

Fire Protection Contract & Liability Issues For Towns

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About Mr. Pinsky

- Represents over 500 fire departments, districts, EMS services and serves as special counsel to a number of municipalities.
- Lectures nationally on firematic issues.
- Has monthly radio show on fireengineering.com
- Author of “Fire Department Law & Management Resource Manual” (700 Pages)
- Hosts Fire Department Law & Management Conference
- Fire Captain of Fire Department, Department Training Officer.
- Law firm soon to be renamed: Pinsky Law Group

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Districts vs. Protection Districts

- A “fire protection district” is a portion of a town which is taxed as a separate line item.
 - The funds must be limited to fire protection and not other expenditures.
 - Sales tax may not be used to pay for fire protection in a town which has a village or fire district in its limits.
- A “fire district” is a separate, political subdivision of the state.
 - It does not report to the town.
 - The town is not liable for actions of the district.
 - The budget of the fire district is provided to the town as a pass through. The town cannot disapprove of it or alter it.



Town Fire Departments

- Towns may not own or operate a fire department.
 - Note: there are a few old laws from the 30's that created some town fire departments where the town board are commissioners.
- Towns may not own a fire house.
- Towns may own equipment and apparatus and contract for manpower. (Town Law 184).



Towns and Fire Protection

- Towns may receive fire protection only a few ways:
 - Form a fire protection district and contract for protection;
 - Form a fire district, and leave it up to the district to provide protection;
- Towns have no duty to provide fire protection. If a fire protection district is formed, the town “shall” provide protection. (Town Law 184)



Contracts for fire protection

- A town may contract for fire protection with one or more incorporated fire companies, village(s), cities or fire districts.
- If a contract is formed with a volunteer fire company of a village, city or fire district, the fire company must also agree to provide fire protection.
 - The President and not the Chief must sign the agreement.
 - The fire company can obtain a portion of the money.
 - Up to 35% of the funds if the fire company does not own the equipment or are in a fire district; 100% if they own the equipment (but not part of a fire district)



Powers of a town “in control”

- When a fire company/department has its main fire house in the fire protection district, the town “is in control of” the fire company. (Not For Profit Corporation Law 1402.)
- A town has limited control over the fire department/fire company in the town, but they are VERY important!
- The main goal of this lecture is how to limit liability of the town. Most towns pay no attention to their fire companies.



Powers of the town

- The town must approve all “active” members of the fire department/company in the fire protection district.
 - The failure to approve a member as “active” can leave the firefighter without the volunteer firefighter death and disability benefits (V.F.B.L.).
- The town can discipline the firefighters and officers.
- The town can institute policies for the fire department/company.



Powers and Policies

- The town can create policies for the Department. The best way is to implement the policies by contract.
- Upcoming slides will discuss policies the town should require or review of the Department.



Liability

- The entity “in control of” the fire company/department is liable for the acts and omissions of the members and department.
- When a town contracts for fire protection with an independent fire company in the fire protection district, the town is liable for negligent acts and omissions of the company.
 - G.M.L. 50 applies to protect the town (90 day notice, etc.)
- **Amazingly, many town contracts do NOT require the fire company to provide insurance or indemnity. Insurers do not suggest this to their clients (not shocking).**



What can a town do to decrease risk of liability?

- Impose certification requirements for interior firefighters.
- Require annual training requirements for interior firefighters.
 - Consider 40-50 hours of training each year.
- Initial certification and recertification requirements for vehicle operators, including course requirements and driver license checks.
- Require and pay for physical exams.
 - #1 cause of death of firefighter on duty is heart attack.



Sample certification policy

- Interior Firefighter Course requirements:
 - Firefighter 1, including hazardous materials operations
 - Firefighter Survival
 - Bailout Training
 - NIMS 100 & 700
- Vehicle Operator Requirements
 - Scene support
 - EVOC/CEVO
 - Apparatus Operator- pump operations
 - 3 years driving experience of non-emergency vehicle
 - Completion of in-service driver training program.
 - THIS IS EXTENSIVE and should be reviewed by the town.



Officer requirements

- Lieutenant and Captains
 - Fire Officer 1
 - Building Construction, non-combustible
 - Hazardous Materials Incident Command (a federal requirement)
 - ICS/NIMS 200
 - Incident Safety Officer
- Chiefs
 - Legal Issues for the Fire Service
 - Fire Officer 2



V.F.B.L.

- The town is liable for providing the death and disability benefits of all firefighters injured in the line of duty in a fire company which is located in the fire protection district.
- The town must provide benefits. This does not require the town to insure for the benefits, but is crazy not to!
- The town should NOT require or rely on the fire company to provide the V.F.B.L benefits. It should obtain them directly.



Bylaws

- The town may not approve the bylaws of the fire company, but the bylaws may not conflict with any valid policy of the town.
- Fire companies are governed by the Not For Profit Corporation Law. They should comply with the numerous requirements of this law, but rarely do.
- Fire companies should apply for and receive IRS 501(c)(3) status, but many do not. Thus, they must pay income taxes!



Audits & Financial Disclosure

- The town has no statutory right to audit the fire company.
- 501(c)(3) entities must file Form 990. If there is over \$50,000 of income, must file an extensive version of the 990.
- The contract can require disclosure of the funds of the fire company.
- Consider limiting the disclosure of the expenditure of the funds to the funds that were provided by the town.
- The fire company can receive funding from other methods, and this is not the town's business.
- Do not punish the fire company for having a successful fundraising campaign or for saving money.



Contract terms

- Do NOT use the same contract you have always had. They are dangerous and may create liability.
- Many form contracts require the fire company to respond to every alarm. This is not going to happen!
- Do NOT require compliance with NFPA. This is not a law and will NEVER happen.



Contract terms...

- Define whether fire protection includes E.M.S., fire inspections, rescue, etc.
- Require filing of 990
- Require compliance with training and recertification programs
- Require adoption of PESH policies and required training
- Require submission of all new members for approval



PESH / OSHA issues

- The town is the employer of fire departments within its fire protection district. Both the fire company and the town are required to ensure a safe workplace.
- There are a significant number of PESH and OSHA regulations which are applicable to fire departments. The town should assist the fire department with PESH compliance policies, including but not limited to the following:



Organizational Statement

- PESH regulations require the adoption of an organizational statement.
- The organizational statement lists all of the services that the fire department will provide. Few departments have actually implemented them.
- Ex: The services the department will provide include:
 - Interior Firefighting
 - Water Supply
 - Fire Police
 - Collapse Rescue, to the operations level
 - Rope Rescue, low angle only
 - Swift Water Rescue.



PESH/OSHA

- Implementing an Organizational Statement;
- Instituting a workplace violence evaluation and program;
- Implementing anti-sexual harassment policies;
- Blood Borne Pathogen Training;
- A respiratory protection program;
- Two-in/Two-out policies;
- Hazardous Materials Communications Policies and training;
- Emergency escape policies including bailout evaluation and training;
- Mayday training and procedures;



PESH/OSHA

- Live fire training policies, ensuring substantial compliance with NFPA 1403 and prohibiting use of live victims;
- Performance of the risk analysis for fire departments;
- Hazardous Materials initial and annual training;
- Ensuring compliance with minimum 15 hour initial training and 8 hour annual recertification;
- Lockout/Tag out Training

And so much more...

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Prevailing Wages, Wicks, Bidding

- A fire company is not required to comply with Bidding requirements, as it is not a municipality.
- A fire company is not required to comply with the Wicks Law (separation of the construction into Prime Contracts)
- A fire company “might” be required to comply with the Prevailing Wage Laws, but this is presently in the court system.



Recruitment & Retention

- Towns should get involved in the recruitment process for their fire departments.
- There are a number of great ways to increase the number of members.
- Not all ways of recruiting require spending on member incentives. Recruitment failures are more in the methods of recruiting than anything else.



FOIL and Open Meetings Law

- The fire company is subject to the Freedom of Information Law
- The fire company is not subject to the Open Meetings Law.

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Discipline

- General Municipal Law 209-l permits the town to terminate or suspend up to one year, the members of the fire companies under the town's control.
- The town may also remove the officers from office, although the town has no ability to appoint or confirm the members in office.
- This almost never happens.



Discipline

- The town may only impose discipline for “incompetence” or “misconduct”. Neither of these terms are defined.
- The town should create a discipline policy for the department and/or require the fire company to institute its own discipline.
- G.M.L. 209-1 requires the town to provide written notice of charges, a hearing with the right to present and cross-examine witnesses, and a written decision. Appeals are to the trial court in an Article 78 proceeding.



Discipline

- The fire company may also impose its own discipline, which is a much more lenient process. The fire company must just provide some limited due process, though not as strict as required by G.M.L. 209-I.
- The town may not remove, from office, the executive officers, but may remove or suspend the line officers.



We can help

- Brad Pinsky can assist at drafting all necessary policies and training programs for fire departments.
- We can assist with PESH/OSHA compliance.
- We can evaluate training programs and assist with implementation of training and certification programs.
- We can assist with responsibilities and obligations review.



Questions?

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