

Dec 21, 2004

Fire District confirmations of chiefs is to be in January

by Bradley M. Pinsky, JD/MHA/EMT-D

We have received a surprising number of calls inquiring when the department's nominations for chiefs and assistant/deputy chiefs should be voted on by the district. We have also been asked what happens if some or all of the nominations of the department are denied by the commissioners.

Confirmation votes are to be held in January, not December

Many fire districts appear to be approving the nominations of the fire department in a December meeting. This is not in accordance with the law.

The law states that if nominations for the chief positions are held in December, then the board shall consider the nominations "at its organization meeting in the month of January next succeeding the making of such nominations".

What is the harm? A candidate that was not confirmed by the District could initiate a lawsuit to void the vote of the commissioners. In the instance where a new commissioner would be taking office in January, this might have changed the course of the discussion or the vote. Thus, it is likely that a court would order a new vote with the new commissioner in office. If the commissioners would have remained the same after the new year, with a prior commissioner beginning a new five year term, then there is no reason for a court to order a new election.

Vacancies create trouble

What about nominations that are not approved by the District? Section 176(11-b) provides that the persons in the chief or assistant chief positions in the prior year shall continue until a successor is approved. The district, after refusing to appoint one or more nominated persons, shall direct the fire department to hold a new election in accordance with the department's bylaws for those vacant positions. The district shall then consider the new nomination after the election.

The law does not provide a solution for the instance when the fire department refuses to elect a new person to fill the position, or continues to elect the same person that the district refuses to confirm. In this instance, new elections continue to be held, and the prior person in office continues in office. The district should consult their attorney for advice in this instance, or for the occasion where the department has no person qualified to appoint to a position other than the candidate the district refused to confirm.