

Firehouse Lawyer

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Reader Survey

In an attempt to be responsive to the interests of my readers, the Firehouse Lawyer is conducting a sort of "reader survey" to find out what topics you want covered in future articles. We try to focus on legal issues arising either under Washington State law or under federal statutes. The vast majority of my readers are fire service personnel (Commissioners and Chiefs, primarily, but not entirely) serving in the State of Washington. However, you might be surprised to learn that the *Firehouse Lawyer* is read monthly by readers in Virginia, Massachusetts, and several other states. For that reason, we try to include occasional articles about the key federal statutes of interest, for example, to employers, such as the FLSA, FMLA, ADA, ADEA, Title VII, etc. While our focus will remain the same, we want to "cover all bases", so if there are topics or articles that you—the readers—want included in a future issue, let me know. You can e-mail me at joe@firehouselawyer.com or my main e-mail: quinnjoseph@qwest.net.

SECTOR BOSS

In the earlier version of the newsletter, during the period 1997-2000, we often included a question and answer column, for readers to send in short inquiries and get answers. Of course this is not legal advice, and full-blown legal opinions are not included. But if we found a question might be a common one, and the answer might have educational value, we would devote a few paragraphs to the answer. We even had a contest to name the column something more interesting than "Q&A". The winner was "Sector Boss", which apparently is a fire service term for the person who comes along and cleans up the mess after the fire! Well, sort of. I felt that was a good choice, especially for the lawyer who often does just that.

The editor told me he wants to spice up the *Firehouse Lawyer* once again, re-establishing the Sector Boss column as needed. So if you have those sorts of nagging questions, to which you have not been lucky enough to find an answer, send me those e-mails too. If we find the query worthy enough to merit publication (and not so unique that 'no one

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else would have that problem'), I am sure the editor will allow us to find space for the answer. Legal questions are best, given the Firehouse Lawyer's expertise, but sometimes even Human Resources and ethics questions are worth writing about.

OPEN PUBLIC MEETINGS ACT

The underlined word is no mistake. We continue every month to notice that public agencies sometimes seem to prefer discussing business in closed or executive sessions, rather than in the public meeting room. Be advised that the exceptions to the OPMA are to be construed narrowly, not broadly, and if there is no exception to fit the factual situation, the topic *must* be openly discussed, if it is discussed at all.

Indeed, I constantly hear about misconceptions concerning executive sessions. Recently, one commissioner insisted that some decision about collective bargaining *was required* to be taken in executive session or closed session. Wrong! There is actually no topic, matter, or decision that is required to be discussed in such sessions. The executive session section of the law is there to allow, not require, that certain specific topics be discussed privately. And there is always a good reason for the secrecy, such as open discussion obviously creating adverse fiscal consequences to the agency.

Also, the fact is that **no decisions** should actually be made in executive session. For example, the law allows for evaluation of candidates for public employment or elective office in executive session. However, deciding who to hire, or which person to appoint to the vacant fire commissioner post, must be done publicly.

The executive session provision is contained in RCW 42.30.110, but there is another section of the Act that defines the scope or applicability of the OPMA. See RCW 42.30.140. That statute provides that, *inter alia*, discussions pertaining to union negotiations, arbitrations, or grievances, and also "professional negotiations" (such as contract negotiations with your Fire Chief) are beyond the scope of the Act. Since this is discussed in a different section of the law (not the executive session section), I refer to those as "closed sessions" instead. However, the net effect is about the same. Similarly, however, when the Board approves the union contract or the Chief's contract of employment, it must be done in open session.

One more pet peeve. Do NOT use the phrase "personnel reasons" when going into executive session. Why not? Although some

"personnel reasons" are certainly appropriate subjects for executive session treatment, others are not, and the act explicitly so provides in a few places. For example, despite what we have said above concerning union negotiations, please note that discussions involving salaries, wages or conditions of employment to be "generally applied" in the agency must be discussed in open session. So, suppose your board wants to discuss how many holidays will be afforded to all employees of the agency. It seems to me that is not an appropriate subject for executive session or closed session, as it is to be generally applied to all personnel.

As we have discussed above, if readers have short questions about the OPMA, which may be dealt with succinctly in the newsletter, fire away, and we shall see if they can fit in the Sector Boss column.

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SURPLUS PROPERTY CLEARINGHOUSE

Here is another "service" item I have been thinking about. My clients and other fire districts frequently have surplus apparatus and equipment. Some of it may only be suitable for giving away or perhaps donating to a fire department in Mexico or Guatemala. While quite serviceable, perhaps it does not meet stringent Washington standards. The *Firehouse Lawyer* hereby offers to act as a clearinghouse for

such transactions. So, if you have (or know of a need for) surplus equipment, feel free to send in the information and we will list it in our pages the following month, free of charge. We could even include the information in our "Chiefs" e-mail group, to see if anyone on my long client list may be able to help. Over the years, Burien Fire, Orting, and a small district in Lewis County have "found a connection" through the auspices of my group e-mail "mailings". Ambulances or aid cars, as well as smaller equipment have been donated or sold through such a connection.

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EDITORIAL OPINION

Today there was a wonderful story in the Tacoma News Tribune, concerning some local firefighters who work hard on coordinating the donation of surplus items to needy cities in Mexico and probably other third world countries in Central or South America. We have known many Pierce County fire service folks who have been involved in such ventures, in Guatemala and/or Venezuela, and who have even traveled to those lands to make delivery and meet or train their counterparts down there. Lasting friendships and much good feeling are achieved this way. Thus, if Firefighters Crossing Borders should need my assistance for any reason, the *Firehouse Lawyer* is ready, willing and able to assist in any way imaginable. The values and goals of that group are very similar to those of my favorite organization—Rotary International. As a twenty-year member of

Rotary, I have found there are few better guides to finding the right path in business ethics than the Four-Way Test:

Of the things we think, say and do, we only need ask: Is it the truth? Is it fair to all concerned? Will it build goodwill and better friendships? Will it be beneficial to all concerned?

Sometimes I cannot help thinking that Rotary knows better than America and its leaders how best to achieve peace and international understanding. We need to relate to people of other countries at a person-to-person level, rather than having our armies get to know each other personally. This is no slap at the military, as I am a proud Air Force veteran myself (Viet Nam era). I just think maybe sometimes our civilian leaders abuse and take advantage of our military might, to the detriment of the people of other nations. Some people say, "The best defense is a strong offense." But sometimes I think we may be too offensive. I apologize for the editorial, but I do think the leadership shown by fire service professionals reaching out to colleagues in other nations is definitely a positive force for international understanding.

That's more than enough for this month. Enjoy the last good days of summer.

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.



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