FIREHOUSE LAWYER

Vol. 3, No. 6 **Joseph F. Quinn, Editor** **June 30, 1999**

Legislative Highlights

This issue of the Firehouse Lawyer will be devoted exclusively (almost) to a discussion of legislation enacted in Washington this year, which may be of interest to fire service personnel.

EMS LEVIES

House Bill 1154 was passed, amending the statutes relating to emergency medical services levies. The primary feature of the bill is that it increases the number of options for such levies. Now the tax may be imposed for six years, ten years, or permanently. There are certain restrictions or qualifications in the law, as amended, particularly with respect to permanent EMS levies. First, a sentence was added to RCW 84.52.069 stating that a taxing district shall not submit to the voters at the same election multiple propositions to impose an EMS levy. In other words, it would not be appropriate to submit an EMS levy proposal for a 25 cent levy at the same time as a 50 cent levy, in an attempt to get the voters to approve one or the other. Similarly, it would probably not be appropriate to submit at the same election a six or ten-year levy at the same time as a permanent levy, in hopes that the voters would approve the lesser levy if they would not approve a permanent one.

The law now requires taxing districts imposing permanent EMS levies to maintain separate accounting of expenditures. A statement of accounting shall be updated at least every two years and available to the public at no charge. Since EMS levies have always been restricted to proper EMS-related purposes, this provision appears to put more enforcement "teeth" in that requirement to ensure that the money really is spent on emergency medical services and related personnel and equipment.

Also a taxing district imposing a permanent levy must provide a referendum procedure to apply to the ordinance or resolution imposing the tax. As you may know, the voters authorize an EMS levy to be imposed when they vote approval by 3/5th majority. However, the governing body must still actually pass an ordinance or resolution annually actually imposing the tax or authorizing the county to levy it. Most county assessors require taxing districts to complete a certification of a levy so that they know exactly how much is being requested each year. What this referendum procedure requires, therefore, is that annually the registered voters would be able to review and approve or disapprove the amount of the EMS levy. Thus, it would appear that even though the voters may authorize a six-year, ten-year or permanent EMS levy, there would still be the possibility of a referendum annually to reject the tax imposed by the governing body.

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In cities and counties, especially those with home rule charters, it is not unusual at all that many ordinances are subject to referendum by the voters. However, for fire protection districts for example, there is ordinarily no referendum power to which their resolutions are subject. Therefore, this referendum provision will take some getting used to.

Another subsection is added to RCW 84.52.069. The subsection states that if an approved ballot proposition did not impose the maximum allowable levy amount authorized under the law, any future increase up to the maximum allowable levy amount must be specifically authorized by the voters at a general or special election. Suppose, for example, that your six or ten-year EMS levy approved by the voters is established at 25 cents per thousand dollars of assessed valuation. If you wanted to exceed that amount, you must return to the voters for their approval.

FIRE DISTRICT ANNEXATION

The statute on annexation of unincorporated territory into a fire district was changed slightly through House Bill 1584. RCW 52.04.011 was amended to remove the word "contiguous" and substitute the word "adjacent" with respect to the annexation of territory. All this appears to mean is that property currently in no fire district and in no municipal territorial boundary can be annexed to a fire district even though it does not touch the fire district at any point on the boundary. The word "adjacent" has been held by court cases to mean near or in the vicinity of and therefore, while the territory would not have to be touching the fire district boundary, it would have to be near it. It may take court decisions to define just how near the property would need to be to the fire district in order to be considered adjacent. We will recommend to clients that they not attempt to annex property if it is more than ¼ mile from their boundary.

MUNICIPAL OFFICERS - CONTRACTS

Most fire protection district commissioners and other municipal officers are familiar with the statutory provisions controlling their interests in contracts awarded by or through their municipal government. There has for many years been a statute stating that no municipal officer shall be beneficially interested, directly or indirectly, in any contract made by, through or under the supervision of such officer for the benefit of their office or municipal corporation. However, this statute has many exceptions and has been the subject of some confusion.

There is one exception, for example, that allows a small amount of money, monthly, to be received pursuant to contracts of the municipality. That threshold amount, below which there will be no ethical problem, has been raised by this statute from $750.00 to $1,500.00 per month. The statute also clearly provides that a municipal officer may not vote with respect to a contract in which he or she is beneficially interested, even if they do fit within one of the many exemptions allowing the awarding of the contract. The interest of the municipal officer in the contract or in the company to which it is awarded must be disclosed to the governing body and noted in the official minutes of the municipal government before the formation of the contract.

FIREFIGHTER RETIREMENT PENSIONS

Substitute House Bill 1219 makes certain amendments to RCW 41.24 with respect to relief and retirement pension provisions. This bill appears to expand the scope of RCW 41.24 so that its provisions are available to provide relief not only to firefighters, but also to police and to emergency workers

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who work for emergency medical service districts. The provisions are also applicable now to reserve officers. Changes to the definition sections make it clear that relief is available not just for death or disability, but also sickness or injury. Under the amendments, RCW 41.24.030(4)(a) now requires that 40% of all monies received by the State from taxes on fire insurance premiums shall be paid into the State treasury and credited to the administrative fund.

FIRE INSURANCE PREMIUM TAXES - DISTRIBUTION

Second Substitute Senate Bill 5102 makes certain amendments to RCW 43.43 and RCW 41.24, among other statutes.

The Fire Prevention Policy Board is charged with the duty to develop and adopt a plan with a goal of providing training at the level of Firefighter I, as defined by the Board, to all firefighters in the state. The plan will include a reimbursement for fire protection districts and city fire departments of not less than $2.00 for every hour of Firefighter I training. RCW 43.43.944 is amended to provide that the Fire Service Training Account shall consist of various fees and grants received, and also 20% of all monies received by the State on fire insurance premiums.

RCW 41.24.170 as amended now makes special provisions for participants older than 59 years of age but less than 65 years of age and provides a reduced monthly pension for such individuals. The reduced monthly pension is calculated as a percentage of the pension the participant would be entitled to at age 65. The statute creates a sliding scale between age 60 and age 64 ranging from 60% up to 92% of what the pension would have been at age 65.

EPINEPHRINE ADMINISTRATION

By Substitute House Bill 1992, the legislature added a new section to Chapter 18.73 RCW on emergency medical services. The legislation has six sections, and all but one of the sections were made effective immediately, using an emergency clause. The one section that was not made effective immediately is Section 4 of the bill which bears an effective date of January 1, 2000. That section states that all of the state's ambulance and aid services shall make epinephrine available to their EMTs.

The EMTs may administer epinephrine to a patient of any age upon the presentation of evidence of a prescription for epinephrine or to a patient under 18 years of age under certain circumstances. That section also provides that any EMT, EMS or medical program director acting in good faith and in compliance with the provisions of the section shall not be liable for any civil damages arising out of the furnishing or administration of epinephrine, *i.e.,* an immunity clause. The section does not authorize the administration of epinephrine by a first responder. Section 4 of the bill, however, expires or sunsets on December 31, 2001.

The purpose of this legislation appears to be primarily to study how widespread is the phenomenon of anaphylaxis -- the most severe form of allergic reaction. Apparently, rapid and appropriate administration of epinephrine to a patient suffering an anaphylaxis allergic reaction may make the difference between life and death. The legislature wants to study this further and gather statistics before going further than they have in this legislation.

UNLAWFUL DISCHARGE OF LASERS

Probably this bill may be of more interest to law enforcement officers than firefighters, but we found it interesting to note that substitute House Bill 2086 makes it unlawful to discharge any laser

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device at a law enforcement officer or a firefighter. Some people may be familiar with laser pointers, which particularly fall into the hands of juveniles. This law criminalizes the unlawful use of lasers to point them at people such as firefighters, but with juveniles (first offenders at least), the violation is only a civil infraction.

E-9-1-1 TELEPHONE SYSTEMS

Under Senate Bill 5806, the legislature found that citizens of the state increasingly rely on the dependability of enhanced 9-1-1, a system allowing the person answering an emergency call to determine the location of the emergency immediately without the caller needing to speak. The legislature found the degree of accuracy of the displayed information must be adequate to permit rapid location of the caller while taking into consideration variables specific to local conditions. The legislature also found that rules are necessary permitting local fire agencies to evaluate and approve the accuracy of location information relating to their service areas. This legislation, by adding a new section to Chapter 38.52, places the duty to establish rules on minimum information requirements of automatic location identification for purposes of E-9-1-1 upon the Adjutant General.

The Fire Prevention Policy Board, under RCW 43.43.934, will now make its recommendations to the Adjutant General instead of the Director of Community, Trade and Economic Development with respect to any rules on minimum information requirements of 9-1-1

Y2K FAILURES - IMMUNITY

By Engrossed House Bill 2015, the legislature passed an act relating to restricting liability for harm caused by incorrectly calculated or interpreted dates associated with year 2000 date changes processed by electronic computing devices. While it is difficult to theorize how a municipal corporation such as a fire district, city or dispatch service might be found liable for a Y2K problem, it could occur. Suppose, for example, that emergency services are delayed or not dispatched due to a Y2K problem, causing extensive fire damage, death or disability. More probably than not, the municipality would have a defense under the Public Duty Doctrine or some other defense. Nonetheless, this new legislation provides an additional defense, if certain conditions are met, to any agency that encounters a Y2K problem with such consequences.

The term "agency" is defined very broadly and specifically includes the state, counties, cities, and special purpose districts. The new legislation amends RCW 4.24 to add an affirmative defense to a claim or action based on a contract if the problem is caused by a year 2000 failure associated with an electronic computing device and if they acted responsibly to identify any Y2K problems in the first place.

Because of space and time limitations, the foregoing is intended to be a very brief listing of some adopted bills that may be of interest to individuals in the fire service. For more detailed information, you may contact The Firehouse Lawyer or you may view the session laws at various websites, including but not limited to the excellent site maintained by CD-Law, Inc. at www.cdlaw.com.

COURT BRIEFS

Two recent Washington appellate court cases caught our attention this month, one in the Supreme Court and one in the Court of Appeals. In Warnek v. ABB Combustion Engineering Services, Inc., 137 Wn. 2d. 450 (1999), the Supreme Court held that there is no recognized claim

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or cause of action for a refusal to hire or rehire. While an employer may incur liability for wrongful discharge when a person is fired for reasons that violate public policy, there is no similar Washington case recognizing a right to sue for refusal to rehire based on violation of public policy. The claim involved a refusal to rehire two individuals who had worked for the same company before (in a different state) and who the company believed had filed fraudulent worker's compensation claims. For that reason they did not rehire them. While the workers claimed that the employer's actions amounted to a wrongful refusal to rehire in violation of the worker's compensation statute and public policy, the Supreme Court disagreed.

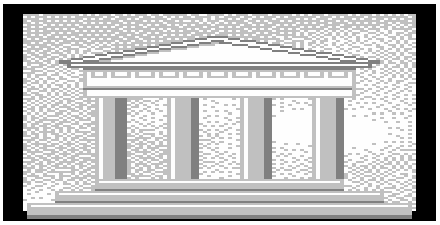
The Court of Appeals case merely reaffirmed something that most of us have believed for a long time. It is fairly well settled that sick leave benefits, unlike vacation pay, are not a vested wage entitlement. A Washington statute requires employers to pay employees who quit or are fired any wages due them on account of their employment. The question was whether such wages included accrued sick leave. The Washington Court of Appeals, Division I, in Teamsters Local 117 v. Northwest Beverages, Inc., Case no. 42386-0-I, ruled on May 24, 1999 that sick leave is not wages.

The Teamsters based their argument on a case involving a different employer and a different union, in which the applicable collective bargaining agreement required payout of accrued sick leave upon termination. Such sick leave payoff clauses are not uncommon, as even public employers sometimes pay at least a percentage of accrued sick leave at the time of retirement, resignation or termination. The Teamsters local in this particular case did not have such a contract, and Teamsters Local 117 did not persuade the trial court that sick leave fit within the definition of wages. The Court of Appeals observed that sick leave is not "vested" compensation. It is, according to the Court of Appeals, a "contingent benefit" provided to the employees to cover wage loss they would otherwise incur due to illness. Employees are not entitled to the cash value of sick leave and it does not need to be paid out upon termination of employment.

The court did not face the issue of vacation pay in this case, but the court did compare the nature of sick leave with that of vacation as follows:

> The employees are entitled to vacation pay whether they go on vacation or not, whereas sick leave is contingent upon illness. If an employee is not absent from work due to illness, no right to sick leave exists.

Absent a well-written exclusive policy, The Firehouse Lawyer ordinarily advises clients that vacation leave is a vested or an earned benefit that should either be taken and used or paid in cash.



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