Personnel," approximately 100 pages, cost \$50.
4. Resolution on Open Public Meetings.
5. Resolution on Open Public Records.
6. Updated Whistleblower Resolution.
7. Guidelines for Personal Property on Premises (Resol.)
8. Resolution on Health Care Information Act (Patient Records)
9. Resolution Appointing Safety Officer and Infection Control Officer.
10. Physical and Mental Fitness and Substance

Abuse Testing
(Resolution).

11. Employee Harassment Policy (Resolution).
12. Resolution Establishing Accounting System and Various Funds.
13. Resolution on Use of Credit Cards (revised 1998).
14. Resolution on Appointment and Termination of Volunteers.
15. Resolution Designating Incident Command Agency for HAZMAT incidents.
16. Resolution Establishing Small Works Roster.

Sector Boss

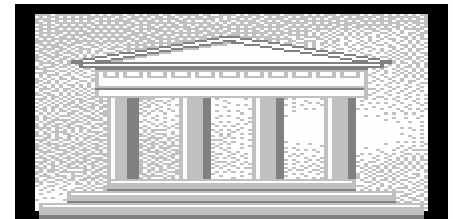
Since no questions have been received this month, the Sector Boss will take off the month of June. In fact, the Firehouse Lawyer will be on vacation during the first two weeks of July so any readers are advised to call or email Joseph F. Quinn after July 14, 1998.

Disclaimer

The purpose of this feature is to allow readers to submit short

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questions which lend themselves to general answers, on various legal issues. More detailed questions would require a formal legal opinion and are beyond the scope of the Q&A column. By giving answers in the Q&A column, the Firehouse Lawyer does not purport to give legal advice and disclaims any attorney/client relationship with the reader. Detailed legal opinions require a greater explanation of the facts, possible legal research and a more thorough discussion of the issue. Readers are therefore urged to contact their legal counsel for legal opinions.



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NOTA BENE:

In 1997 I developed a fire department safety checklist and a set of forms for safety officers. Designed to help fire departments comply with the new WAC 296-305 safety standards, these materials are available to fire departments throughout the state, subject to payment of \$50.00 to defray reasonable copying and mailing costs.

In June, 1997, a model Safety Resolution and complete set of operating instructions (SOPs) were completed, to comply with the "vertical standards". Cost \$100.

ORDER FORM:

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Description of Document

(Or call first for more information)