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Hot off the press: A summary of newspaper publication requirements

by John E. Motylinski

Illinois newspapers love fire protection districts. Not only do their firefighters perform heroic acts that make for attractive headlines, but fire districts are great customers. Indeed, fire districts are statutorily required to publish certain notices in their local papers. This article details what the most common publication requirements are and how some of them may be changing.

Budget and Appropriation Ordinance Hearing Notices

Fire protection districts, as units of local government, are subject to the Illinois Municipal Budget Law (50 ILCS 330/1 *et seq.*). Section 3 of the Municipal Budget Law requires each district to adopt a “combined annual budget and appropriation ordinance” by the end of the first quarter of its fiscal year. (50 ILCS 330/3) Before the ordinance can be adopted, however, the district must first hold a hearing. Notice of this hearing must be published at least 30 days beforehand in an English-language newspaper that is published in the district’s geographic territory. If there is no newspaper published within the district’s boundaries, the district must put the budget hearing notice in a newspaper published within the county.

Truth in Taxation Law Hearing Notices

The Truth in Taxation Law requires a fire district to hold a public hearing if its annual tax levy exceeds 105% of the preceding year’s extension. (35 ILCS

200/18-65) As an initial step, however, a statutory hearing notice must be given in a newspaper “not more than 14 days nor less than 7 days prior” to the date of the public hearing. (35 ILCS 200/18-80) The Truth in Taxation Law also prescribes the form of the notice—it “shall be no less than 1/8 page in size,” the smallest type used shall be 12 point, and it “shall be enclosed in a black border no less than 1/4 inch wide.” Furthermore, the notice must be placed in the newspaper “where legal notices and classified advertisements appear.”

Treasurer’s Reports

Each year, each fire district’s treasurer is required by the Public Funds Statement Publication Act (30 ILCS 15/0.01 *et seq.*) to publish and file a “treasurer’s statement of receipts and disbursements—commonly known as a “treasurer’s report.” After the report is filed with the county clerk, the fire district must also arrange to have it run once in an English-language newspaper published in the district (or, if such a newspaper is not available, one located in the district’s county). (30 ILCS 15/2) However, the full report is not required to be published if: (1) there has been an audit performed by a certified public accountant of the district’s funds; (2) this audit is filed with county officials as required; (3) and a one-time “notice of the availability of the audit report” is published in the newspaper instead.

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Introducing the new minimum wage law

by Brian J. O’Connor

The new minimum wage law, Public Act 101-0001, took effect February 19, 2019. The new law incrementally increases the minimum wage from the current \$8.25 per hour up to \$15.00 per hour starting in January 2025. Employers must comply with the State’s minimum wage which is higher than the current Federal minimum wage of \$7.25 per hour which has been in effect since July 2009.

As fire protection district staff plans its budget for the upcoming and following fiscal years, remember to consider the potential increases to wages and salaries that might be attributable to the changing minimum wage.

For quite some time the minimum wage in the State of Illinois has been \$8.25 per hour. That rate remains unchanged through December 31, 2019. However, beginning January 1, 2020, the minimum wage periodically increases. Note that except for 2020, most rates increase annually.

| Time Period | Minimum Wage |
|--------------------------------|-----------------|
| Now to December 31, 2019 | \$8.25 per hr. |
| January 1 to June 30, 2020 | \$9.25 per hr. |
| July 1 to December 31, 2020 | \$10.00 per hr. |
| January 1 to December 31, 2021 | \$11.00 per hr. |
| January 1 to December 31, 2022 | \$12.00 per hr. |
| January 1 to December 31, 2023 | \$13.00 per hr. |
| January 1 to December 31, 2024 | \$14.00 per hr. |
| On and after January 1, 2025 | \$15.00 per hr. |

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How to avoid business-related conflicts of interest as a trustee

by Ryan M. Morton

Fire protection district trustees, like other government officials, must avoid conflicts of interest. That is one of the hallmark rules that gets drilled into trustees' heads at required training sessions. Sometimes those conflicts are clear; for instance, a trustee whose spouse works for the district should abstain from any vote directly involving that spouse. When the potential conflict involves business activity, though, the question becomes much more complicated.

As a general rule, the Illinois Fire Protection District Act prohibits trustees, or employees, from being "directly or indirectly interested financially in any contract work or business or the sale of any article," where the district pays the cost. (70 ILCS 705/4(a)) That same section also prohibits the sale of the district's real estate or property to trustee or employee. Alone, this section would appear to bar any business owner from becoming a trustee and continuing to sell merchandise or services to the district.

However, there are exceptions to this general rule. (70 ILCS 705/4(b) and 4(c)) Trustees can provide materials, merchandise, property, services, or labor in certain situations, provided the trustee meets several requirements. For all transactions:

- 1) The trustee must publicly disclose the "nature and extent" of the trustee's interest in the contract before the contract is awarded;
- 2) The trustee must abstain from voting on the contract; and
- 3) The board must approve the contract by majority vote.

There are additional requirements depending on the size of the contract. For contracts that do not exceed \$1,000, the aggregate value of contracts awarded that fiscal year to the same person, firm, association, partnership or corporation

cannot exceed \$2,000. For individual contracts that exceed \$1,000, that aggregate limit is \$25,000. Additionally, if a contract exceeds \$1,500, it must be awarded to the lowest responsible bidder after sealed bids. Lastly, for contracts over \$1,000, the trustee must have no more than a 7.5% ownership interest in the business receiving the award.



Importantly, each of the above requirements must be met for an exception to apply, or else the general prohibition against any transaction of business applies. A single failure to abide by these rules is a Class 4 felony, punishable by prison time. The best approach to determining if a conflict exists is to start by assessing the value of the contract, because ownership percentage only matters if the contract price is high enough.

For instance, imagine that a district wants to service a vehicle at a mechanic's shop owned partly by a trustee. How much is the bill? If the tune-up costs \$1,000 or less, the next question is whether the district will spend more than \$2,000 at that shop this fiscal year. If the answer is no, the trustee can simply disclose and abstain from voting on the bill without worrying about ownership. However, if the annual cost is more than \$2,000, the district must choose a different mechanic's shop. Alternatively, if the vehicle repair costs more than \$1,000, then the trustee must own 7.5% or less of the business, in addition to meeting the other requirements.

Generally speaking, a business is not barred from contracting with a fire protection district if the trustee is simply an employee of a company. While an argument could be made that the trustee is benefiting "indirectly" from that contract, the connection is too remote. The trustee would not even need to consider the exceptions, because the general rule would not apply.

A situation that often arises involves a trustee who works for a bank. There is a special provision in the statute for that scenario. If a trustee is an employee, officer, or part-owner (no more than 7.5% share) of a financial institution, the trustee is not barred from providing services to the district. However, the first three exception requirements (disclosure, abstention, and majority vote) still apply, and the contract must be awarded at a regular board meeting. (70 ILCS 705/4(f))

The statute also includes a special carve-out for employees, officers, or part-owners (no more than 7.5% share) of a public utility company. So, a trustee who works for an electric, gas, or telephone company is free to vote on the district's utility bills, without even having to worry about disclosure or abstention. Additionally, if a district's population is less than 7,500, the trustee's ownership interest could exceed 7.5%. (70 ILCS 705/4(d))

The rules are also different for a trustee who holds a position on the board of a not-for-profit organization that contracts with a fire protection district. In that

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Newspaper publication

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Competitive Bidding Advertisements

Section 11k of the Fire Protection District Act (70 ILCS 705/11k) requires fire protection districts to subject “supplies, services, or work involving an expenditure in excess of \$20,000” to competitive bidding. To that end, Section 11k requires fire districts to run an advertisement in a local paper to inform the public of the project. Specifically, this advertisement must be: (1) published at least 10 days, excluding Sundays and legal holidays, in advance of the date announced for the receiving of bids; and (2) in a secular English language *daily* newspaper of general circulation throughout the district.

However, Section 11k’s newspaper publication requirements are currently in flux. On May 16, 2019, House Bill 271 passed both chambers of the General Assembly. This legislation removes the “daily newspaper” requirement such that the bidding advertisement need only be placed in an English-language newspaper of general circulation throughout a fire district. The bill received unanimous support in the legislature, so it is expected the governor will sign it into law soon.

Ordinances Imposing Penalties or Appropriations

Section 7 of the Fire Protection District Act (70 ILCS 705/7) requires fire districts to publish “[a]ll ordinances imposing any penalty or making any appropriations” within one month after they are passed. Examples of such ordinances may include budget and appropriations ordinances, fire code ordinances, ambulance billing ordinances, non-resident fee ordinances, spiller pays ordinances, and other ordinances, but only if they impose a penalty or fine. The newspaper must be one published in the district’s territory or, if that is impossible, then one of general

circulation within the county. Importantly, ordinances covered by Section 7 do not become effective until 10 days after publication, so it is imperative to ensure compliance with its requirements.

Annexation Notices/Boundary Changes

When a fire district seeks to annex property or change its boundaries, there are a host of newspaper publication requirements that must be satisfied. (70 ILCS 705/1, 3.1, 3.2, 16c, 16d, 19, 19a, 20a, 21) There are too many specific obligations to detail here, but readers should be aware that, in most annexation proceedings, some form of newspaper publication is required.

Notices of Examination

If a fire commission seeks to hold an original appointment examination, it is required to first advertise the time and place in a notice at least two weeks in advance. (70 ILCS 705/16.09) Traditionally, this notice had to be placed in a newspaper published in the fire district. However, House Bill 271 has also amended this requirement to solely “a newspaper of general circulation within the fire protection district.”

Real Estate Sale Resolutions

Section 10a of the Fire Protection District Act (70 ILCS 705/10a) requires fire districts to dispose of real property in a particular fashion. After declaring the real estate surplus and having it appraised, the board of trustees may pass a resolution that formally sells it. However, this resolution “must be published at the first opportunity” after passage in a newspaper of general circulation published in the district or, if that is impossible, a newspaper of general circulation in the county.

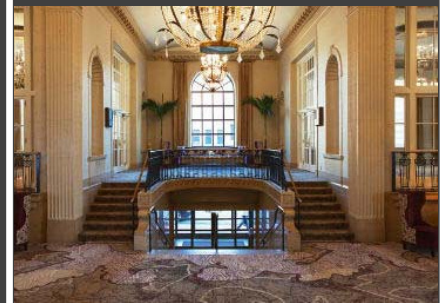
Fire Commission Rules

After enacting new rules, a Board of Fire Commissioners (or a Board of Trustees sitting in its stead) must publish a notice indicating where the public can access them. (70 ILCS 705/16.05) This notice must be placed in a newspaper published in the district or, failing that, in a general circulation newspaper published in the county. New rules become effective 10 days after they are published.

Conclusion

Given the breadth of materials required to be published, it is readily apparent that fire protection districts are one of the newspaper’s biggest customers. Nevertheless, compliance with statutory notices is critical, and failure to comply with such requirements may result in severe consequences. Therefore, please contact your attorney if your district needs assistance in crafting and publishing any mandatory newspaper notices. ■

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Minimum wage law

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This minimum wage applies for employees who are at least 18 years of age. This includes full-time and paid-on-premise firefighters. There are special wage rules for limited service paid-on-call and volunteer firefighters; while coverage of these rules is beyond the scope of this article, please check with your accountant and/or attorney to ensure compliance with the wage payment laws. Also, be mindful of non-firefighter and other district employees to whom the minimum wage laws also apply.

“Remember to consider the potential increases to wages and salaries that might be attributable to the changing minimum wage”

It is unlikely a district would employ persons under the age of 18. Different minimum wage rules apply for employees under the age of 18 and are contingent upon the number of hours worked for a district in a calendar year. If your district has employees under age 18, perhaps as temporary or part-time summer employees, confirm use of and compliance with the correct minimum wage for calculation of compensation for work performed for the district.

Minimum wage compliance will need to be monitored to ensure wages paid at least meet the changing minimum wage. Wages exceeding the minimum wage present no problem, except perhaps to a district's revenue and budget. However, failure of wages to meet the minimum wage brings vulnerability to administrative scrutiny, such as by the Illinois Department of Labor, and the potential for filing of claims in local courts.

Enforcement actions may also be brought by an aggrieved employee. In any case valuable administrative effort will be

diverted to correct an issue that might otherwise have been avoided with proper planning.

Penalties for non-compliance may include fines and possible assessment of treble damages against a non-compliant district in favor of an aggrieved employee. A situation which we have occasionally needed to address arises with different rates of pay for secondary employment under a Fair Labor Standards Act 7(g) agreement. Recall that the wage rate for an employee under a secondary employment under a 7(g) agreement may be less than the wage rate for the same employee for his or her primary duty/function. However, wage rates for both primary and secondary employment duties must meet or exceed minimum wage.

The time to plan and incorporate impacts of the changing minimum wage is now: don't be caught short. ■

Conflicts of interest

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situation, the trustee must abstain from voting on any proposition involving the not-for-profit. Additionally, the trustee does not even count for purposes of creating a quorum. However, if the trustee was appointed to that organization by the district to represent the district's interests, then the trustee may vote, as long as the not-for-profit appointment is unpaid. (70 ILCS 705/4 (i))

While there are many boxes to check in order for a trustee to avoid a conflict of interest, it is possible. In most cases, as long as the trustee is not a significant owner of a business and the total money spent by the district is less than \$25,000 in a given year, the trustee should be able to vote by following the rules above. If there is any uncertainty, though, contact your attorney to double-check that the requirements have been met. ■

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