



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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I - 07-051

GOVERNMENTAL ETHICS AND
CONFLICT OF INTEREST:
Firefighter or Paramedic Serving as
Fire Protection District Trustee

The Honorable James W. Glasgow
State's Attorney, Will County
121 North Chicago Street
Joliet, Illinois 60432

Dear Mr. Glasgow:

I have your letter inquiring whether a full-time, paid firefighter or paramedic may simultaneously serve as a fire protection district trustee of the district that employs him without violating section 4 of the Fire Protection District Act (the FPD Act) (70 ILCS 705/4 (West 2006)). For the reasons set out below, pursuant to section 12 of the Local Governmental Employees Political Rights Act (the Political Rights Act) (50 ILCS 135/12 (West 2006), as amended by Public Act 95-142, effective August 13, 2007), it is permissible for a full-time, paid firefighter or paramedic to serve simultaneously as a fire protection district trustee. A trustee who is also a firefighter or paramedic, however, must abstain from voting on matters pertaining to his or her own compensation or benefits.

BACKGROUND

Fire Protection District Act

Section 4 of the FPD Act provides, in pertinent part:

*No trustee or employee of [a fire protection] district shall be directly or indirectly interested financially in any contract work or business or the sale of any article, the expense, price or consideration of which is paid by the district; * * **

* * *

(c) *[However], any trustee or employee may provide materials, merchandise, property, services or labor if:*

A. *the award of the contract is approved by a majority vote of the board of trustees of the fire protection district provided that any such interested member shall abstain from voting; and*

B. *the amount of the contract does not exceed \$1000; and*

C. *the award of the contract would not cause the aggregate amount of all such contracts so awarded to the same person, firm, association, partnership, corporation, or cooperative association in the same fiscal year to exceed \$2000; and*

D. *such interested member publicly discloses the nature and extent of his interest prior to or during deliberations concerning the proposed award of the contract; and*

E. *such interested member abstains from voting on the award of the contract, though he shall be considered present for the purposes of establishing a quorum. (Emphasis added.)*

Similarly, section 3 of the Public Officer Prohibited Activities Act (50 ILCS 105/3 (West 2006)) prohibits public officers in general from being financially interested "in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote." Section 3 contains an analogous exception for small contracts to that contained in section 4 of the FPD Act. 50 ILCS 105/3(b)(2) (West 2006) (\$2,000 maximum contract amount and \$4,000 maximum aggregate annual contract amount).¹ For the sake of convenience, our discussion will be limited to the provisions of section 4 of the FPD Act, which specifically addresses officers of fire protection districts. Our conclusions, however, are equally applicable to section 3 of the Public Officer Prohibited Activities Act.

¹You have indicated that all full-time firefighters and paramedics that are the subject of your inquiry are compensated in excess of the applicable maximum contract limits.

Section 6 of the FPD Act (70 ILCS 705/6 (West 2006), as amended by Public Act 95-331, effective August 21, 2007) provides, in pertinent part:

(b) Except as otherwise provided in Sections 16.01 through 16.18,^[2] the board may appoint and enter into a multi-year contract not exceeding 3 years with a fire chief and may appoint any firemen that may be necessary for the district, who shall hold office during the pleasure of the board and who shall give any bond that the board may require. The board may prescribe the duties and fix the compensation of all the officers and employees of the fire protection district.

* * *

(e) The trustees have express power to provide for the benefit of its employees, volunteer firemen and paid firemen, group life, health, accident, hospital and medical insurance, or any combination thereof; and to pay for all or any portion of the premiums on such insurance.

Pursuant to section 6, the board of trustees of a fire protection district has the authority to fix the compensation of all of its officers and employees, and pay premiums on group life, health, accident, hospital, or medical insurance for the benefit of its employees and firefighters. Additionally, pursuant to section 22 of the FPD Act (70 ILCS 705/22 (West 2006)), the board of trustees has the authority to contract with a private person, hospital, corporation, or another governmental unit for the provision or operation of emergency ambulance services. To the extent that a fire protection district board compensates its firefighters and/or paramedics for their services, a contract exists between the parties, for purposes of section 4 of the FPD Act. See Ill. Att'y Gen. Inf. Op. No. I-97-024, issued August 25, 1997.

Section 4 of the FPD Act does not specifically prohibit a full-time employee of a fire protection district from simultaneously serving as a trustee of the district. A fire protection district trustee who possesses a personal, pecuniary interest in a contract (including contracts for

²All fire protection districts having fire departments with full-time, paid officers or members are subject to sections 16.01 through 16.18 of the FPD Act. 70 ILCS 705/16.01 through 16.18 (West 2006). In all such districts, the board of trustees *may* appoint a board of fire commissioners. If the board of trustees chooses not to do so, then it must perform the duties of the board of fire commissioners as outlined in sections 16.01 through 16.18. In districts where the board of trustees appoints a board of fire commissioners, the board of fire commissioners is responsible for appointing all officers and members of the fire departments in their respective districts except for the chief of the fire department. 70 ILCS 705/16.04a (West 2006). However, the board of fire commissioners does not have the power to fix the compensation of such officers or members or pay premiums on their insurance.

personal services, whether written or otherwise) entered into by the fire protection district which exceeds the *de minimis* interest provisions, however, would necessarily violate section 4. Section 4 of the FPD Act, therefore, effectively precludes simultaneous tenure as both a trustee and as a full-time employee of the district unless another provision of the law expressly permits such service. See Ill. Att'y Gen. Inf. Op. No. I-97-024, issued August 25, 1997 (firefighters serving as fire protection district trustees); Ill. Att'y Gen. Inf. Op. No. I-93-013, issued February 26, 1993 (volunteer firefighters serving as fire protection district trustees).

Political Rights Act

In this regard, section 12 of the Political Rights Act, which was added by Public Act 94-316, effective July 25, 2005, provides:

Elective and appointed office.

(a) A member of any fire department or fire protection district may:

(1) be a candidate for elective public office and serve in that public office if elected;

(2) be appointed to any public office and serve in that public office if appointed; and

(3) as long as the member is not in uniform and not on duty, solicit votes and campaign funds and challenge voters for the public office for which the member is a candidate. 50 ILCS 135/12 (West 2006), as amended by Public Act 95-142, effective August 13, 2007.

You have inquired whether section 12 of the Political Rights Act authorizes firefighters or paramedics who earn more than the maximum permitted contract amounts set forth in section 4 of the FPD Act to simultaneously serve as fire protection district trustees.

ANALYSIS

The cardinal rule of statutory construction is to ascertain and give effect to the intent of the General Assembly in enacting a law. *Moore v. Green*, 219 Ill. 2d 470, 479 (2006). The statutory language is the best indicator of legislative intent. When the plain language of one statute apparently conflicts with the plain language of another statute, they must be construed

together, if such an interpretation is reasonable. *Moore*, 219 Ill. 2d at 479. If the two statutes cannot be reconciled, then traditional rules of statutory construction must be applied to determine which statute controls. *Barragan v. Casco Design Corp.*, 216 Ill. 2d 435, 451-52 (2005). If a general statutory provision and a more specific statutory provision relate to the same subject, the particular provision generally prevails. *Hernon v. E.W. Corrigan Construction Co.*, 149 Ill. 2d 190, 195 (1992). Moreover, the more recent statute is generally deemed to take precedence over the earlier statute. *Jahn v. Troy Fire Protection District*, 163 Ill. 2d 275, 282 (1994).

Pursuant to section 12 of the Political Rights Act, a firefighter or a paramedic who is a member of a fire protection district or fire department is expressly authorized to serve in *any* elected or appointed public office. The office of fire protection district trustee of the employing district is neither expressly nor impliedly excepted from the category of offices in which a firefighter or paramedic may serve. As noted above, however, section 4 of the FPD Act prohibits trustees from having a personal, pecuniary interest in any contract entered into by the fire protection district board beyond the minimal contract amounts set forth therein, including employment agreements between a district and a firefighter or paramedic. Because the provisions of both of these Acts cannot be given effect in accordance with their terms, they must be construed together to determine whether the provisions can be reconciled.

The legislative debates concerning House Bill 1338, which as enacted became Public Act 94-316, provide guidance in ascertaining the intent of section 12 of the Political Rights Act. Representative Schmitz, the bill's sponsor, summarized the bill's purpose as follows:

Currently, firefighters in the State of Illinois can run for any office in the land except for which the town they ... they happen to work in, if they reside there. This Bill will simply allow them to run for city council. Remarks of Rep. Schmitz, March 9, 2005, House Debate on House Bill No. 1338, at 44.

Similarly, the Senate debates on House Bill 1338 focus almost exclusively on the inherent conflicts of interest arising out of an individual's simultaneous service, within the same municipality, as a firefighter and as a city council member. Remarks of Sen. Roskam, May 19, 2005, Senate Debate on House Bill No. 1338, at 242; Remarks of Sen. Lauzen, May 19, 2005, Senate Debate on House Bill No. 1338, at 243-44; Remarks of Sen. Viverito, May 19, 2005, Senate Debate on House Bill No. 1338, at 245-46. Specifically, Senators Roskam, Lauzen, and Viverito voiced their concern that city council members would be put in the position of voting on, and negotiating, their own compensation as firefighters. Senator Crotty, the bill's co-sponsor, responded that city council members are still required to comply with the same "local ethics ordinances" as other public officials, therefore they "can also recuse themselves from - - from any conflict." Remarks of Sen. Crotty, May 19, 2005, Senate Debate on House Bill No. 1338, at 241, 243.

There is no indication in the legislative debates that the provisions of section 4 of the FPD Act or the office of fire protection district trustee were considered in the drafting of House Bill 1338 or during action on the floor. However, the language of section 12 was drafted broadly and is not limited to firefighters and paramedics of municipal fire departments, although that may have been the primary concern of the sponsors. The debates do demonstrate that the General Assembly recognized the inherent conflicts that would inevitably arise from an employee serving in a public office that is responsible for determining his or her compensation as an employee, but apparently did not consider those potential conflicts to outweigh the benefits of the bill. It must be concluded, therefore, that it was the intention of the General Assembly to permit firefighters and paramedics employed by fire protection districts to serve as fire protection district trustees. To the extent that section 4 of the FPD Act impliedly prohibits such simultaneous tenure if a firefighter's or paramedic's compensation exceeds the statutory contract limitations, section 12 of the Political Rights Act must be construed as superseding its provisions.³

This conclusion does not mean that subsection 4(c) of the FPD Act has been superseded in its entirety. To the contrary, although the maximum monetary limitations in subsections 4(c)(B) and 4(c)(E) of the FPD Act may no longer be applicable to trustees with respect to contracts for their services as firefighters and paramedics, the remainder of the provisions of section 4 may still be given effect.

It is clear from the debates concerning the passage of Public Act 94-316 that it was anticipated that persons who were employed as paid firefighters or paramedics and who also served on the governing body would be required to "recuse themselves" in order to avoid possible conflicts of interest concerning fixing their own compensation. See Remarks of Sen. Crotty, May 19, 2005, Senate Debate on House Bill No. 1338, at 243. Therefore, requiring a trustee to abstain from acting upon contracts that affect a trustee's personal, pecuniary interests and otherwise comply with the requirements of subsections 4(c)(A), 4(c)(D), and 4(c)(E) of the FPD Act is entirely consistent with section 12 of the Political Rights Act. Accordingly, firefighters and paramedics who also serve as fire protection district trustees must comply with subsections 4(c)(A), 4(c)(D), and 4(c)(E) of the FPD Act by disclosing "the nature and extent of [their] interest prior to or during deliberations concerning" their compensation or benefits and must "abstain[] from voting" thereon. Further, fire protection district trustees continue to be bound by the *de minimis* limitations with respect to the award of any other contracts in which they are interested.

³Moreover, section 12 of the Political Rights Act was enacted more recently than section 4 of the FPD Act. Furthermore, due to the fact that section 12 focuses on members of the fire department or fire protection district and section 4 focuses on fire protection district trustees, neither provision is more specific than the other with respect to simultaneous service as a firefighter or paramedic and fire protection district trustee.


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CONCLUSION

Pursuant to section 12 of the Local Governmental Employees Political Rights Act, a full-time, paid firefighter or paramedic may serve simultaneously as a fire protection district trustee if elected or appointed to that office. A trustee who is also a firefighter or paramedic, however, must abstain from voting on matters pertaining to his or her own compensation or benefits.

This is not an official opinion of the Attorney General. If we may be of further assistance, please advise.

Very truly yours


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