

**Statement of Position****Fire Departments: The Differences between Municipal Departments and Independent Nonprofit Firefighting Corporations**

Whether your fire department is a municipal department or an independent nonprofit firefighting corporation determines who has control over fire department funds, how the affiliated relief association's board of trustees is composed, who approves relief 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 of both a municipal fire department and an independent nonprofit firefighting corporation. Minnesota law does not authorize these hybrid arrangements, and they can create financial, governance, and liability concerns. This Statement of Position is designed to assist you in determining your fire department's proper classification as either a municipal department or as an independent nonprofit firefighting corporation.

**Municipal Fire Departments**

When a city or town has its own fire department, the fire department is classified as a municipal fire department. Firefighters of municipal fire departments are considered city or town employees for most purposes, and the municipality issues to them paychecks and corresponding tax statements. Firefighter hiring and discipline decisions are made by the municipality. In these fire departments, the city or town may also sign contracts with other entities allowing those entities to receive fire protection services from the fire department, but the city or town does not have a contract with its own fire department to provide fire protection services for the municipality.

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 must therefore be controlled by the city or town. The municipality must receive and account for all municipal funds, and all expenditures, including those for the fire department, and must be approved in advance by the city council or town board. There is no authority for a municipal fire department to control separate fire department financial accounts. In addition, fire department vehicles and equipment should be titled in the municipality's name.<sup>1</sup>

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<sup>1</sup> For more information about fire department accounts, see the OSA's Statement of Position titled "[Checking Accounts for Fire Departments and Fire Relief Associations](#)."

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This Statement of Position is not legal advice and is subject to revision.

Some municipal fire departments are operated as joint powers entities. Joint powers fire departments are formed when cities and towns have 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 entity must maintain control of all funds and must maintain reports of all receipts and disbursements. To the extent practicable, the same rules that apply to the individual cities and towns must be applied to any contracts, purchases, or disbursements of funds made under the agreement.

### Board of Trustees

A fire relief association affiliated with a municipal fire department is governed by a board of trustees consisting of nine individuals.<sup>2</sup> Six trustees must be elected from among the relief association membership, one trustee must be the fire chief, and the remaining two trustees must be designated by the municipal governing board or joint powers board.<sup>3</sup>

### Ratifying Benefit and Bylaw Changes

A relief association affiliated with a municipal fire department is generally required to seek ratification of benefit and bylaw changes by the city council or town board. 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.<sup>4</sup>

The joint powers agreement of a joint powers fire department should specify the process for ratifying benefit and bylaw changes and paying required contributions. 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's Office to become incorporated as a nonprofit corporation and must complete an annual renewal to maintain its nonprofit status. In addition, an independent nonprofit firefighting corporation may have other annual reporting requirements with various government offices, including the Minnesota Attorney General's Office, the Minnesota Department of Revenue, and the Internal Revenue Service.

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<sup>2</sup> See Minn. Stat. § 424A.04, subd. 1.

<sup>3</sup> For more information on the designation of municipal trustees, see Minn. Stat. § 424A.04, subd. 1. See also the OSA's Statement of Position titled "[Governance for Fire Relief Associations](#)."

<sup>4</sup> For more information about municipal contributions to a fire relief association, see the OSA's Statement of Position titled "[Required Municipal Contributions to Fire Relief Associations](#)."

## Finances

Independent nonprofit firefighting corporations are separate corporations and usually are authorized to control their own financial accounts. 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. The nonprofit corporation funds the fire department by charging for fire services through its contracts with cities and towns.

If the nonprofit corporation owns the fire department vehicles and equipment, the vehicles and equipment should be titled in the corporation's name. Some independent nonprofit firefighting corporations use a city's 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. The contract should also address issues such as insurance and legal liability.

## Board of Trustees

A relief association affiliated with an independent nonprofit firefighting corporation is also governed by a board of trustees consisting of nine individuals. Six trustees must be elected from among the relief association membership, one trustee must be the fire chief, and the remaining two trustees must be drawn from the officials of the municipalities served by the fire department.<sup>5</sup>

## Ratifying Benefit and Bylaw Changes

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

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<sup>5</sup> If only one municipality contracts with the independent nonprofit firefighting corporation, the municipal trustees must be two officials of the contracting municipality who are designated annually by the governing body of the municipality. If two or more municipalities contract with the independent nonprofit firefighting corporation, the municipal trustees must be one official from each of the two largest municipalities in population who are designated annually by the governing bodies of the applicable municipalities. Minn. Stat. § 424A.04, subd. 1.