

Firehouse Lawyer

Volume 8, Number 6

June 12, 2008

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Firehouse Lawyer Has Moved Again

I seem to have gotten into the habit of moving every two years. As of now, my office is located in the headquarters of Gig Harbor Fire and Medic One, also known as Pierce County Fire Protection District No. 5. My new e-mail address is firelaw@comcast.net and my new phone number is (253) 858-3226. The new fax number is (253) 858-3221. My understanding is that you may still send e-mail to joe@firehouselawyer.com and it should forward to my new address. This is a beautiful facility. Stop in for a visit.

WFCA SATURDAY SERIES AT CHELAN A SUCCESS – ETHICS CODE UNVEILED

The Firehouse Lawyer was asked by the Washington Fire Commissioners Association to develop a model ethics code or policy for Washington fire districts to consider. The model code or policy was only intended to apply to commissioners, but could easily be adapted to cover senior staff members or other employees. Obviously, before it could be made applicable to represented (unionized) employees, a district ethics code would have to be bargained. While the model code seemed to be well received by the assemblage of 230 "students" who attended my presentation, we tried to stress that a district should "customize" the code or policy to fit local needs and situations.

The purpose of this article is to provide readers with the highlights of the model code, so that those departments that could not send a representative to Lake Chelan may share in this draft. (Sorry you were not there; you also missed the 80 plus degrees of sunshine.) I use the word "draft" advisedly, as I feel that the model code is a work in progress, and as such certainly may be improved upon over time. Notwithstanding that point, I do believe strongly that it is a good idea for all fire departments to consider adoption of an ethics code, applicable at least to the leaders of the department. Why, you ask? Basically, I feel it is all about maintaining the public confidence and trust that normally, and historically, does prevail with regard to the community relationship with its fire department. For several reasons, the fire service, including EMS personnel, are held in high regard by local community members in

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this nation. Lest we take that for granted, please note that other governmental agencies, including law enforcement, are not universally loved by the populace that they serve. We do not want to let those good feelings slip away; an ethics code is one way to ensure that does not happen.

So what are the highlights of this model code? First, let me say that the sources of this model were certain state ethics code statutes, the Seattle and King County Ethics Code, and some local fire service ethics codes that I referenced.

One key provision in the model code is the list of prohibited behaviors, which I repeat here in its entirety. The code provides that a commissioner *shall not...*:

- Have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature that is in conflict with the proper discharge of the commissioner's duties.
- Be beneficially interested, directly or indirectly, in a contract, sale, lease, purchase, or grant that may be made by, through, or under the supervision of the commissioner, in whole or in part, and shall not accept, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in any such contract, sale, lease, purchase, or grant, except as set forth below.
- Use his or her position to secure special privileges or exemptions for himself, herself, or others.
- Give or receive or agree to receive any compensation, gift, reward, or gratuity from a source other than the fire district, for a matter connected with or related to the commissioner's services unless provided for by law.
- Receive, accept, take, seek, or solicit, directly or indirectly, any thing of economic value as a gift, gratuity, or favor from a person if it could be reasonably expected that the gift, gratuity, or favor would influence the vote, action, or judgment of the commissioner, or be considered as part of a reward for action or inaction.
- Accept employment or engage in business or professional activity that the commissioner might reasonably expect would require or induce him or her by reason of his or her official position to disclose confidential information acquired by reason of his or her official position.
- Disclose confidential information gained by reason of the commissioner's position, nor may the commissioner otherwise

use such information for his or her personal gain or benefit.

- Except in the course of official duties or incident to official duties, assist any person, directly or indirectly, in a transaction involving the district, where such commissioner's assistance is, or to a reasonable person would appear to be, enhanced or affected by the commissioner's position.
- Employ or use any district employee or other person, district funds or money, or district property under the commissioner's official control or direction, or in his or her official custody, for the private benefit or gain of the commissioner, an employee of the district, or another person, except as allowed by law. This section does not prohibit use of public resources to benefit citizens or others when such is part of district functions or official duties, or otherwise allowed by law.
- Use the facilities, personnel or resources of the district to assist or oppose a campaign for election or for the promotion or opposition to a ballot proposition, except pursuant to one of the recognized exceptions to RCW 42.17.130.
- Participate, by voting or otherwise, in any issue that comes before the Board of Commissioners, when the commissioner has any direct or indirect personal or financial stake in the outcome of the matter.
- Campaign for, or accept appointment or election to, any public office that would be incompatible with the office of fire commissioner, if concurrently serving as a fire commissioner.

The next important section takes a different approach. Instead of mandatory prohibitions, which are inherently negative, it provides aspirational goals, stated in a positive manner. It states that at all times, a commissioner *should*:

- Respect and comply with the law.

- Act at all times in a manner that promotes public confidence in the office of fire commissioner.
- Participate in establishing, maintaining, and enforcing high standards of conduct and personally observe those standards.
- Exhibit unquestionable integrity and have an uprightness of character and soundness of moral principle.
- Show respect for others through temperance, fairness and civility in the execution of their duties and conduct of their personal life.
- Have the courage to do what is right and stand up for those without power or authority.
- Have compassion that is inherent to understanding another's problems while controlling and understanding personal feelings.
- Conduct political campaigns in an honest and forthright manner, without attacking others in a negative way.
- Lead by example.
- Never forget that public office requires public trust and confidence.

Section 6 of the Model Code includes some exceptions from the prohibitions. These are, for the most part, suggested by state statutes. Of course, you may go beyond state law ethics prohibitions in your local ethics code, being instead more restrictive. Consider that option in thinking about the first section 6 exception, as you may find commissioner involvement in contracts (up to \$1,500.00 per month) to create more ethical problems than you care to deal with. In any event, here is the content of section 6:

Exceptions:

- A commissioner is allowed by state statute to be financially involved in a contract with the fire district, so long as payment to the commissioner or his/her business does not exceed \$1,500.00 in any calendar month, **provided** that such commissioner shall not

vote on any such contract in which he/she is beneficially interested. Moreover, such interest shall be disclosed to the governing body and noted in the minutes before formation of the contract.

- A commissioner may accept a gift in the form of food or beverage on infrequent occasions in the ordinary course of performance of duties, but no such gift shall exceed a value of fifty dollars (\$50.00).
- A commissioner is not deemed to have an interest in a contract, as those terms are used herein, if the commissioner has only a **remote interest** in the contract, so long as disclosure is made. A remote interest means, for example, the interest of a nonsalaried officer of a nonprofit corporation, the interest of a mere employee of a contracting party, where the compensation of that employee (commissioner) consists entirely of fixed wages or salary, the interest of only a landlord or tenant of the contracting party, or the interest of a less than 1% shareholder of a contracting corporation or cooperative; **provided** that this exception does not apply to a commissioner who attempts to influence, or does influence other district officers with respect to entering into the contract.

The next two sections of the model code deal with complaints and investigations, respectively. Requiring that complaints be in writing and be signed (not anonymous) is just common sense. Considering them open records, to me, is mandated by the lack of any clear exemption in the Public Records Act that would require otherwise. Most of the investigative procedure portion is just my suggestion and certainly some departments might do it a different way. I suggest that the Fire Chief appoint a three-member investigation committee of registered voters. Why the Fire Chief (a subordinate to the Board)? Primarily because I would make the naming of the committee a purely ministerial act, by establishing in advance a list of volunteer citizens and then appointing them in alphabetical order when facing a complaint that needs investigation. I provide for sixty (60) days to investigate merely because I think 30 may not be enough and longer than 60 may not protect a "right to speedy trial" sort of concept. I have suggested that a hearing may be optional, but if a commissioner demanded a hearing, I would suggest allowing them time for a verbal response, in addition to the written response. Finally, the committee should enter written findings and a recommendation about the case.

There is no section setting forth the appropriate Board procedure, in dealing with the committee recommendation. I did not feel it was necessary, but some comments in Chelan at the presentation suggested that it might not hurt to add a section dealing with that. My feeling is that the board should not tinker with the recommendation of the committee much, if at all, as that would weaken the ethics code and provide a disincentive to volunteering for the committee. Citizens whose recommendations are ignored will not be happy with the board. Thus, my suggestion is that their recommendation should be adopted by the board, by motion, unless there is evidence that the committee work was tainted by fraudulent conduct or by bias or prejudice. Having thought about the issue more since Chelan, my belief is that probably the accused commissioner should not participate in the debate or motion, as they have an obvious conflict of interest. Like any motion, if the proposition cannot command a majority vote, it is not



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adopted by the board. Thus, a tie vote would mean the recommendation and findings are not accepted, and thus there is no violation of the ethics code found or sustained by the board. Again, this should not happen very often, in my opinion, or your system will not work well (only for fraud or bias).

The final substantive section of the model policy deals with sanctions. If the infraction is held to be minor, and it is a first offense, then the only sanction is to notify the accused commissioner of the finding. If the infraction is major, even for a first offense, the Board Chair is authorized by motion to write a letter of censure to the accused commissioner. Copies should be sent to the Washington Fire Commissioners Association and any local county association of commissioners. Additionally, a copy is to be provided to the news media and any recall committee. For second or repeated offenses, the Board will move to demand the immediate resignation of the accused commissioner. Board members will even consider filing recall charges themselves.

In conclusion, I would stress that the model ethics code or policy is subject to local variations. You may want to "customize" the policy to suit your local conditions. Since the concept of an ethics code for fire commissioners is relatively new (although many municipal agencies have well established ethics policies applicable to all employees), I would anticipate that this draft may change over the years. Readers may obtain a copy of the model code by e-mailing the *Firehouse Lawyer* at firelaw@comcast.net.

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