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Court determines that fire chief has the ability to designate its power to regulate traffic in a village fire department.

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One word of caution to readers before they read this case review and determine that fire police are not necessary. This case dealt with a village fire department. The author of this article believes that the court's holding would also apply to a fire district's fire department. However, it is questionable whether the ability of a fire chief to designate its power to regulate traffic may be designated in a "town controlled" or "independent" fire department.

This decision was handed down on April 28, 2005 (People v. Loren, 4 N.Y.3d 411, 796 N.Y.S.2d 26).

The facts are as follows. Two firefighters were instructed by their chief to control traffic on an emergency scene. The firefighters were not trained or certified as fire police. One firefighter had an orange flag and another wore a safety vest. They utilized a person vehicle and flares to shut down the road.

A driver approached a roadblock and ignored the firefighters' order to stop. Instead, he swerved into a lane which was not closed by the firefighters, and continued to drive. Other drivers attempted to follow the driver around the roadblock. The two firefighters ran after the car, shouting, waving their arms and a flag. The driver stopped his car briefly, and the firefighter opened the driver's passenger door in an attempt to identify him. The driver refused to give his name, and, with the firefighter wedged between the door and the passenger compartment, attempted to drive off. The driver then stopped his car and informed the firefighter that he was driving home. The firefighter replied that he was going to call the State Police. Undeterred, the driver left the scene. A State Police officer later called on the driver at his residence and issued him a ticket for violating Vehicle and Traffic Law § 1102. That section provides that "[n]o person shall fail to or refuse to comply with any lawful order or direction of any police officer or flagperson or other person duly empowered to regulate traffic."

The court held that even though the two volunteer firefighters were not fire police, they were "duly empowered to regulate traffic" under Vehicle and Traffic Law § 1102 because they were acting under instructions from the department's fire chief, who enjoys independent statutory authority to direct traffic at the scene of an accident, fire or other emergency. This power derives from Vehicle and Traffic Law § 1602--the "Emergency rule." Section 1602(b) provides that:

"[i]n the event of a fire or other emergency or to expedite traffic or to safeguard pedestrians or property ... [a] person empowered to regulate traffic at the scene may, to the extent authorized by local law, ordinance, order, rule, regulation or administrative code *414 provision adopted by local authorities with respect to highways within their corporate boundaries, direct traffic as conditions may require notwithstanding the provisions of this chapter or of local laws, ordinances, orders, rules, regulations, administrative code or sanitary code provisions regulating traffic" (emphasis added).

The court held that it could easily conclude that the "emergency rule" authorized a fire chief to direct traffic at the scene of an accident or a fire. A fire chief's responsibility to coordinate a department's response to an emergency necessarily includes the power both to keep the

public out of harm's way and to keep people from obstructing firefighters' all-important mission of protecting life and limb.

The court also held that village fire chiefs may delegate their Vehicle and Traffic Law § 1602 authority to regulate traffic to their subordinates. Village Law § 10-1018 specifies that the village's fire chief shall "have exclusive control of the members [of the department] at all fires". The court interpreted this statute to permit the fire chief to direct firefighters to undertake tasks critical to public safety, such as diverting traffic away from the scene of a fire or dangerous accident.

Village Law Section 10-1018 controls village fire departments. A similar statute is found with regard to fire chiefs of fire districts, at Town Law 176-a. However, there is not a similar statute for town controlled or "independent" departments that is not part of a village or fire district, fire department. Thus, while all fire chiefs have the power to control traffic, whether this power can be designated in every type of fire department is unclear.