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Is Your Fire Department A Municipal Department Or An Independent Nonprofit Firefighting Corporation?

By Rebecca Otto, State Auditor

Is your fire department a municipal department or is it an independent nonprofit firefighting corporation?

The answer to this question determines a number of important issues: who has control over fire department funds, how the affiliated relief association's board of trustees is composed, who approves association bylaw changes, and who is responsible for funding relief association benefits.

The Office of the State Auditor (OSA) occasionally encounters fire departments operating as "hybrids", with characteristics both of municipal fire departments and of independent nonprofit firefighting corporations. Hybrid arrangements are not authorized in state statute. These arrangements can pose financial, governance, and liability concerns.

Understanding some key differences between municipal fire departments and independent nonprofit firefighting corporations will help assure that your fire department is classified correctly and in compliance with the law.

Municipal Fire Departments

When a city or town has its own fire department, that department is classified as a "municipal fire department". Firefighters in municipal fire departments are considered city or town employees for most purposes, and the municipality issues them paychecks and corresponding tax statements. Firefighter hiring and discipline decisions are made by the municipality.

Cities or towns may also enter into contracts to have their municipal fire departments provide fire protection services to other entities. When a municipal fire department provides fire protection services for its own municipality, no contract is needed.

Control of Finances

Under Minnesota law, a city council or town board must control a municipality's finances. All assets intended for use by a municipal fire department are therefore controlled by the city or town. The municipality must receive and account for all municipal funds, and all expenditures must be approved in advance by the city council or town board. In addition, fire department vehicles and equipment should be titled in the municipality's name. There is no authority for a municipal fire department to control a separate fire department financial account.

For pension reporting purposes, fire departments that are operated as joint powers enterprises are considered municipal fire departments. Joint powers fire departments are formed when cities and towns make agreements with each other to exercise certain powers together, such as providing fire services. A joint powers fire department may or may not have the authority to handle its own finances.

It is important to review fire department contracts and agreements and to seek legal counsel when determining how a joint powers fire department's finances should be handled. If a joint powers fire department is authorized to control its own finances, the joint powers enterprise must maintain control of all funds and maintain reports of all receipts and disbursements. The same rules that apply to the individual cities and towns should be applied to any contracts, purchases, or disbursements of funds made under the joint powers agreement whenever possible.

Board of Trustees

A volunteer fire relief association affiliated with a municipal fire department is governed by a board of trustees consisting of nine individuals. One trustee must be the fire chief; six trustees are elected from the relief association membership; and two trustees must be designated by the municipal governing board or the joint powers board, if applicable.

Ratifying Benefit and Bylaw Changes

A relief association affiliated with a municipal fire department is generally required to seek ratification by the city council or town board of any benefit and bylaw changes. If a city council or town board ratifies benefit or bylaw changes, the municipality becomes responsible for supporting benefits at the ratified level. If contributions are needed to support ratified benefits, the municipality is required to contribute the necessary funds to the relief association.

A joint powers agreement should specify the processes for ratifying benefit and bylaw changes and for paying required contributions for a joint powers fire department. Some agreements specify that the joint powers board is the entity empowered with ratifying benefit and bylaw changes and is responsible for paying required contributions; other agreements require that these functions be performed by some or all of the municipalities that are party to the agreement.

Independent Nonprofit Firefighting Corporations

“Independent nonprofit firefighting corporations” are separate corporations that contract with cities and towns to provide fire services. An independent nonprofit firefighting corporation must register with the Minnesota Secretary of State to become incorporated as a nonprofit corporation and must complete an annual renewal of nonprofit status with the Secretary of State. In addition, an independent nonprofit firefighting corporation may have annual reporting requirements with other government offices, such as the Minnesota Attorney General’s Office, the Minnesota Department of Revenue, and the Internal Revenue Service.

Control of Finances

Independent nonprofit firefighting corporations are separate corporations and usually are authorized to control their own financial accounts. The nonprofit corporation funds the fire department by charging for fire services through its contracts with cities and towns. In these fire departments, the nonprofit corporation generally issues paychecks and corresponding tax statements to its firefighters and handles the hiring and discipline of firefighters.

If the nonprofit corporation owns the fire department vehicles and equipment, they should be titled in the corporation’s name. Some independent nonprofit firefighting corporations use a city or town’s fire department vehicles and equipment. In these cases, there should be a contract between the nonprofit corporation and the public entity for use of the property and equipment, and the public entity should be reasonably compensated. Issues such as insurance and legal liability should also be addressed in the contract.

Board of Trustees

A relief association affiliated with an independent nonprofit firefighting corporation is governed by a board of trustees consisting of nine individuals. One trustee must be the fire chief; six trustees are elected from the relief association membership; and two trustees are officials of the municipalities served by the fire department. If only one municipality contracts with the firefighting corporation, the two municipal trustees must be officials of that municipality, designated annually by the municipality’s governing body. If two or more municipalities contract with the firefighting corporation, the municipal trustees must be from each of the two municipalities with the largest population, designated annually by the governing bodies of the municipalities.

Ratifying Benefit and Bylaw Changes

A relief association affiliated with an independent nonprofit firefighting corporation must generally seek ratification of benefit and bylaw changes from the independent corporation, and the corporation is responsible for making required contributions to the association.

Additional Information

Two Statements of Position from the OSA provide additional information regarding municipal fire departments, independent nonprofit firefighting corporations, and joint powers fire departments. To find them, go to the OSA website at www.auditor.state.mn.us. Once there, choose the “For Local Officials” menu option, and then select “Statements of Position.” Under the “Pensions” heading, choose “Differences between Municipal Departments and Independent Nonprofit Firefighting Corporations” and “Joint Powers Fire Departments and Fire Districts”.