

Firehouse Lawyer

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Client Survey

Recently, I decided to conduct an informal survey of my clients, virtually all of which are Western Washington fire departments. The information is useful to me in various ways, but I am seeing that the data may be of interest to readers as well, to learn about the demographics of some departments in this region.

Although I have 16 contract clients in Pierce and King Counties, not all have responded yet, so the base information included here was taken from the Washington State Fire Service Directory. I learned that these 16 jurisdictions with Legal Services Contracts—10 in Pierce County and six in King County—have a combined population in their service areas slightly in excess of 900,000 persons. Their combined assessed valuation, of all taxable property in their jurisdictions, is approximately 100 billion dollars (not million, but billion), and their boundaries encompass just over 1000 square miles. Since I also have about twenty more "hourly" clients, when all clients submit their data, I may create a matrix or present the data in a tabular format in a later issue.

One odd thing this made me realize is that perhaps it is unrealistic for me to serve these clients without any other lawyers working in my office! In other words, a comparable city with that many citizens would probably have more than one lawyer in the city attorney's office. And I have been wondering how I was going to take a vacation. But perhaps it is possible to make do in this case because not all fire department clients call their lawyer often, even when they should. Or maybe fire departments do not have as many legal issues as a city or county of comparable size. However, on the face of it, this appears to me to be an issue that perhaps I need to address.

I can supplement this information as more clients complete the survey and return the information to me. For now, though, I would like to include some brief profiles of the larger departments that have already responded, as readers may find that interesting.

The first profile is of Central Pierce Fire & Rescue, a product of several mergers that took place in the 1990's, combining Pierce County Fire Protection Districts 4, 6, 7 and 9 into District 6. Central Pierce serves a population of approximately 150,000 persons. The total assessed value of property in this mega-district exceeds \$14 billion! The annual

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operating budget is about \$33 million annually. They finance district services with a \$1.00 per thousand AV basic fire levy, plus a (currently) 46 cent EMS levy, benefit charges of about \$8.5 million and some EMS transport revenue, amounting to another \$2.7 million per year. CP has 217 full time employees, of whom 194 are uniformed employees and 23 are civilians. The district encompasses 72 square miles. They have nine stations, nine engines, 6 medic units (2 persons) and one ladder truck. The engines and ladder have three-person engine companies. And they have two 24-hour shift battalion chiefs on duty too. Recently, they have taken on a joint training role to assist the City of Puyallup's Fire Department. Their Fire Chief, Jack Andren, is very knowledgeable, particularly about benefit charges, as his district has used that method of financing for many, many years.

The other big Pierce County "merger" development that started in the 1990's (but has come to fruition mostly since 2001) is the creation of what is now known as East Pierce Fire & Rescue. About ten years ago, in approximately 1997-98, the following fire departments essentially served their respective citizens as stand-alone departments with their own Fire Chief and administration (including elected officials): The cities of Bonney Lake and Sumner, and Fire Districts 1, 12, 20, 22, and 24...for a total of seven departments! Now as this is written, there is only one department with one chief!! During the mid-1990's, District 22 consolidated with the Bonney Lake Fire Department, which actually provided all emergency services to District 24, although that district did have its own board. Very quickly, in 1999, that was put to a vote, with District 24's voters approving merger into District 22, at the same election at which Bonney Lake voters approved annexing the city to District 22 for service. In short order, that was followed by a functional consolidation of both District 20 (which also historically served the small town of South Prairie) and District 12 (which also served the small town of Wilkeson), combining with District 22 pursuant to an interlocal cooperative agreement. In 2006, since that consolidation effort was successful, the voters of both 12 and 20 voted to merge into District 22, which had started using the name "East Pierce Fire & Rescue". Shortly thereafter, the City of Sumner began experiencing some fiscal issues and problems keeping their small municipal department up to modern standards and expectations. Thus, when their Fire Chief retired they looked to East Pierce and its Fire Chief Dan Packer, for "chief services". Since Sumner was linked closely to Fire District 1 for many years, that district also "piggybacked" on the agreement with East Pierce. Following the above pattern, after a couple of successful short years, both Sumner voters and District 1 voters approved annexation (by Sumner) and merger (by District 1) into East Pierce. So, since you asked, that is how seven fire departments have become one, in the

short span of about ten years. Much credit must be given to the visionary elected officials of East Pierce and their Chief, Dan Packer, who has been serving as President of the Washington State Fire Chiefs in his spare time.

Again, without trying to do an exhaustive district profile, East Pierce now serves a population of about 76,000 souls, has an assessed valuation of around 9.1 billion dollars, and does the job with 98 full-time employees, 53 volunteers, serving over 128 square miles. They finance this effort through the \$1.50 regular fire suppression levy, plus a \$.50 EMS levy. Not bad, eh? It goes without saying that these two clients have involved this writer in every imaginable legal issue that might come up in merger or consolidation scenarios in this state!

Another large and dynamic client of mine is South King Fire & Rescue. Just within the last two years or so, the department changed its name when King County Fire District 26 (Des Moines Fire) merged into Federal Way Fire Department (King 39). This mega-district has a population of about 150,000 and an AV of roughly 14.5 billion dollars (note- this is comparable to Central Pierce). Their \$24 million annual budget provides about 160 full time employees and ten non-operations volunteers, serving 41 square miles with a base fire suppression tax levy of \$1.50 per thousand AV. They have been very successful obtaining voter support for annual levy "lid lifts" and recently succeeded in a multi-year lid lift election. Al Church and his commissioners and staff are most proud, however, of their rating of "2" from the Washington Surveying and Rating Bureau. This is about as good as it gets in the State of Washington, so Al and the department are justifiably glowing with pride. Al is another Fire Chief who has been a stellar leader at the State Chiefs' level, as he seems to serve on all committees. It is simply not true that Al and his board want to take over the world!! Just kidding, Al.

Well, that will suffice for now, as we should turn our attention back to the never-ending goal of educating readers about the laws relating to the fire service.



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CLIENT TRAINING OPPORTUNITY

But first one more housekeeping item. I have just sent out a group e-mail to my "Chiefs" list, but felt it might help to include the information here as well. I have scheduled a class/training on medical records issues for March 11, 2008, here at my office, which is located in Station 32 of University Place Fire Department. The plan is to spend three hours, from 9:00 a.m. to noon, teaching and answering questions about HIPAA, the Washington State Health Care Information Act (RCW 70.02), patient confidentiality, and related issues. If we have time, we will contrast that with the rules and processes for inspection and production of open public records under the state Public Records Act.

There will be handouts of forms and FAQs on these issues, developed over the last 10 years or so, as the Firehouse Lawyer deals with these issues weekly if not daily. We will also discuss establishment of a policy and procedure for dealing with subpoenas and other discovery requests, attorney requests, law

enforcement exceptions, handling depositions and interviews by attorneys and insurance adjusters, etc. Sorry, but this training is limited to clients, who have used my services in the last five years.

By the way, many people continue to ask whether I will be conducting any training soon for commissioners, new or experienced. I doubt it, since the WFCOA offers such training, by advertising, supporting and marketing the Saturday Seminar series in several locations, using a different law firm. There is no need to duplicate that effort. Instead, look for the Firehouse Lawyer to be scheduling trainings like the one on March 11th numerous times per year, but limited to clients of Joseph F. Quinn, P.S.

SOME LEGISLATIVE PROPOSALS OF INTEREST TO THE FIRE SERVICE

At this point in the short legislative session in Washington we felt it might be helpful to mention what we feel are the most significant or interesting bills of interest to the fire service. The State Fire Chiefs and Fire Commissioners' associations are both trying again to gain approval to raise the bid threshold from \$2,500 to \$10,000 on public works. Frankly, it is rather incongruous that the bid threshold for equipment has long been \$10,000, but the much larger (potentially) public works jobs must be bid, starting as low as \$2,500, unless an agency has a small works roster, which is another conundrum altogether. Also, they support another bill to allow all fire protection facilities, including districts, to have access to impact fees imposed on new developments. There is no reason for city fire departments to have that power when fire districts do not. Various bills are being proposed that would affect the multi-year lid lift legislation passed last year. Interested persons should keep following these bills: HB 2545, HB 2554, and HB 2627. The associations support certain versions of this legislation but one retroactive law that would make even previously approved lid lifts temporary rather than permanent (HB 2627) is categorically opposed.

Also opposed is a bill that would require the ballot title of any taxing measure to include a statement describing the amount of tax increase or decrease and another bill that would require all public agencies to post certain information on their web site, if they operate one. See SB 5418 and SB 5420, respectively.

Finally, the associations oppose ESHB 1873, which would change wrongful death and personal injury actions somewhat. The changes that are proposed would broaden the scope of persons for whom the claims could be brought, such as adding the parents of the deceased. Also, the changes would add some non-economic damages that may be debatable elements of damages under present law, in certain types of cases, such as pain and suffering. Nonetheless, this proposal does not appear to be a major or earth-shattering change in the Washington law of torts. I am not at all convinced that the associations are acting wisely by taking positions on such legislation, which only indirectly involves the fire service. With legal rules in place such as the public duty doctrine, qualified immunity for medical personnel, and adequate insurance policies, do we really need to take a stance for the defense/insurance industry and against plaintiffs? After all, those injured parties are also our citizens, customers, and voters. There are plenty of public policy bills that directly affect the fire service, with which we should be concerned, without needing to address other bills of more general application. Anyway, that is my humble opinion.

A NARROW NLRB DECISION ON USE OF E-MAIL FOR UNION BUSINESS

Occasionally, fire department clients ask me about the legal rules, if any, that pertain to use of the employer's e-mail system for union business. Typically, my concern revolves around the rules prohibiting discrimination against union members engaged in concerted activities, and how such rules might be invoked if you treat union communications different from other allowed uses of e-mail. A recent

3-2 ruling from the National Labor Relations Board (NLRB) sheds some favorable light on this topic, at least from the employer's perspective.

A Eugene, Oregon newspaper adopted a policy prohibiting the use of company communications systems for all "non-job-related solicitations". A copyeditor, who also served as president of the union, got in trouble for sending three e-mails on union-related topics to co-workers, using the company's e-mail system. The copyeditor and union contested the discipline. The case showed the importance of how e-mail is analyzed or characterized by the factfinder. Is use of e-mail just another form of workplace communication, or should it be analyzed as use of company property?

The majority of the NLRB followed the reasoning of two Seventh U.S. Circuit Court of Appeals cases relating to use of bulletin boards. It defined discrimination as "the unequal treatment of equals". So long as the employer consistently based its actions on factors other than union status, its actions could not be deemed discriminatory. The Board found that two of the union president's e-mails were solicitations, and in the absence of evidence that the employer had allowed other, nonunion e-mail solicitations, the employer's policy banning all "non-job-related solicitations" could not be held to discriminate against union activity.

Unfortunately, the decision was issued on the last day of the term of member (and Chairman) Robert Battista. This raises the possibility of a change in the NLRB's direction on this issue, should a more union-oriented member be appointed soon. While President Bush has less than a year left to serve, we cannot predict that an appointment will be blocked by Democrats for that long.

Thankfully, perhaps many of my clients allow limited personal use of the e-mail system, including but not limited to union-related communications. Therefore, unless those privileges are abused or overused, maybe this issue will not really arise in Washington State fire districts. I hope so, as decisions like this

one do not inspire the kind of permanent confidence that the "final ruling" has been made.

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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.