Firehouse Lawyer

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Inside This Issue

Merger and Annexation Issues

This edition is primarily devoted to a discussion of an issue that is always timely. Broadly stated, the issue is: "What are the various options for cooperating and consolidating, or merging, as between adjacent jurisdictions, such as cities and fire districts, in the State of Washington?"

Numerous studies of governance in our state have concluded that efficiencies and economies are available by reducing the number of local governments and/or special purpose districts. This can be accomplished by merger of fire districts under RCW 52.06 and by annexation of cities or towns to adjacent fire districts pursuant to RCW 52.04, as well as through cities annexing unincorporated land into the city by annexations. See e.g. RCW 35.13. Alternatively, the agencies can contract for services, such as fire protection and/or emergency medical services (EMS). Actual experience shows that either the city or the fire protection district can "take the lead" in such a contract.

The Municipal Research Services Center (MRSC) web site contains a list of about 76 cities and towns in Washington that are either annexed to or consolidated with nearby fire districts. It is estimated that approximately 175 cities or towns operate their own municipal fire departments. There are no available statistics that we know of, to memorialize the number of mergers of fire districts that have taken place in recent years. However, the author knows from twenty years personal experience that mergers have not been uncommon. Contractual arrangements are even more common in the urban or urbanizing counties in Western Washington.

MERGER OR CONSOLIDATION?

Based on considerable experience with these two options, it is my belief that these two options are not mutually exclusive, but can be effectively used one after the other. By that I mean that two or more fire districts that might ultimately envision merger as being advantageous or inevitable are almost always well served by "consolidating" first. There

is really no good definition of that word in the statutes, so I will define what I mean by "consolidation". In my discussion, I use the term broadly to mean "any combination of functions, administration, or operations of two or more local government agencies designed to enhance services through cooperative efforts." In other words, the combination may be as minor as joint training or sharing a Training Officer, or by contrast, it may mean combining the two work forces by cross-staffing and in effect ignoring jurisdictional boundaries with regard to operations. Either way, this can be accomplished without creating legal or audit problems, if documented in an agreement under the Interlocal Cooperation Act—RCW 39.34.

After a few years of successful and ever-widening cooperation, a merger is not such a huge step. Moreover, if merger is not feasible for political or other reasons, some of the same economies or efficiencies can be attained through consolidation anyway.

Of course, there are some differences and therefore some advantages and disadvantages to each of these two options. We have found through actual experience that certain "local topics" cannot really be dealt with by the agencies acting jointly. Examples include each district's annual budget, boundary issues, commissioner positions and elections, and property tax levies. Each of these can only be dealt with by the local board and the other agency's board has no control over those local topics. On the other hand, the list of "consolidated topics", which the boards can deal with together or jointly, is quite lengthy. Together, the boards could provide for a consolidated administrative team of chiefs and other appointed staff. It is not unheard of for one administrative team to administer three or four separate jurisdiction's fire services, in addition to their own actual fire protection district.

The only significant disadvantage to these "consolidations" or complex interlocal agreements is their inherent limitations. Because the "local topics" such as commissioner compensation, elections, and separate budgets are all measurable costs, without merger there will always be some cost-cutting that just cannot occur. Therefore, we submit that when a consolidated entity or entities gets to a certain critical point of almost totally consolidated operations and administration, the only way to move further forward is to submit a merger proposition to the voters.

ANNEXATION OF CITY TO FIRE DISTRICT

When the two adjacent "cooperating" fire departments are not both fire districts, but rather one is a city fire department and the other is a fire

district, there are two distinct choices. Either the two entities can contract for service, choosing one to "take the lead" and the other to just pay for the service, or they could consider the advantages and disadvantages of asking the city to annex to the fire district pursuant to the provisions of RCW 52.04.061 and .071.

Although it is possible for a city and an adjacent fire district to contract for a consolidated fire department, with neither one taking the lead, that model does not seem to be chosen very often. In our experience, it is more efficient for one agency to assume the role of legal "employer" of all paid personnel. Indeed, it is common for that one agency to be in charge of all administrative and management decisions within the department, with the other entity just paying over a large portion of its annual budget so that such agency can provide all services. Typically, the city takes the lead, with the adjacent fire district paying for services, and holding back only enough money to pay commissioners' expenses, election costs, perhaps one district secretary, and other minimal expenses. Of course, this simplifies the administration of the fire district, but there is a concomitant loss of control as to how the money is spent. Even with good contract provisions, there is always a perceived loss of control over the fire protection, since so much discretion is inevitably delegated to the city administration. After all, the city must balance the needs of the fire department against the financial needs of all other city departments, including police, planning, general administration, municipal court, etc.

Annexation of the city into the fire district, for fire protection and EMS, may have much appeal to both the city and the fire district. From the standpoint of the district, it allows that special purpose district, which specializes in fire and EMS services, to focus all of the available resources on that public safety mission. The district commissioners, and district citizens, often feel a renewed sense of control over the destiny and mission of the fire department. Of course, there can be a commensurate loss of control on the part of the city's leadership. Many cities have found, however, that such annexations are actually beneficial to overall city governance. First, statutes provide that cities annexed into fire districts can levy a property tax of up to $3.60 per thousand of assessed violation, minus any fire district property tax levy (which can be as much as $1.50) and any library district levy (up to $.50). Second, the annexation does free the city from the legal obligation of providing such services, so it simplifies the total picture of service delivery in the city. Sometimes, without the fire department to compete for dwindling funds, other departments such as the police are actually helped.

Needless to say, with the "Eyman initiative" (Initiative 747, now codified in RCW 84.55) limiting annual increases in property tax revenues to 1%, unless the voters approve an increase (called a "lid lift") all cities in Washington are facing declining property tax rates. With inflation still outpacing 1% annually, and increases in costs of health care, gasoline, and public employee wages and benefits certainly exceeding 1%, ways to cut costs must be found. Annexation can be one of those choices.

When annexation does occur, some other issues remain. For example, the passage of an EMS levy within the city is still a city voter issue. That measure does not somehow pass to the fire district, for purposes of presenting it to the voters. Similarly, cities that annex to fire districts should address the fire code inspection and enforcement issues that may still arise within the city's boundaries, by dealing with the fire district on that point. Also, RCW 48.48.060 still requires a city to investigate any fires to determine "cause and origin", so that statutory duty does not automatically pass to the local fire district, just because the city annexes.

The number of cities, both new and not so new, that have annexed to fire districts under these statutes suggests that this is a very viable and workable alternative for providing these necessary public services. Especially with newly incorporated cities that can be served by well established and professional fire district personnel, the issue seems to

be non-controversial. We have noted that such annexation elections have generally been approved by voters with about 80% affirmative votes, which is very high for any election.

ANNEXATION BY CITIES

Cities and towns have long possessed the authority, especially when petitioned by citizens of unincorporated areas near city boundaries, to increase their size by annexing adjacent unincorporated territory. The statutes on annexation address numerous issues that are beyond the scope of this article, such as the disposition of the fire district's assets when the city annexes large portions of the district territory, especially more than 60%. Since these scenarios are not really cooperative efforts between neighboring jurisdictions (they are really more competitive than cooperative!) they will not be covered here, but may be the subject of a later article in the *Firehouse Lawyer.*

We hope this brief overview stimulates some discussion of the different options for cooperation and creativity in providing fire and EMS service in our state.

YOUR VOLUNTEER FIREFIGHTERS CAN SUE FOR NEGLIGENCE

As we have previously reported when this case was decided by the Court of Appeals, ***Doty v. Town of South Prairie,*** Supreme Court #75824-7, is a case you should be aware of if your district has volunteer firefighters. Due to space limitations, we will save extensive discussion for next month. But for now, please be aware that on October 6, 2005, the State Supreme Court affirmed the Court of Appeals. Both Courts have now held that volunteer firefighters can sue their own agencies for damages, for negligently caused injuries. This holding means they are not barred by the workers compensation statute that bars employees from suing their employers, because they are not employees at all. They are volunteers. More details to follow.

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