Firehouse Lawyer

Volume 5, Number 10 **October 15, 2005**

Joseph F. Quinn, Editor

Joseph F. Quinn is legal counsel to more than 25 fire districts in Pierce, King and other counties throughout the State of Washington.

His office is located at:
5000 Steilacoom Blvd. SW
Lakewood, WA 98499
(in Lakewood's Station 2-1)

Telephone: 253.589.3226

Fax: 253.589.3772

Email Joe at:
quinnjoseph@qwest.net

Access this newsletter at:
www.Firehouselawyer.com

Inside This Issue

1	This Month's Issue
1	Surplus Property – Are There Rules or Just Best Practices?
3	Discrimination – Maybe Nonsexual Harassment Is Still Sex Discrimination
3	Communication Site Leases
4	Disclaimer
4	Advertising in F.L.

This Month's Issue:

Since I received a good deal of positive feedback after the issue that discussed the questions I answered during a typical month of my law practice, I decided to do that again. Why? Because it seems that the same questions just keep coming up and therefore they must be representative of the types of issues many of you need to learn about. So here goes.

SURPLUS PROPERTY – ARE THERE RULES OR JUST BEST PRACTICES?

I wrote a lead article on this subject in the ***Firehouse Lawyer*** of September 1998. My views (and the law) have not really changed much since then. (The back issues, by the way, are all archived and available on this same web site.)

The discussion needs to be divided into two parts: surplus real property, such as fire stations and surplus personal property, such as apparatus and equipment. When deciding to surplus either type of property you need to have the Board of Commissioners adopt a resolution declaring the **identified** property as being surplus to the needs of the District. I stress the word "identified" for a reason—if you do not specifically identify the property in question, a doubt could later arise, especially if that or similar property ends up in the hands of department personnel and the State Auditor has a question about the transaction. For example, was the item "misappropriated" or properly surplused and sold?

Fire districts that need a resolution format can simply call the Firehouse Lawyer and we will provide a sample.

The only statute respecting surplus real property is RCW 39.33.020, which applies to intergovernmental disposition of real property valued at $50,000 or more. Since that only applies to conveyances to other governmental agencies, the statute is seldom applicable. When it is, you need to follow the detailed notice and other procedures in the

RICEfergusMILLER
ARCHITECTURE & PLANNING

Fire Stations • Training Towers
Capital Facilities Planning

David Fergus, Partner
(360) 377-8773
dfergus@rfmarch.com

Fire Fighting Equipment Consultants

Planning an Apparatus Purchase?
-Needs assessment
-Help with specifications
-Bid evaluation
-Consultation thru final Inspection

Call Ed Johnson
253-445-9624

Or e-mail: firetruckguy1@aol.com

Donald Owen & Associates, Inc.
Construction Management Services

- Pre-construction & Construction Management for Public Owners
- Analysis of change orders and claims
- Dispute Resolution
- Constructability Review

Phone: 360-297-3738
E-mail: **donowen@centurytel.net**

YOUR AD HERE

For $75 per year, your firm could have its ad right here. See and compare the other ads in this publication. After the year is over, the issues are archived, so basically your ad is permanent.

statutory provisions.

Otherwise, there is no statutory guidance for the whole process of declaring surplus and disposing of surplus real or personal property by fire protection districts. So what is a district supposed to do? I look to the statute applicable to water/sewer districts in Title 57 of the RCW for guidance.

With real property, typically we are dealing with an asset of considerable value, which for some reason the District has decided it just does not need any longer. The most common example is an outdated, seismically unsound station whose location is not consistent any longer with the growth or service patterns in the district. Since the biggest mistake you can make is selling the property too cheaply (and one for which the taxpayers will not forgive you!) I recommend sound procedures for determining the fair market value **before** you advertise the property for sale. While a commercial appraisal can be quite expensive, often local real estate professionals can provide you with a written market analysis. Some appraisers will also do less than a full-blown appraisal, such as review of comparable sales for you. You can also easily find out the value assigned by the county assessor, but be mindful that in some counties the assessed value is not nearly what the fair market value might be. In summary, get the best information you can get about true value before the next step.

Unless you have a private offer that is too good to pass up, I recommend essentially that you sell the property at a public auction. Simply advertise the property for sale in the real estate section—or use the "legal" ad section of the local newspaper if you prefer. Place a notice in the paper that you are accepting sealed bids for sale of the property, to be opened at the specified place and time and read publicly. Reserve the right in the Board to reject any and all bids, just in case you get no proper bids or they come in very low for some reason. If the property has some problems, such as boundary disputes or pollution history, consider selling the real property "AS IS, WITH ALL FAULTS". Advertising in the paper would not constitute an offer to sell per se, so no one can claim a contract "acceptance" and argue that you must sell at their bid price if for example they are the only bidder.

With personal property, I would not recommend following that same procedure, although with valuable engines or apparatus you could do it quite similarly. Frequently, we see ads in *The Fireline,* the publication of the Washington Fire Commissioners Association, so this seems to be an effective way to dispose of surplus apparatus and equipment. Boards often debate whether to establish a minimum price or bid, but

personally I have not seen that as being helpful. I recommend just reserving the right to reject all bids and if only one comes in, or what you get is well below your estimated value, you can just decline to sell the item "at this time" and re-advertise.

When disposing of either real or personal property, always document everything you have done, including offers received, so that there is a paper trail for the State Auditor.

DISCRIMINATION – MAYBE NONSEXUAL HARASSMENT IS STILL SEX DISCRIMINATION

Many of us—including attorneys—have always believed that a claim of generalized harassment was not the same as sexual harassment, in the sense of supporting a claim of "hostile work environment". Now a Ninth U.S. Circuit Court of Appeals decision has caused us all to re-examine that belief and change the analysis somewhat. Many times in recent years I have been told by clients that some females in their organizations were claiming harassment, and some of the facts suggested it might need to be investigated as a sexual harassment complaint, under the policies to prevent that scourge. However, when we examined the facts in many instances we found that there was really no gender element at all involved, or very little. So the question has always bothered me—can a claim of generalized abuse by, for example, an obnoxious, abusive supervisor, be asserted as a sexual harassment claim, absent unlawful unwelcome advances or comments with a sexual content?

In this case, the new assistant executive director of the National Education Association branch in Alaska was thought to be an "equal opportunity" abuser. In other words, he was thought to be abusive, profane, and obnoxious to men as well as women. He was physically intimidating as well as verbally offensive, but to men **and** women. Eventually, three women filed an EEOC complaint about him and that agency filed a federal lawsuit. The trial court dismissed the case, finding that he was "rude, overbearing, obnoxious, loud, vulgar, and generally unpleasant" but there was no evidence to suggest that he was motivated by gender issues, sexual lust or animus toward women.

The appellate court reversed, however, and required more before such claims can be ruled out as being discrimination under Title VII, which prohibits sex discrimination. The Court said that there is no actual requirement that hostile acts be sex- or gender-specific in content. Moreover, the Court said, while that is one way to establish a case for discrimination, it is not the only way. Comparing how the person treats women versus men is an available evidentiary route. The courts can look for any qualitative or quantitative differences in their behavior toward women and men. Was the treatment different enough to show that the differences may have been motivated by sex? One can even ask, did the conduct affect women more than men? The appellate court sent the matter back for re-trial.

Certainly, decisions like this one suggest that we cannot lightly dismiss claims of sexual harassment, even when no one points to any sexual content in the behavior of the alleged perpetrator. Since I see more clients adopting or considering policies prohibiting any kind of harassment, and going well beyond sexual harassment, it would be my prediction that we can look for further expansion of claims and litigation in this arena.

COMMUNICATION SITE LEASES

While many of my clients may not ever be involved in anything of this sort, I just wanted to mention that over the last several years I have analyzed, reviewed and drafted leases or site agreements for communications sites. Especially with my water district client, which leases sites and antennae locations on water tanks

and reservoirs, there is a very viable source of extra revenue. The cellular telephone companies are very aggressively seeking new locations all of the time as Americans increasingly use cell phones, sometimes in lieu of land lines, to stay in touch. If your fire district or agency needs guidance in this area, feel free to call me and I can share what I have learned over the last 6-8 years on these leases.

USE OF PUBLIC FUNDS AND RCW 12.17.310

Especially before the September and November elections, I get a lot of questions revolving around the above-referenced statute, the PDC guidelines, and the exceptions. Generally, you should not use public funds in support of or in opposition to any ballot proposition or candidate (even your own agency's election issue). There are some exceptions, such as the one relating to normal and regular conduct of your agency. Generally, you can do one mass mailing to your citizens per election. I was asked, "What if we have two propositions on the ballot?" Well, those are two separate elections. For example, suppose one is for a "lid lift" on your EMS levy and the other is a lid lift on your regular tax levy. The issues are probably different on those two and so I would say you can do one mailing for each. But I was asked whether they could do two mailings and discuss both propositions in each mailing. I think the PDC might frown on that; we need to continue to be conservative and cautious on such expenditures. After all, the purpose of the rule is to ensure that elections are fair, and it is deemed to unfairly "unlevel" the playing field if government can spend lavishly, without any limit, and the opposition does not have such unlimited funds. Keep that in mind.

DISCLAIMER

The Firehouse Lawyer newsletter is published for educational purposes only. Nothing herein shall create an attorney-client relationship between Joseph F. Quinn and the reader. Those needing legal advice are urged to contact an attorney licensed to practice in their jurisdiction of residence.

ADVERTISING IN F.L.

Some of this year's advertisers have already asked to be included in the publication in 2006 at the same rates used in 2005. Others are certainly welcome, and if included we can always go to a six-page format with more articles. Anyone else interested? Call or e-mail me. Some of the advertisers have found that it helped their business.