The Firehouse Lawyer

Volume 19, Number 3

March 2021

Be sure to visit firehouselawyer.com to get a glimpse of our various practice areas pertaining to public agencies, which include labor and employment law, public disclosure law, mergers and consolidations, financing methods, risk management, and many other practice areas!!!

Eric T. Quinn, Editor

Joseph F. Quinn, Staff Writer

The law firm of Quinn and Quinn, P.S. is legal counsel to more than 40 Fire Departments in the State of Washington.

Our office is located at:

7403 Lakewood Drive West, Suite #11
Lakewood, WA 98499-7951

Mailing Address:
20 Forest Glen Lane SW
Lakewood, WA 98498

Office Telephone: 253-590-6628

Email Joe at joequinn@firehouselawyer.com
Email Eric at ericquinn@firehouselawyer2.com

Access and Subscribe to this Newsletter at:
firehouselawyer.com

Inside this Issue

Ballot Titles Anyone?

A recent client inquiry reminded me that we did an excellent article on ballot titles some years ago in the *Firehouse Lawyer*[1] and it might be time to revisit that issue to educate readers who are planning elections this year. Here it is again, with any needed updates due to statutory changes and due to lessons learned by us in the intervening years.

Ballot Titles Can Be Problems That Count!

Almost every local government or municipal corporation in Washington will have an election proposition on the ballot at some point. And that means someone has to write the all-important "ballot title", which is critical because that is about all some voters will look at or study prior to voting.

Based on legislation enacted in the year 2000, the rules on local government ballot titles are a bit complex and frankly, somewhat arcane. Even those of us who deal with ballot titles often are not always in clear agreement about how to write the ballot title! For special purpose districts such

[1] https://firehouselawyer.com/Newsletters/v08n05may2008.pdf

as fire protection districts, regional fire authorities, school districts, and the like, the responsibility for writing ballot titles falls to the county prosecuting attorney. However, your district counsel or bond counsel will first draft a resolution calling for the election, that includes a suggested ballot title form. More often than not, your suggested ballot title form will be the starting point (and often the "finishing point") for the prosecutor's efforts.

So…what are the rules applicable to these ballot titles, pursuant to the statutes of our State? First, RCW 29A.36.071 requires the ballot title to have three elements: (1) an identification of the enacting legislative body and a "statement of the subject matter"; (2) a "concise description" of the measure; and (3) a question. Second, it is relatively clear that the ballot title should take the form of a referendum bill submitted to the people. Respected municipal attorneys believe the "referendum" rather than the "initiative" is the most appropriate form, and apparently prosecutors and the Office of the Washington State Attorney General agree with that view. That form is included in RCW 29A.72.050(4).

This is where the counting comes in. RCW 29A.72.050 and RCW 29A.36.071 both have relevant limitations on the number of words to be contained in certain parts of the ballot title. There is a 10-word limit for the statement of the subject matter. RCW 29A.72.050 (1). See below for an example of how that counting process works in actual practice. Moreover, there is a 75-word limit for the "concise description". RCW 29A.36.071(1). Again, see below. There is no word limit for the question at the end of the ballot title. Thus, even with these limitations, the total of the ballot title can easily exceed 100 words and still be lawful, so long as you stay within these complex parameters for the various parts. **We would hasten to add one caveat: certain statutes prescribe, by state law, the precise ballot title to be used for certain types of measures.**

Now let us illustrate these rules by an example. The bracketed materials delimit the extent of the 10-word "subject matter" and the 75-word "concise description" limits, respectively. If not within the brackets, the words of the ballot title do not "count" as against any statutory limit at all.

SAMPLE BALLOT TITLE

_____ COUNTY FIRE PROTECTION DISTRICT NO. ____

FIRE STATION CONSTRUCTION BONDS- $12,000,000

The Board of Fire Commissioners of ____ Fire Protection District No. ___ adopted Resolution No. ____, concerning [a proposition to finance and construct a fire station.] This proposition would [authorize the district to construct and equip a new fire station; issue no more than $12,000,000 of general obligation bonds maturing within 20 years; and levy annual excess property taxes to repay the bonds, all as provided in Resolution No. ____.] Should this proposition be:

Approved……..□

Rejected……

As you can see, the statement of the subject matter is only nine words and the concise description is less than 75 words. That whole paragraph is actually only about 75 words, but you can see that, with those two elements alone adding up to (potentially) 85 words, the whole ballot title might exceed 100 words and still be "legal".

The purpose of this article is to give fire protection districts and regional fire authorities something to show their local prosecutor or the district's attorney to assist in drafting ballot titles. Never try to write your own ballot title without advice from bond counsel or general counsel experienced in such matters. In fact, for bonds, you should rely upon bond counsel to prepare the resolution that submits the ballot title to the voters. UNDER NO CIRCUMSTANCES SHOULD OLD BALLOT TITLES SUBMITTED AT ELECTIONS OCCURRING PRIOR TO SEPTEMBER 2000 BE USED AS MODELS.

However, since that article above was written some 13 years ago, changes have come to our attention or statutes have changed. One important point we should expand upon is that sometimes RCW 29A.36.071 does not apply at all, because another statute provides a rather precise ballot title that must be used for that kind of election! If one of those statutes applies the ballot title must substantially conform to that language.

For example, the statute on the initial imposition or continued imposition of benefit charges—RCW 52.18.050—specifies a precise ballot title that should be used so the statute in chapter 29A.36 does not apply. Regional fire authorities have exactly parallel statutes in chapter 52.26 RCW, so this admonition also applies to them. We draw this conclusion because of a rule of statutory construction: a specific statute will prevail over a general statute when there is any conflict. These latter statutes are more specific directions as to the ballot title; RCW 29A.36.071 is a general statute applicable to ballot title writing. And so concludes our discussion of ballot titles, in well over 75 words.

SHOW DUE CARE, EVEN TO THE DEAD PATIENT

A March 18th Supreme Court decision may seem at first glance to have little bearing on safe fire department operations, but the facts belie that conclusion. In *Fox v. City of Bellingham*, No. 98514-6,[2] the Supreme Court of Washington decided a narrow issue: who has standing to sue for emotional distress caused by the alleged mishandling of a deceased person's body.

The Court held that a brother of the decedent had standing to sue for the mishandling of a decedent who was in the custody of the Bellingham Fire Department. In a 6-3 decision, the Court held that the class of plaintiffs was not limited to the persons mentioned in a statute on the subject of remains, so the brother could sue.

But it is not the legal holding of the case—on standing—that we want to discuss here. It is the facts of the case. The decedent passed away in

[2] https://www.courts.wa.gov/opinions/pdf/985146.pdf

2018 but for some reason the hospital there had insufficient room for his body, so his remains were brought to the fire station.

Without obtaining permission from the decedent's family, the fire department used his body for a training exercise and performed numerous intubations on his body. Bad idea. When the brother learned of these events, he suffered severe emotional distress and sued. He brought a claim for tortious interference with a corpse in federal court.

We include this case simply as an admonition to fire departments that the due care owed to a patient does not end upon death. It may seem like common sense, but we believe that a fire department owes a duty of due care with respect to decedents and that duty is owed to all of the relatives.

Families get very upset when their deceased relatives are not treated respectfully after their demise (we know from past experience). I once represented five siblings whose father had died many years earlier. They visited his grave regularly at the cemetery, until one year when that cemetery had a road relocation project that necessitated "temporary" relocation of numerous graves. To make a long story short, the cemetery could not assure the siblings that their father was in fact where they claimed to have placed his coffin and was not sure he was any longer next to their mother as he had been before. We settled that case out of court for a modest sum for each of the five siblings, as the cemetery (as you might imagine) was embarrassed and did not want a trial in which it would be impossible to look good.

The moral of these stories, and of reciting the sad facts of the *Fox* case, is that fire department personnel should all be mindful of the respect they need to show—and the sensitivity of relatives of the decedent—to remains of deceased persons in their custody.

NEGLIGENT EXECUTION OF SEARCH WARRANT CASE

A January Supreme Court case may also be somewhat instructive. In *Mancini v. City of Tacoma*, No.97583-3,[3] the Court held that a city may be liable if its police department negligently executes a search warrant.

Why should we care about a police search case, you ask? Well, here's why:

Fire department personnel may enter onto or into private property without a warrant because of the emergency exception to the warrant rule, derived from the Fourth Amendment to the U.S. Constitution. Entry may constitute a search in a fire or EMS case, but the emergency exception allows that privilege. But as the *Mancini* Court noted the officers cannot "engage in unreasonable conduct in exercising their privilege to be on the property."

To illustrate the point, suppose the firefighters are fighting a fire confined to the attached garage of a house. But one firefighter goes throughout the house, merely out of curiosity, and happens upon a large supply of methamphetamine. What should

[3] https://www.courts.wa.gov/opinions/pdf/975833.pdf

be done, if anything? Or suppose instead that he or she enters into a private bedroom and discovers some contraband such as illegal weapons or pornographic materials?

These are not scenarios that can end well for the fire department. The emergency exception to the no-warrant rule allows a scope of entry limited to the purpose to be served. If the EMS emergency is limited to the front room of the house, there is ordinarily no cause to search the entire house! Of course, if the call is for a drug overdose situation it might be appropriate to ask about prescriptions and even to look in the bathroom cabinet for drugs to see if an elderly person may have the prescription drugs mentioned. It is all a matter of reasonableness, but we believe firefighters should get some legal training on the scope of their rights, privileges and duties when entering on private property to do their jobs.

The City of Tacoma paid the price *ten years* after the search was botched, and it cost them $250,000 plus all the costs and time of defending the search in court. Training could have prevented the liability. Although not recognized in Washington State, the real problem was negligence in the investigation of the facts, leading to a search of the wrong apartment in the first place. The Court relied instead on the general duty of due care while doing police work on private property, so for that reason we feel the case is relevant to the fire service.

POLICIES AND SOPS

After 35 years devoted to serving fire department clients, as you might well imagine, I have a hard drive full of client policies, resolutions, SOPs and all types of forms.

Since I have already been paid to develop most of these documents, I am loath to charge much money for sharing them with non-clients. When you need such a policy or form, feel free to email me at joequinn@firehouselawyer.com.

Additionally, you can call or email Eric Quinn at the phone number and/or email shown on page 1 of this newsletter. We may have what you need and if it is a large order we still only charge a minimal fee for search time, and to send to you.