

Firehouse Lawyer

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Thanksgiving Is a Time to Give Thanks...

As this is written, the turkey and all the trimmings are still very evident around my middle. The exercise routine needs to kick into high gear to get those pounds off! But during this holiday season, my thoughts are with all of you --- my clients. I just want to say thanks for another great year. Without all of the work (and all of your legal problems) that you give me, I would have to look for another profession or re-enter the rat race of attorneys all competing for the same pool of clients. More importantly, I remember once again the kind of quality people in the fire service that I get to associate with every week. Often at social gatherings I tell stories arising from your activities, but I am most fond of pointing out that I have seldom if ever met anyone working in the fire service that got into this field for money, power, avarice, or other less than laudable reasons. People who work or volunteer in fire and EMS generally do it for very altruistic motives—to serve their fellow man. I wish that were true for all vocations—including my own.

So thank you to all those who provide me with such fascinating work, which actually provides quite a potpourri of legal issues to challenge the analytical mind. While such narrow specialization means that many questions have been asked of me before, it seems every month there are one or two new twists. I try to write about some of them in the newsletter each month.

Speaking of the *Firehouse Lawyer*, I want to thank my advertisers for placing their ads in the newsletter in 2005. I already know some of them will repeat their participation in 2006. And I will continue to recommend them to clients and others.

AND SPEAKING OF ADVERTISING... WHY NOT CONSIDER AN AD IN F.L.??

In 2006, we will continue to offer advertising space in the newsletter. The small ads cost \$75 for a whole year, with the oversize ad costing \$110.00. The advantage of archiving is that each edition is kept permanently, or at least for many, many years, which means these ads

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For \$75 per year, your firm could have its ad right here. See and compare the other ads in this publication. After the year is over, the issues are archived, so basically your ad is permanent.

can be seen by readers searching the archives. As in the past, my philosophy is to offer exclusivity, so that there will only be one architectural firm, one construction manager, etc. If we do sell more than the current number of ads, I fully intend to increase the number of pages of the newsletter during 2006.

WELCOME TO NEW CLIENTS

In the last month or so, we have added new clients to my law practice including Anderson Island Fire (Pierce County Fire District 27), the West Thurston Consortium (an interlocal cooperative effort of four districts in Thurston County), and the King County Fire Chiefs Association. I have helped that association to revise the countywide Mutual Assistance Agreement. As counsel to the association, I will be the custodian of the records, including the signed originals of the MAA for King County, much like I have done for the Pierce County Fire Chiefs Association for many years. In summary, while I brag to friends that I am "semi-retired" and that I spend half the day on the golf course, alas it is not really true (only an exaggeration) because I continue to add new work as I approach 60 years old next month. Please hold back your tears and condolences, as work is still enjoyable and never dull.

AND SPEAKING OF EXCITING, I AM PLEASED TO ANNOUNCE THAT TRAINING UNLIMITED HAS SCHEDULED COMMISSIONER TRAINING

On January 21, 2006 at Graham Fire & Rescue, February 11 at Black Lake Fire & Rescue, and on February 25 at a King County location to be announced, my training company will be offering commissioner training. Look for the brochures in your mailbox, or ask the Fire Chief. The conference materials will cover the key laws and issues every fire commissioner needs to know about: Open Public Meetings Act, Ethics and Conflicts of Interest, Public Bid Laws, Commissioners' and District Secretary's Roles, Fire District Finances, Open Public Records, etc. This seminar is aimed at both new and existing commissioners. I guarantee if you have not previously attended one of my training sessions (or even if you have), you will learn some new things you have never heard of before. Over eighty pages of written materials and a Power Point presentation are included; the seminar lasts for a total of six hours, with an hour of free time in between to eat lunch, so be prepared to work hard. You will not be lectured to for six hours; there will be time for questions, so come prepared to ask some.

MORE DETAILS ON THE DOTY CASE

Last month we mentioned the case of *Doty v. Town of South Prairie*, Supreme Court #75824-7, in which the State Supreme Court recently affirmed the Court of Appeals decision announced a year or so ago.

The key facts of the case are as follows: Jill Doty was a volunteer for South Prairie Fire Department, a municipal fire department, at the time she sustained an injury. She filed a negligence suit against the town, seeking damages. The Superior Court determined that the Industrial Insurance Act (IIA) barred any such claim and dismissed her suit. As many of you already know, the workers compensation law does not allow an employee to sue their employer, unless the harm is intentional.

About a year ago, the Court of Appeals reversed the trial court, holding that Doty was a volunteer—not an employee—and therefore the action was *not* precluded. In this opinion, the State Supreme Court agreed with the Court of Appeals. Most of our readers would not be interested in the details of the abstruse legal issues in the case. However, it is important to note that the IIA must be construed liberally in favor of employee coverage and therefore exceptions are construed narrowly. Here, the Town attempted to use that rule of construction to argue that the IIA should be construed to include volunteer firefighters (and therefore they should not be allowed to sue for negligence). However, the appellate courts now have both taken a definitional approach, and found that a volunteer firefighter is not paid “wages”, is not an “employee”, and is therefore not covered by the IIA. They are covered by another law, of course, the Volunteer Fire Fighters Pension Act, RCW 41.24. But the Court pointed out here that obviously that law does not provide full health care coverage but something more akin to limited disability and life insurance benefits, and only if the injury or disability arises from their duties. Therefore, the Court said, these funds could hardly be considered “wages” paid to an employee.

An interesting discussion included in the Supreme Court opinion, but not included in the Court of Appeals’ reasoning, relates to the issue of whether Doty’s service was voluntary. Based on past cases, the high Court said it is vital to look at the degree of control asserted over the alleged volunteer. The Court noted that Doty had the freedom to choose to respond (or not) to any alarm or attend any given drill, and therefore the Town had no control over if or when she would serve. The Town countered with an argument that a state statute provides that a volunteer fire fighter serves under the direction or general orders of the chief in accord with rules and regulations of the department. But the Court held that argument misses the main point: Doty had a choice—to volunteer her services or not and the remuneration was not expected, so she was a volunteer.

Of course, the upshot of all this analysis is that volunteers can sue the agency for which they volunteer for negligently caused injuries.



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DO YOU HAVE A COOP AND COG PLAN IN EFFECT?

Recent extensive media coverage of the threat of an avian flu pandemic has caused discussion of how

emergency services agencies will respond in the event of such a disaster. Suppose such an event renders a high percentage of your work force, including fire commissioners, incapacitated to the point that they cannot perform their duties for an extended period of time. Have you got a plan for continuing operations or even a succession plan, to keep the enterprise going? If not, you are not alone.

Pierce County, through its department of Emergency Management, has started to take action to deal with this issue. All local fire districts should probably also address the potential problem by preparing plans for continuing operations and the continuance of government.

I have begun exploring this issue for one or more clients, and a few ideas have already to start to surface. For example, epidemics often include quarantine orders, so it would be logical (and a good idea, anyway) to have meeting rules in place that expressly allow for participation in Board of Commissioner meetings from remote locations by telephone. I have developed a resolution for a client already to provide for that situation, including a condition that technology must be available (such as a speaker phone) to ensure the public can attend and hear the absent participant. Another useful tool, in a more general sense, would be a policy expressly allowing employees to work at home (sometimes called telecommuting), subject to certain conditions and restrictions. Since one of my clients adopted a policy allowing that practice a few years ago, I have researched that issue and found the legal literature addressing the topic is quite substantial. Frankly, I was astounded at the degree to which workers already work from home in our "wired" society. Moreover, I was bit surprised at how many legal issues needed to be dealt with in the policy allowing "working at home".

In any event, fire departments and local governments in general should be working on "succession planning". Whether you believe the "bird flu" is a real and substantial threat, or are cynical (who me?) and believe the media builds up these scares periodically

to sell more newspapers, the fact remains that there are ample reasons for doing this planning. Just look at the recent history of hurricanes, earthquakes, and tsunamis; then ask yourself if something can happen here. Can you say "Mt. St. Helens"? How about "Mt. Rainier"? On that depressing note, I will see you next month.

Happy Holidays to all.

LATE BREAKING NEWS – THIS JUST IN!

After this edition had already been essentially "put to bed" last week, it came to my attention that Initiative 901 just became effective. I-901 is the non-smoking law that the electorate soundly approved at the November general election.

Although an exhaustive discussion of legal issues is not feasible in this small space, suffice it to say that we are getting a few questions about this statute. It does apply to public employers and in public places such as fire stations and vehicles. Please check your signage to see if it is adequate.

Remember that smoking is now prohibited within the buildings and within 25 feet of any entrances, exits, windows that open, and vents that serve the building. Enforcement against owners and employers is the responsibility of the local health department, unlike an earlier draft, which tried to delegate enforcement to the fire department. Law enforcement individuals will be the enforcement authority against individual violators who smoke where they shouldn't.

Call me if you have questions.

DISCLAIMER

The Firehouse Lawyer newsletter is published for educational purposes only. Nothing herein shall create an attorney-client relationship between Joseph F. Quinn and the reader. Those needing legal advice are urged to contact an attorney licensed to practice in their jurisdiction of residence.