



REBECCA OTTO  
STATE AUDITOR

# STATE OF MINNESOTA

## OFFICE OF THE STATE AUDITOR

SUITE 500  
525 PARK STREET  
SAINT PAUL, MN 55103-2139

(651) 296-2551 (Voice)  
(651) 296-4755 (Fax)  
[state.auditor@osa.state.mn.us](mailto:state.auditor@osa.state.mn.us) (E-mail)  
1-800-627-3529 (Relay Service)

July-August 2013

Article for *Minnesota Fire Chief*

---

### **Volunteer Fire Departments: Municipal Departments vs. Independent Nonprofit Firefighting Corporations**

*By Rebecca Otto, State Auditor*

Is your volunteer fire department a municipal department, or an independent nonprofit firefighting corporation? The answer to this question is important because it determines 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 of both municipal fire departments and independent nonprofit firefighting corporations. Hybrid arrangements are not authorized in state statute and can pose financial, governance, and liability concerns. This article is designed to assist you in clarifying your department's classification by explaining some differences between municipal fire departments and independent nonprofit firefighting corporations.

#### **Municipal Fire Departments**

When a city or town has its own fire department, the 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 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 enter into contracts with other entities to provide fire protection services. When a municipal fire department provides fire protection services for its municipality, no contract is needed.

#### 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 must be approved in advance by the city council or

town board. There is no authority for a municipal fire department to control a separate fire department financial account. In addition, fire department vehicles and equipment should be titled in the municipality's name.

Fire departments that are operated as joint powers entities are also considered municipal fire departments for pension reporting purposes. 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 volunteer fire relief association affiliated with a municipal fire department is 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 designated by the municipal governing board or joint powers board.

#### 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 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.

Each joint powers fire department's joint powers agreement should specify the process for ratifying benefit and bylaw changes and for 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 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 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.

### 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, 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 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. 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.

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.

### 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 required contributions to the association.