

Richard Gutman
Richard Gutman, P.C.
55 Warfield Street
Montclair, NJ 07043-1116
973-744-6038 (voice & fax)
rickggg@yahoo.com
Attorney for Plaintiff John Paff

FILED

NOV 22 2011

KENNETH J. GRISPIN, P.J.Cv.

JOHN PAFF,
Plaintiff,

v.

NEW JERSEY STATE FIREMEN'S
ASSOCIATION,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
UNION COUNTY
DOCKET NO.

Civil Action

11-4371-11

ORDER TO SHOW CAUSE

THIS MATTER being brought before the Court by Richard Gutman, P.C., attorney for plaintiff John Paff seeking relief by way of summary action pursuant to R. 4:67-1(a), based upon the facts set forth in the verified complaint filed herewith; and the Court having determined that this matter may be commenced by order to show cause as a summary proceeding pursuant to N.J.S.A. 47:1A-6 and for good cause shown.

IT IS on this 22nd day of November, 2011, ORDERED that the defendant New Jersey State Firemen's Association appear and show cause on the 6th day of January, 2012 before the Superior Court at the Union County Courthouse in Elizabeth, New Jersey at 9 o'clock in the forenoon, or as soon thereafter as counsel can be heard, why judgment should not be entered for:

A. A declaration that the NJSFA violated OPRA and the common law right of access to public records by denying John Paff access to the requested pension records;

B. An order that the NJSFA grant John Paff access to the requested pension records;

C. An award of costs and attorney's fees; and

D. Such other relief as the Court deems equitable and just.

And it is further *ORDERED* that:

1. A copy of this order to show cause, verified complaint and all supporting affidavits or certifications submitted in support of this application be served upon the defendant by the method set forth in R. 4:4-4(a)(7) within 10 days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4, this being original process.

2. The plaintiff must file with the court its proof of service of the pleadings on the defendant no later than three (3) days before the return date.

3. Defendant shall file and serve a written answer to this order to show cause and the relief requested in the verified complaint and proof of service of the same by December 22, 2011. The answer must be filed with the Clerk of the Superior Court in the county listed above and a copy of the papers must be sent directly to the chambers of Judge Regina Caulfield.

4. The plaintiff must file and serve any written reply to the defendant's order to show cause opposition by January 3, 2012. The reply papers must be filed with the Clerk of the Superior Court in the county listed above and a copy of the reply papers must be sent directly to the chambers of Judge Caulfield.

5. If the defendant does not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that the plaintiff files a proof of service and a proposed form of order at least three days prior to the return date.

6. If the plaintiff has not already done so, a proposed form of order addressing the relief

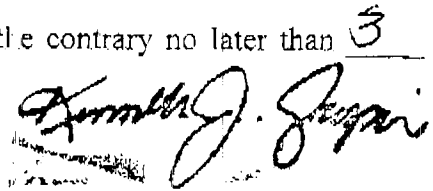
sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the court no later than three (3) days before the return date.

7. Defendant, take notice that the plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The verified complaint attached to this order to show cause states the basis of the lawsuit. If you dispute this complaint, you or your attorney must file a written answer and proof of service before the return date of the order to show cause.

These documents must be filed with the Clerk of the Superior Court in the county listed above. A list of these offices is provided. Include a \$135.00 filing fee payable to the "Treasurer State of New Jersey." You must also send a copy of your answer to the plaintiff's attorney whose name and address appear above. A telephone call will not protect your rights; you must file and serve your answer (with the fee) or judgment may be entered against you by default.

8. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live. A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.

9. The Court will entertain argument, but not testimony, on the return date of the order to show cause, unless the court and parties are advised to the contrary no later than 3 days before the return date.



J.S.C.

KENNETH J. GRISPIN, P.J.Cv.

MIDDLESEX COUNTY:
Deputy Clerk of the Superior Court
Administration Building
Third Floor
1 Kennedy Sq., P.O. Box 2833
New Brunswick, NJ 08903-2833

LAWYER REFERRAL
(732) 828-0052
LEGAL SERVICES
(732) 249-7600

MONMOUTH COUNTY:
Deputy Clerk of the Superior Court
Court House
71 Monument Park
P.O. Box 1269
Freehold, NJ 07728-1289

LAWYER REFERRAL
(732) 431-5544
LEGAL SERVICES
(732) 886-0020

MORRIS COUNTY:
Deputy Clerk of the Superior Court
Civil Division
30 Schuyler Pl., P.O. Box 910
Morristown, NJ 07960-0910

LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(873) 286-6911

OCEAN COUNTY:
Deputy Clerk of the Superior Court
Court House, Room 119
118 Washington Street
Toms River, NJ 08754

LAWYER REFERRAL
(732) 240-3888
LEGAL SERVICES
(732) 341-2727

PASSAIC COUNTY:
Deputy Clerk of the Superior Court
Civil Division
Court House
77 Hamilton St.
Paterson, NJ 07505

LAWYER REFERRAL
(973) 278-8223
LEGAL SERVICES
(973) 345-7171

SALEM COUNTY:
Deputy Clerk of the Superior Court
82 Market St., P.O. Box 10
Salem, NJ 08079

LAWYER REFERRAL
(856) 935-5626
LEGAL SERVICES
(856) 461-0003

SOMERSET COUNTY:
Deputy Clerk of the Superior Court
Civil Division Office
New Court House, 3rd Fl.
P.O. Box 3000
Somerville, NJ 08876

LAWYER REFERRAL
(908) 885-2323
LEGAL SERVICES
(908) 231-0840

SUSSEX COUNTY:
Deputy Clerk of the Superior Court
Sussex County Judicial Center
43-47 High Street
Newton, NJ 07860

LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 383-7400

UNION COUNTY:
Deputy Clerk of the Superior Court
1st Fl., Court House
2 Broad Street
Elizabeth, NJ 07207-6073

LAWYER REFERRAL
(908) 353-4716
LEGAL SERVICES
(908) 354-4340

WARREN COUNTY:
Deputy Clerk of the Superior Court
Civil Division Office
Court House
413 Second Street
Belvidere, NJ 07823-1500

LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 475-2010

Richard Gutman
Richard Gutman, P.C.
55 Warfield Street
Montclair, NJ 07043-1116
973-744-6038 (voice & fax)
rickggg@yahoo.com
Attorney for Plaintiff John Paff

JOHN PAFF,	:	
	:	SUPERIOR COURT OF NEW JERSEY
Plaintiff,	:	LAW DIVISION, CIVIL PART
	:	UNION COUNTY
v.	:	DOCKET NO.
	:	
NEW JERSEY STATE FIREMEN'S	:	Civil Action
ASSOCIATION,	:	
	:	
Defendant.	:	

VERIFIED COMPLAINT

Plaintiff John Paff, by way of complaint against the New Jersey State Firemen's Association, states as follows:

1. This is an action under the Open Public Records Act (OPRA), N.J.S.A. 47:1A-6, and the common law right of access to public records, seeking public access to pension records of the New Jersey State Firemen's Association.
2. Plaintiff John Paff is an individual residing at 1605 Amwell Road, Somerset, New Jersey, 08873.
3. Plaintiff John Paff is a Life Member of the State Firemen's Association.
4. Defendant New Jersey State Firemen's Association is an association having its principal office at 1700 Galloping Hill Road, Kenilworth, Union County, New Jersey.
5. On September 26, 2011, John Paff requested from the State Firemen's Association the following record: "N.J.S.A. 47:1A-5(f) requires the custodian of every public agency to adopt a records request form for the public to use for requesting records. I'd like a copy of the form

adopted by the custodian for the Firemen's Association." (Pa1.)

6. On September 26, 2011, John Paff also requested from the State Firemen's Association "records that shows the amount and type of pension received by each member of the Executive Committee who served immediately prior to the current members of the Executive Committee (see N.J.S.A. 47:1A-10)." (Pa1-2.)

7. The State Firemen's Association received Paff's record request on September 26, 2011. (Pa3.)

8. On October 12, 2011, John Paff's counsel faxed the State Firemen's Association a letter noting that eleven business days had passed since it received Paff's record request. Paff's counsel warned that Paff would seek his legal remedies if the State Firemen's Association did not respond to Paff record request by October 17, 2011. (Pa4.)

9. The State Firemen's Association responded to Paff record request on October 13, 2011. (Pa5-13.)

**First Count
(Untimely OPRA Response)**

10. The State Firemen's Association's response violated the OPRA requirement that "a custodian of a government record shall grant access to a government record or deny a request for access to a government record as soon as possible, but not later than seven business days after received the request . . ." N.J.S.A. 47:1A-5(i).

WHEREFORE, Plaintiff Paff demands judgment against the State Firemen's Association as follows:

A. A declaration that the State Firemen's Association violated OPRA's deadline for a response to a record request;

B. An order that the State Firemen's Association respond to future OPRA requests in a

timely manner;

C. An award of costs and attorney's fees; and

D. Such other relief as the Court deems equitable and just.

**Second Count
(Lack of OPRA Record Request Form)**

11. Plaintiff repeats the allegations stated above as if set forth at length herein.

12. In its October 13, 2011, response, the State Firemen's Association admitted, "the Association does not have . . . an OPRA request form." (Pa6.)

13. The State Firemen's Association is required by OPRA to "adopt a form for the use of any person who requests access to a government record held or controlled by the public agency." N.J.S.A. 47:1A-5(f).

WHEREFORE, Plaintiff Paff demands judgment against the State Firemen's Association as follows:

A. A declaration that the State Firemen's Association's failure to adopt a record request form violated OPRA;

B. An order that the State Firemen's Association adopt a record request form within 45 days;

C. An award of costs and attorney's fees; and

D. Such other relief as the Court deems equitable and just.

**Third Count
(Lack of OPRA Custodian)**

14. Plaintiff repeats the allegations stated above as if set forth at length herein.

15. In its record response, the State Firemen's Association admitted, "the Association does not have a 'records custodian' as required of public agencies under the Act." (Pa5.)

16. The State Firemen's Association violated OPRA's requirement that it appoint a record custodian to promptly comply with a request to inspect, examine, copy, or provide a copy of a government record. N.J.S.A. 47:1A-5(f), -1.1.

WHEREFORE, Plaintiff Paff demands judgment against the State Firemen's Association as follows:

A. A declaration that the State Firemen's Association violated OPRA by failing to appoint a records custodian;

B. An order that the State Firemen's Association appoint a records custodian within 45 days;

C. An award of costs and attorney's fees; and

D. Such other relief as the Court deems equitable and just.

**Fourth Count
(OPRA Denial of Record Access)**

17. Plaintiff repeats the allegations stated above as if set forth at length herein.

18. In its October 13, 2011, response, the State Firemen's Association denied John Paff access to the individual pension information on the grounds that the State Firemen's Association is not a public agency. (Pa6.)

19. The State Firemen's Association is an OPRA public agency.

20. The State Firemen's Association violated OPRA by denying access to the requested individual pension information. N.J.S.A. 47:1A-10.

WHEREFORE, Plaintiff Paff demands judgment against the State Firemen's Association as follows:

A. A declaration that the State Firemen's Association is an OPRA public agency and violated OPRA by denying access to the requested individual pension records;

B. An order that the State Firemen's Association grant John Paff access to the requested individual pension records within 45 days;

C. An award of costs and attorney's fees; and

D. Such other relief as the Court deems equitable and just.

**Fifth Count
(Common Law Denial of Record Access)**

21. Plaintiff repeats the allegations stated above as if set forth at length herein.

22. John Paff and/or the public's need for access to the requested records individual pension records is greater than the State Firemen's Association's need for secrecy.

23. The State Firemen's Association's denial of access to the requested record violated the common law right of access to public records.

WHEREFORE, Plaintiff Paff demands judgment against the State Firemen's Association as follows:

A. A declaration that the State Firemen's Association violated the common law right to access by denying access to the requested individual pension records;

B. An order that the State Firemen's Association grant Paff access to the requested individual pension records;

C. An award of costs and attorney's fees; and

D. Such other relief as the Court deems equitable and just.

Respectfully submitted,

Richard Gutman

November 16, 2011

Designation of Trial Counsel

Plaintiff designates Richard Gutman as trial counsel in this action.

Certification Pursuant to R. 4:5-1(b)

Plaintiff certifies that the matter in controversy is not the subject of any other action pending in any court or arbitration proceeding and that he is not contemplating any other action or arbitration proceeding regarding the subject matter of this action. Plaintiff is not aware of any other party that should be joined in this action.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Executed on November 16, 2011

Richard Gutman

Richard Gutman
Richard Gutman, P.C.
55 Warfield Street
Montclair, NJ 07043-1116
973-744-6038 (voice & fax)
rickggg@yahoo.com
Attorney for Plaintiff John Paff

JOHN PAFF,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION, CIVIL PART
Plaintiff,	:	UNION COUNTY
	:	DOCKET NO.
v.	:	
	:	
NEW JERSEY STATE FIREMEN'S	:	Civil Action
ASSOCIATION,	:	
	:	
Defendant.	:	

CERTIFICATION OF JOHN PAFF

I, John Paff, hereby certify and say as follows:

1. I am the plaintiff in John Paff v. New Jersey State Firemen's Association.
2. I have personal knowledge of the facts alleged in the Complaint and Brief.
3. The factual allegations of the Complaint and Brief are true.
4. All attached documents are true copies and have not been redacted, changed, modified, adjusted or otherwise altered in any manner by me or my agents.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Executed on November _____, 2011.

John Paff

OPRA REQUEST

submitted to

Records Custodian
New Jersey Firemen's Association
1700 Galloping Hill Road
Kenilworth, NJ 07033-1303

sent via certified mail, # 7010 3090 0000 6410 7714
on September 23, 2011.

Please accept this writing as my request for government records in accordance with the Open Public Records Act (OPRA) and the common law right of access. Please respond and send all responsive documents to me via regular mail to

John Paff
P.O. Box 5424
Somerset, NJ 08875-5424

Background:

I am both a Life Member of the Association and a citizen who is very interested in open and transparent government. I have often sought enforcement of the provisions of the Open Public Records Act (OPRA) and the common law right of access.

The New Jersey Supreme Court's August 23, 2011 decision holding that the League of Municipalities is subject to OPRA has caused me to wonder whether the Firemen's Association is also within OPRA's scope.

The first numbered request below seeks the Association's request form, if it has one, that OPRA requires government agencies to adopt for public use. If the Association provides me with its OPRA request form (or advises me in writing that it considers itself subject to OPRA but has not yet created a form) I will conclude that response dispositive of the issue of whether the Association considers itself bound by the provisions of OPRA. Suffice it to say that my first numbered request is intended to require the Association to clearly declare, in writing, whether or not it believes that it is subject to OPRA.

Requested Records:

No. 1. N.J.S.A. 47:1A-5(f) requires the custodian of every public agency to adopt a records request form for the public to use for requesting records. I'd like a copy of the form adopted by the custodian for the Firemen's Association.

No. 2. I am informed, perhaps erroneously, that after a person who is selected by a county caucus to serve on the Executive Committee serves in that position for more than one term, he or she is eligible for a pension. I would like two specific classes records: a) records that shows the amount and type of pension received by each

member of the Executive Committee who served immediately prior to the current members of the Executive Committee (see N.J.S.A. 47:1A-10); b) any record that establishes the number of years that a member of the Executive Committee must serve in order to be entitled to a pension.

No. 3. The detailed bills for legal services rendered during March of 2011 submitted by any and all attorneys and law firms retained by or on behalf of the Association. I have requested these records from numerous government agencies and they typically show the date of service, a brief description of the specific services rendered and the amount of time spent on that service.

Thank you very much for your attention to this matter.

Sincerely,

John Paff
732-873-1251

[English](#)

[Customer Service](#)

[USPS Mobile](#)

[Register / Sign In](#)



[Search USPS.com or Track Packages](#)

[Quick Tools](#)

[Ship a Package](#)

[Send Mail](#)

[Manage Your Mail](#)

[Shop](#)

[Business Solutions](#)

Track & Confirm

[GET EMAIL UPDATES](#)

[PRINT DETAILS](#)

YOUR LABEL NUMBER

7010309000064107714

SERVICE

First-Class Mail®

STATUS OF YOUR ITEM

Delivered

DATE & TIME

September 26, 2011 11:22 am

LOCATION

KENILWORTH, NJ 07033

FEATURES

Expected Delivery By:
September 24, 2011
Certified Mail™

Notice Left (Business Closed)

September 24, 2011 6:12 am

KENILWORTH, NJ 07033

Arrival at Unit

September 24, 2011 7:59 am

KENILWORTH, NJ 07033

Processed through Sort Facility

September 24, 2011 1:02 am

KEARNY, NJ 07099

Acceptance

September 23, 2011 12:55 pm

SOMERSET, NJ 08873

Check on Another Item

What's your label (or receipt) number?



LEGAL

[Privacy Policy](#) |
[Terms of Use](#) |
[FOIA](#) |
[No FEAR Act EEO Data](#)

ON USPS.COM

[Government Services](#) |
[Buy Stamps & Shop](#) |
[Print a Label with Postage](#) |
[Customer Service](#) |
[Site Index](#)

ON ABOUT.USPS.COM

[About USPS Home](#) |
[Newsroom](#) |
[Mail Service Updates](#) |
[Forms & Publications](#) |
[Careers](#)

OTHER USPS SITES

[Business Customer Gateway](#) |
[Postmaster Inspectors](#) |
[Inspector General](#) |
[Postal Explorer](#)

Copyright © 2011 USPS. All Rights Reserved

RICHARD GUTMAN, P.C.
ATTORNEY AT LAW
55 WARFIELD STREET
MONTCLAIR, NEW JERSEY 07043-1116

TELEPHONE & FAX
978-744-6038

October 12, 2011

Records Custodian
New Jersey State Firemen's Association
1700 Galloping Hill Road
Kenilworth, NJ 07033-1303
908-620-1874 (fax)

Re: OPRA/Common Law Record Request of John Paff

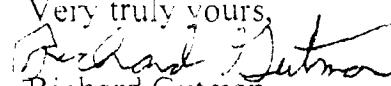
Dear Sir or Madam:

I represent John Paff regarding his September 23, 2011, record request.

As you know, eleven business days have passed since you received Mr. Paff's September 23 record request. The Open Public Records Act requires "immediate access ordinarily" to a request for bills, N.J.S.A. 47:1A-5(e), and a valid response to other record requests "as soon as possible, but not later than seven business days after receiving the request." N.J.S.A. 47:1A-5(i).

Please respond to Mr. Paff's record request on or before October 17, 2011, or Mr. Paff will seek his legal remedies.

Thank you for your anticipated cooperation.

Very truly yours,

Richard Gutman



Parker McCay P.A.
 9000 Midlantic Drive, Suite 300
 P.O. Box 5054
 Mount Laurel, New Jersey 08054-1539
 P: 856-596-8900
 F: 856-596-9631
 www.parkermccay.com

George M. Morris, Esquire
 Direct Phone 856-810-5855
 Direct Fax 856-489-6980
 gmmorris@parkermccay.com

October 13, 2011

File No. 01121-0001

Richard Gutman, P.C.
 55 Warfield Street
 Montclair, New Jersey 07045-1116

**Re: NEW JERSEY STATE FIREMEN'S ASSOC.
September 23, 2011 Records Request by John Paff**

Dear Mr. Gutman:

This firm serves as general counsel to the New Jersey State Firemen's Association ("Association") and was timely asked to review a September 23, 2011 request by Mr. Paff concerning access to records. Mr. Paff questioned whether the Association is bound by the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq. (the "Act"). Please accept this letter on behalf of the Association. As noted below, the Association does not have a "records custodian" as required of public agencies under the Act.

First, it should be noted, that well prior to the Fair Share Housing Center, Inc. v. New Jersey State League of Municipalities, 207 N.J. 489 (2011), the Association requested an Advisory Opinion from the Government Records Council ("GRC") as to whether or not the Association is subject to the Act. On December 30, 2008, the GRC, in a written response, declined to issue an Advisory Opinion. A copy of the GRC's response is attached hereto.

The Association has never considered itself bound by the Act. As noted, it has never named or appointed a records custodian. Further, it has never adopted an OPRA form. In comparing this Association to the New Jersey League of Municipalities there are great differences between the organizations. While both the Association and the League are established by statute, a review of the Association's 1885 enabling statute reveals that local firemen's associations may be established by fire companies and departments. There is no municipal (i.e. government) involvement in the establishment of a local fire relief association. As such, the firemen's relief associations are different that the League of Municipalities which is formed by municipalities (i.e. public entities) by an affirmative act of a public body. N.J.S.A. 40:48-22.

Public Law 1885, c. 122 states that the local relief associations may form a state entity to coordinate their efforts. The law also establishes that the Legislature may alter, modify or repeal



ATTORNEYS AT LAW

October 13, 2011
Page 2

the charters of relief associations. In effect, the enabling law simply establishes a specific type of nonprofit association. The Association is not established as an office, board, bureau or commission with government powers as required by the definition of a public agency under the Act.

The formation of the relief associations differs greatly from the formation of the League in that the statute simply authorizes individuals to form local relief organizations. The enabling statute does not permit or require a government entity to take any action in relation to providing relief services. This difference between authorization of individuals versus state actors is fundamental when considering how these organizations are to be impacted by other legislation.

As to the other various points raised in the Fair Share decision, there are clear differences when evaluating the characteristics the court explored in ultimately finding that the League qualified as a public agency under the Act. Unlike the League, the Association is not funded by tax dollars. The League is funded by its members' dues which are, in turn, funded by local tax dollars; conversely, the Association by out of state chartered fire insurance premiums.

Additionally, while employees of the Association can qualify for a pension, unlike the League, the pension is not part of the State pension systems. Further, while the League is comprised entirely of public employees, the Association's membership is primarily composed of the numerous members of non-profit volunteers fire companies. Finally, unlike the League, the Association does not institute legal action on behalf of its members or lobby for changes in state law, other than to protect the integrity of the local relief funds from malfeasance or neglect by its own members.

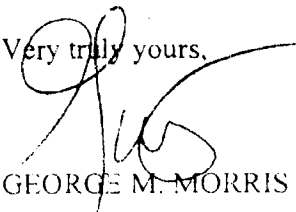
Based on the above differences, the Association is not likely to be considered a public agency subject to the Act. Again, the Association does not have a records custodian or an OPRA request form and attempted to gain guidance from the GRC on this very issue.

While it is noted that the Association does not believe it is bound by OPRA and, as acknowledged, the Association does not participate in any state pension programs, because Mr. Paff is a Life Member of the Firemen's Association, the attached materials are provided to demonstrate the requirements of the pension offered to employees of the Association. Individual pension information is not available for dissemination. Additionally, as a Life Member of the Firemen's Association, attached is a copy of the Association's legal bills for March 2011.



October 13, 2011
Page 3

If you have any questions regarding this letter please feel free call on upon me so we can discuss further.

Very truly yours,

GEORGE M. MORRIS

Enclosures

cc: George H. Heflich Sr., President
Frank P. Cavallo, Esq., Association Counsel

New Jersey State Firemen's Association
Employees' Retirement Plan

Notes to Financial Statements

1. Plan Description

The following brief description of the New Jersey State Firemen's Association Retirement Plan is provided for general information purposes only. Participants should refer to the Plan agreement for more complete information. The Plan is a defined benefit pension plan.

Pension Benefits

Employees are eligible for participation in the Plan after the completion of the later of the date the employee attains age 21 or completes six months of service. Participants become fully vested in the plan after 5 years of service. However, 10 years of service is required for early retirement benefits.

Benefits for participants retiring upon reaching the normal retirement age of 65 are based on 65% of the average annual compensation reduced pro-rata for years less than 25, based on the previous 12 month period. The Plan provides a cost of living adjustment.

An employee may elect early retirement after having reached age 55 and having completed 10 years of service. Benefits upon election of early retirement are reduced for each month by which the retirement date precedes age 65.

The normal form of benefit payment is a life annuity with 10 years certain for single employees and a joint and survivorship annuity basis for married employees. Several other options in the method of benefit payment are also available.

Participants who have attained the age of 70½ and are still working must commence collection of their pension benefits. In addition, participants will be able to accrue benefits for service beyond the age of 65.

2. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying financial statements have been prepared on the accrual basis. The Plan is not required to make certain Department of Labor required disclosures due to the number of eligible participants being below 100.

Use of Estimates

The preparation of financial statements requires the plan administrator to make estimates and assumptions that affect reported amounts of assets, liabilities and disclosures of contingent assets and liabilities, and the actuarial present value of accumulated plan benefits at the date of the financial statements. Accordingly, actual results could differ from those estimates.

New Jersey State Firemen's Association
Employees' Retirement Plan

Notes to Financial Statements

2. Summary of Significant Accounting Policies *(continued)*

Fair Value Measurements

The Plan follows Financial Accounting Standards Board (FASB) guidance on *Fair Value Measurements* which defines fair value and establishes a fair value hierarchy organized into three levels based upon the input assumptions used in pricing assets. Level 1 inputs have the highest reliability and are related to assets with unadjusted quoted prices in active markets. Level 2 inputs relate to assets with other than quoted prices in active markets which may include quoted prices for similar assets or liabilities or other inputs which can be corroborated by observable market data. Level 3 inputs are unobservable inputs and are used to the extent that observable inputs do not exist.

Investment Valuation and Income Recognition

Investments in shares of mutual funds are valued at quoted market prices, which represent the net asset values of shares held by the Plan at year end. The change in net unrealized appreciation or depreciation in the fair value of investments is recognized as income or loss currently.

Purchases and sales of investments are recorded on a trade-date basis. Gains or losses on sales of investments are based on the average cost of investments.

Accumulated Plan Benefits

Accumulated plan benefits are those estimated future periodic payments that are attributable under the Plan's provisions to services rendered by the employees to the valuation date. Accumulated plan benefits include benefits expected to be paid to present employees or their beneficiaries. Benefits for retired or terminated employees or their beneficiaries are based on plan provisions at the time of retirement.

Administrative and Investment Expense

Administrative and investment expenses are paid by the Plan.

Payment of Benefits

Benefit payments are recorded upon distribution.

New Jersey State Firemen's Association
Employees' Retirement Plan

Notes to Financial Statements

2. Summary of Significant Accounting Policies *(continued)*

Risks and Uncertainties

The assets of the Plan are primarily financial instruments which are monetary in nature. Investment securities, in general, are exposed to various risks, such as interest rate, credit, and overall market volatility risk. Due to the level of risk associated with certain investment securities, it is reasonable to expect the changes in the values of investment securities will occur in the near term and that such changes could materially affect the statement of net assets available for benefits.

Plan contributions are made and the actuarial present value of accumulated plan benefits are reported based on certain assumptions pertaining to interest rates, inflation rates and employee demographics, all of which are subject to change. Due to uncertainties inherent in the estimations and assumptions process, it is at least reasonably possible that changes in these estimates and assumptions in the near term would be material to the financial statements.

Subsequent Events Evaluation by Management

Management has evaluated subsequent events for disclosure and/or recognition in the financial statements through the date that the financial statements were available to be issued, which date is September 14, 2010.

3. Investments

Investments that represent 5% or more of the Plan's assets are as follows:

	<u>2009</u>	<u>2008</u>
Mutual Fund		
Alliance Bernstein SH Duration Port A 189	\$ 4,283,221	\$ 4,023,921

All investments at December 31, 2009 and 2008 are Level 1 investments.

**New Jersey State Firemen's Association
Employees' Retirement Plan**

Notes to Financial Statements

4. Actuarial Information

Accumulated plan benefits are those future periodic payments that are attributable under the Plan's provisions to the service employees have rendered. They include benefits expected to be paid to (a) retired or terminated employees or their beneficiaries, (b) beneficiaries of employees who have died, and (c) present employees or their beneficiaries. The accumulated plan benefits for active employees are based on 65% of the average annual compensation reduced pro-rata for years less than 25, based on the previous 12 month period. Benefits payable under all circumstances including retirement, death, disability and termination of employment are included to the extent they are deemed attributable to employee services rendered to the valuation date.

The actuarial present value of accumulated plan benefits is determined by the Association's actuary, and is that amount that results from applying actuarial assumptions to adjust the accumulated plan benefits to reflect the time value of money (through discounts for interest) and the probability of payment (by means of decrements such as for death, disability, withdrawal or retirement) between the valuation date and the expected date of payment. The significant actuarial assumptions used in the valuations as of January 1, 2009 were (a) life expectancy of participants (the 1984 UP mortality table), (b) an assumed retirement of the earlier of age 55 and 10 years of service or age 65 and five years of service and (c) an assumed average rate of return of 6.00%.

The foregoing actuarial assumptions are based on the presumption that the Plan will continue. Were the Plan to terminate, different actuarial assumptions and other factors might be applicable in determining the actuarial present value of accumulated plan benefits.

The following data summarizes the actuarial present value of accumulated plan benefits as of January 1, 2009:

VESTED BENEFITS	
Participants currently receiving benefits	\$ 3,206,180
Other participants	<u>1,927,699</u>
	5,133,879
Non vested benefits	<u>46,462</u>
Total Actuarial Present Value of Accumulated Plan Benefits	<u>\$ 5,180,341</u>

**New Jersey State Firemen's Association
Employees' Retirement Plan**

Notes to Financial Statements

4. Actuarial Information *(continued)*

The following data summarizes the changes in actuarial present value of accumulated plan benefits for the year ended January 1, 2009:

Actuarial present value at the beginning of the year	\$ 4,796,527
Increase (decrease) during the year attributable to:	
Timing	287,792
Benefits paid	(274,309)
Benefits accumulated	<u>370,331</u>
Total Actuarial Present Value at the End of the Year	<u>\$ 5,180,341</u>

5. Funding Policy

The Association's policy is to fund the Plan annually at the minimum level permitted under ERISA regulations as computed by the Association's actuary.

6. Income Tax Status

The Internal Revenue Service has determined and informed the Association by letter that the Plan is designed in accordance with applicable sections of the Internal Revenue Code and is exempt from income taxes.

The Internal Revenue Service has determined and informed the Plan administrator by a letter dated March 10, 2004, that the Plan and related trust were designed in accordance with the applicable regulations of the Internal Revenue Code (IRC). The Plan has been amended since receiving the determination letter. The plan administrator and the plan's tax counsel believe that the plan is currently designed and being operated in compliance with the applicable requirements of the code. Therefore, they believe that the Plan was qualified and the related trust was tax-exempt as of the financial statement date.

PRESIDENT HEFLICH: Thank you, Barry.
Report of the Board of Managers, Chairman Oscar Dutch, Jr.

129

Invoice Time Detail



Invoice 242

Client Name

Date	Tkpr No.	Name / Invoice Number	Hours	Amount	Description
3/25/2011	0105	Frank P Cavallo	0.50	87.50	Receipt and review letter from attorney for
4/6/2011		Invoice=2425064	0.50	87.50	Firemen's Home regarding budget appeal with attachment; draft e-mail to President and Vice President regarding same; Telephone conference with President and Vice President regarding same.
3/30/2011	0105	Frank P Cavallo	1.00	175.00	Receipt and review letter from attorney for
4/6/2011		Invoice=2425064	1.00	175.00	Firemen's Home with enclosure regarding budget; draft letter o/b/o President to Firemen's Home regarding same; draft e-mail to President regarding same; draft letter to NJ Firemen's Home regarding same; review NJSA 54:18-8 regarding payment to Firemen's Home; draft letter to Governor Christie regarding Firemen's Home budget.
BILLED TOTALS: WORK:			1.50	262.50	2 records
BILLED TOTALS: BILL:			1.50	262.50	
GRAND TOTALS: WORK:			1.50	262.50	2 records
GRAND TOTALS: BILL:			1.50	262.50	

139

Board of Officers
Committees
Association Lists
Abridged Reports
News & Information
Membership View
Financial
Secretary Reports
Local Relief Officers
insurance Tax
Notice of Death
Caucus & Convention
Object of Association
History
Reports
Links
Firemen's Home
Home

1700 Galloping Hill Road
Kenilworth, New Jersey
07033-1303

Phone (908) 620-1871
Toll Free 1-800-852-0137
Fax (908) 620-1874

History of Association

PDF Version of this file: [History_of_Association.pdf](#) 248kb



FEBRUARY 2007

ACKNOWLEDGEMENTS

Peter Maezzi, Librarian, New Jersey Legislative Services, Trenton, N.J.

Robert Shea, C.P.C.U., Retired General Accident Insurance Co
Secretary, Firemark Society of America,
Board of Directors, Philadelphia Fire Department, Historical Corporation

Ernest J. Greenwald, Sr., President Emeritus
New Jersey State Firemen's Association

Anthony Carnival, Clerk, Burlington Township, N.J.

Philip Haines, County Clerk, Burlington County Court House, Mount Holly, N.J.

H. Leigh Peterson, President, New Jersey State Firemen's Association,
1700 Galloping Hill Road, Kenilworth, N.J.

George H. Heflich, Sr, Vice President, New Jersey State Firemen's Association,
1700 Galloping Hill Road, Kenilworth, N.J.

David Gsell, Assistant Fire Marshall, Burlington County, N.J.

Kenneth Orangers, Relief Fire Company, Mount Holly, N.J.

Joseph D. Stauffer, Jr., Past Secretary, New Jersey State Firemen's Association,
Secretary, Jersey City Firemen's Relief Association,
Executive Committeeman, Hudson County, N.J.

Konrad A. Mellert, Executive Committeeman, Warren County, N.J.

Patricia C. Williams, Manchester, N.J.

Executive Committeemen, New Jersey State Firemen's Association

149

NEW JERSEY STATE FIREMEN'S ASSOCIATION HISTORY

TABLE OF CONTENTS

- Introduction
- Background
- Taxes and Relief
- Chapter One- Beginnings
- Chapter Two- Moving Ahead
- Chapter Three- Difficult Times
- Chapter Four- Executive Committee
- Chapter Five- Burial Benefits and the Advisory Committee
- Chapter Six- Local Relief Associations
- Chapter Seven- The New Jersey Firemen's Home
- Chapter Eight Exempt Firemen
- Citations
- Background
- Taxes and Relief
- Chapter One
- Chapter Two
- Chapter Three
- Chapter Four
- Chapter Five
- Chapter Six
- Chapter Seven
- Chapter Eight

INTRODUCTION

The history of the New Jersey State Firemen's Association, ("State Association") and the organization of the Local Relief Associations, ("local associations") is unique in the history of the United States. It is an interesting review of the fire service in New Jersey. In order to fully understand this history it is necessary to go back to the 1600's (17th Century) and examine the origin and organization of the state's early municipalities, the fire service therein, the laws governing the same, their historical records and the legislative initiatives

The State Association was created in 1885 pursuant to the Laws of 1885, Chapter CCXL (240), approved May 2, 1885. This Act legalized the local associations which were organized within a fire department under governmental control and allowed such local association to affiliate with and create the State Association. Separate Acts provided for the funding of the local relief associations and provided the benefits which the firefighters were originally given and which they received throughout the years including the present. The original funding was a tax or assessment on foreign insurance companies writing fire-related policies in the municipalities of this state. The initial legislation appears to have been enacted in 1825, Laws of 1826, dated December 26, 1826, entitled an "Act relative to Foreign Insurance Companies." This Act provided for a five percent (5%) tax to be paid to the State for the use by the State. Information was received by representatives of the State Association that a tax or other monies were available for fire service prior to this date, but no record thereof could be found. We conducted a search of the records of some of our earliest municipalities, especially Mount Holly and Burlington City (Township), and the organization of their first fire companies, the Relief Fire Company No. 1, originally named "Brittania Fire Company",

and the Endeavor Fire Company. These records for both municipalities are extant to 1666 and/or 1677. The Relief Fire Company records, still preserved, are complete from 1752. Some of the Endeavor Fire Company records were lost or destroyed and the earliest are unavailable. Also reviewed were some of the records of the Philadelphia fire companies and insurers, especially the Union Fire Company, organized by Benjamin Franklin in 1736, and the Contributionship Companies of Philadelphia, also attributed to Benjamin Franklin in 1752.

Our search also led us to examine State and various County records, including their respective budgets, revenues, tax records and receipts, recorded documents and filings, minutes, ordinances and resolutions, records of related meetings, newspapers of that time and historical records and artifacts as available.

Barry T. Parker
Counsel
New Jersey State Firemen's Association

BACKGROUND

The early history of the fire service is fairly well documented. Early service seems to have originated in Boston, New York, 'New Amsterdam', and Philadelphia. The Boston area experienced a serious fire in November of 1623, (#1) and thereafter Governor Bradford issued regulations, adopted as "ordinances", concerning the construction of houses and chimney's. Likewise Peter Styvesant, Governor of New York, also had ordinances similar in nature passed for that city in 1645, and a year later established "fire wardens" to inspect houses and buildings and help or assist in organized fire fighting response.

In the 1670's some cities were plagued with firebugs, especially Boston, and the city adopted more stringent ordinances, planning ordinances, including street design, ban on thatched roofs and wooden plastered chimney's. Boston officials also envisioned the need for fire fighting equipment and apparatus and they apparently purchased a fire engine from London and engaged people to take care of the equipment and 'managing the engine'. This group managing the engine may have been the first fire company with any organized response because Boston suffered from eight (8) major conflagrations, the worst of which was the "great fire of 1711", (#2) & (#3)

Definitive fire fighting and organized response was the concern of many, especially Benjamin Franklin, who as a young man lived in Boston and experienced the problems there and later experienced the "Fishbourn Wharf area fire of Philadelphia in April 1730". Several years later on December 7, 1736, he and twenty-five other citizens of Philadelphia organized and signed the Charter or Articles of Association of the "Union Fire Company of Philadelphia". (#4) The Charter called for the "better preserving our goods and effects from fire", and the members mutually agreed to provide "two leather buckets and stout bags" to collect precious belongings and make them safe from fire. To assure attendance and response to fire and to require proper maintenance of the equipment, a system of fines was established for violations of these rules and regulations. These fines were levied against the members of the Company who were derelict or violated the same and were paid to the Company to be used for operating revenues. Each member was to respond " . . . upon hearing of fire breaking out and immediately report to the same with all their buckets and bags and employ our best endeavor to preserve the goods and effects of such of us as shall be in danger . . ." The charter or articles of association set forth the duties of the officers, the meeting dates and other provisions necessary for operating the fire company. (#5)

The charter or articles of Association of the Relief Fire Company No. 1, formerly the "Britannia Fire Company", Mount Holly, New Jersey, the oldest volunteer fire company in continuous service in the United States, are strikingly similar to those of the Union Fire Company, of Philadelphia. The Relief was created on July 11, 1752. It's Articles of Association provide for the contribution of a specific number of "buckets", but required a minimum of two thereof. These original leather "buckets", with individual and company name are preserved and located at the Relief today. The company, itself provided "four ladders and four fire nocks in common at the expense of the company." (#6) The Relief

169

also created a system of fines for attendance and maintenance of the equipment. In addition, the Relief required lanterns to be displayed in homes to assist in locating a fire, and the articles provided for this unique system, "... two or more lights be set against our windows and such of our company whose houses may be thought to be in danger shall likewise place lights in every room to prevent confusion ..." (#7)

The Charter and Articles of Association of both the Union and the Relief, in original condition, still exist, and are available to be examined. (#8) Franklin, continually expressed concern about fire in Philadelphia and as a young man growing up was impacted by fires in Boston. He was also affected by the Fishbourn Wharf Fire in the city in April of 1730 and this led to Franklin's efforts to create the Union. (#9) Fires also caused financial hardship and disruption in the city and was costly to life and property. Therefore the citizens were looking for ways to improve their response and provide the necessary equipment and apparatus. Solicitations and donations, along with the monies for fines within the companies provided these resources.

The equipment utilized by the firemen in colonial times consisted of the leather ('leathern') buckets, ladders, ropes and hooks, to pull down burning buildings, axes, lanterns, trumpets to holler instructions, claxons and bells, to sound the alarm, and ultimately fire engines, if the company could afford the same. (#10) Subscriptions or solicitations among the citizens was the method utilized by the Relief in Mount Holly, then "Bridgetown" to acquire its first fire engine. (#11)

The fire engines used in the early 18th and 19th century were generally direct pressure pumps, which contained a wooden box as reservoir where the water buckets were dumped by a bucket brigade. The firemen would then stand on either side of the engine and operate the pump by alternately applying pressure up and down on the pump handles on each side. The water was thus forced from the chamber through the nozzle attached. Most of these engines were drawn or pushed to the fire, however some were carried because they lacked wheels. (#12) Many of these fire engines were made in England and later in Philadelphia.

The firefighters usually were required to hang the buckets on their houses and keep them filled with water at all times. (#13) Alarms were given by voice, claxon, bell or other noise-making device, and members upon hearing the alarm were required to respond to the scene of the fire with the bucket or other assigned equipment. At the scene of the fire, members of the company were assigned various jobs, mostly to extinguish the flames, but others included salvage of a persons goods and effects, such as the Union's "stout bags of good oznabrigs or wicker linen" in which to put the same. (#14) Others might be assigned to the application of the hooks and ladders and axes to pull down burning buildings or destroy other buildings to keep the fire from spreading throughout the area. (#15)

As fire companies continued to emerge throughout the country the need for firemen and new and better equipment escalated. Methods for payment also escalated, but the two prevalent methods utilized at that time were the subscription and municipal contribution. (#16) Along with the need to acquire equipment was the desire or need of the victims of the fire to obtain recompense for the losses suffered as a result thereof. In colonial times beds, cookingware, clothes and weapons were essential for existence. Insurance was therefore the answer for the individual homeowners to protect these interests.

Insurance was generally available in England to members who joined an association organized to fight fire. (#17) The association provided fire "marks" which were placed on the outside of the house and identified the homeowner as a member. Fire marks and fire associations became prevalent in England, usually under the auspices of the same which operated insurance companies and which also organized and operated the fire company. (#18) Insurance companies or fire associations incorporated somewhat differently in the colonies and in Philadelphia. Members paid into the association or the insurance company to protect their own property and usually they received a fire mark representing that company or association which was placed on the house to signify the property was insured. They did not own the fire company or direct response in a particular fashion as was usual in England.

The first insurance association or company in the colonies was also the brainchild of Benjamin Franklin and this was the Contributionship Companies of Philadelphia. (#19)

179

This company was founded by Franklin in 1752 and many of the signatories of the Union were also signatories of the original charter for the Contributionship. The members of the Contributionship put up a one time financial payment which was essentially the premium. The member was then covered against fire and was given a plaque or mark for the house, which is the famous four hands clasped at the wrist. Other insurance companies were organized in Charleston, South Carolina, and in New Jersey but they are no longer active, in fact the Charleston company did not survive it's first fire shortly after organizing. (#20) The Contributionship is still in business and is actively covering members. (#21)

These insurance companies and the fire companies like the Union and Relief contributed to the safety and well being of our early communities. Most, if not all, were composed of volunteer members and civic-minded citizens of the municipality. Initially they contributed their own time and money. It was not until the 19th Century that municipalities started to assist financially and this was either by creating a paid fire department or by financial contribution to the fire companies. The firemen themselves, volunteers, received no compensation or remuneration, and if injured, hurt, or killed they were on their own or on the mercy of the people in the community. Not until 1879 was there some recognition that financial assistance should be provided and New Jersey adopted a two percent tax on foreign insurance companies writing fire insurance in New Jersey and this was soon allocated to relief, disabled, benevolent or like organizations for the benefit of the firemen and their families. (#22)

TAXES AND RELIEF

The first legislative initiative resulting essentially for the benefit of firefighters or their families was the Act of 1826, "The Act Relative to Insurance Companies." This Act imposed a five percent (5%) tax on the "gross amount . . . received in monies or securities for money for premiums or insurance effected or contracted . . . for the six months last proceeding such accounting . . ." (#1) Some information or documentation and rumors gave the impression to certain firefighters that such a tax was imposed or enacted for firemen during the Revolutionary War, or immediately thereafter. A search through the archives of New Jersey, the Laws of this State and the Law of our predecessor the Colony of New Jersey, the records of two of the oldest municipalities of this State, Burlington 1666, and Mount Holly ('Bridgeton and Northampton Township') 1677, reveal no evidence of payments to or for firemen for services or benefits. (#2) Newark also was apparently incorporated in 1666 and inquiry was made for early records pertaining to their fire department at both the Newark Library and the Newark Museum. Although we were advised some existed we have been unable to obtain them. There were persons assigned to create a Newark Fire Museum, but again inquiry revealed no documentation or records. We also sought records pertaining to the Newark Relief Association prior to 1879.

The Act of 1826 provided for "an agent' acting . . . for any individuals or associations of individuals, not incorporated in their state . . . for the purpose of effecting insurance . . . against losses by fire, or otherwise must post a bond and securities in the penal sum of one thousand (\$1,000) dollars with the clerk of the county." (#3) Such tax although collected by an agent in the county was for the use of the state. (#4) The Act does not designate the use of any of the funds received from the tax and it appears all receipts went into the general treasury of the State of New Jersey. A search of several of the state's County Clerks' offices revealed no bonds filed by any collector of the tax, and no certificates issued by the County Clerks to that effect, as required by that law. (#5) Also a check of the state budgets after 1826 did not reveal the receipt of any tax revenues received from this tax until 1868. (#6) The 1826 Act was amended several times (#7) but there was no mention of firefighters or their families until March 1850 when reference was made to "The collector of the county of Essex . . . account with the treasurer for the time being of the fire department of the city of Newark for all sums of money received by him under the provisions of this act . . . and pay over the same to the treasurer to be applied and appropriated for the use of the charitable fund of said department under the direction of such fire department." This Act also provided these same procedures for Passaic County and stated it be paid to the "Paterson Fire Association, in said county, specifically monies received from within the townships of Paterson and Manchester, in said county." (#8) A catchall was added in sections two (2) and three (3) of the act and stated those provisions were applicable to and included all

184

"... the cities, boroughs, townships and districts in this state, wherein a fire department, fire association or fire company shall be organized." Such department, however, was required to have a fund otherwise the department did not receive the tax proceeds. Finally the Act established the tax to be two percent (2%), because prior to this Act the tax fluctuated from five percent (5%) down to two and one half percent (2-1/2%) from 1826 to 1847. (#9)

With this newer Act the tax monies were specifically being earmarked for some kind of charitable, benevolent, or disability fund providing for or operated by firemen. The Act did not specify or refer to the type of fund, how it operated, or to whom the proceeds or receipts were to be delivered or applied. Apparently the various municipalities operated differently and one, the City of Paterson, was being more aggressive than the others and in 1857 an act was passed removing the county collector. It provided the county collector, "... was removed from any duties and the mayor and aldermen of the City of Paterson ..." were specifically designated as the recipients of the monies. (#10) To date we have been unable to identify or trace these funds to any charitable associations. None were apparently recorded or found in the Secretary of State records for corporations or in the County Clerks office where not-for-profit corporations are filed. Newark had one such benevolent association because they advertised in the newspapers in 1874 for contributions. (#11) Thus most of the charitable, relief, disability or benevolent funds were haphazard and spread throughout the state and fire departments, with little or no oversight.

At least some oversight was being exercised by the State Treasurer or Secretary of State over the insurance companies because a new Act adopted in 1860 imposed more stringent capital and filing requirements. It also required the insurance companies to file periodic accountings and annual statements with the Secretary of State. (#12) Also it required the county collector to turn over the two percent (2%) tax to those so directed. This regulatory oversight continued in order to protect the tax revenues, and in 1867 the legislature specifically recognized, "that when there shall exist in any city, borough or township of this state an organized fire department, and a charitable association or organization, the accumulation and disbursement of a fund for the benefit of disabled or incapacitated firemen or their families, the monies received by the Secretary of State ... shall be received for the benefit of and appropriated and applied to the use of the charitable fund of said department ..." (#13) Clearly, monies received after 1876 by any source, local, county or state, had to be delivered to the municipal fire department which maintained a charitable or benevolent association.

Generally, taxes on a state's foreign insurance companies, especially fire insurance companies, are reciprocal, and other states apparently adopted similar laws; however, New Jersey now earmarked their tax for the benefit of the fireman, specifically the disabled or incapacitated fireman and his family. From the inception of the tax in 1826 until 1871 the Secretary of State, exercised supervision over the foreign insurance companies, but in 1871 the state Department of Insurance was created and most of the supervision was assumed by it. Other states then and now apply the tax receipts toward fire protection in the state or municipality. (#14) or to the Firemen's Home. (#15)

Obviously many of the older and larger cities or municipalities were formulating more sophisticated fire departments and charitable associations, and also procedures for collecting and disbursing the tax receipts. Unfortunately the regulation and laws pertaining thereto were still somewhat haphazard and disjointed. Many private and municipal corporations were created by special acts of the legislature and many not-for-profit corporations were unincorporated or not filed in the County Clerks or Secretary of State's office. Some cities, like Newark, Paterson and Trenton, must have been operating and dispensing some form of benefits. Trenton appears to have the best records and incorporated its Relief Association on November 12, 1855, entitled "The Fire Association for the Relief of Disabled Firemen of the City of Trenton." (#16) The records indicate they elected officers, collected the two percent (2%) tax, and requested donations from domestic insurance companies and agents. They made disbursements toward the funeral expenses for "Henry Nice, March 12, 1856, in the amount of fifteen dollars." (#17) They also apparently provided for other beneficiaries. A "Newark Relief Association" also must have been organized because a newspaper advertisement was run in the Newark Daily News requesting donations and making appeals for funds in February of 1874. (#18) Later references were made that an

Assemblyman Macknett, Essex County, conducted some type of legislative hearings in 1877, but there is no record thereof in the New Jersey Legislative Library in Trenton. Legislative action was, however, initiated to provide more structure and authority to the fire department relief funds and to direct the local insurance agents to make payment to "the treasurer of the benevolent fund of the fire department ..." (#19) During this time the Jersey City Fire Department created "The Exempt Firemen's Association of Old Jersey City", which was active in January of 1878 and the records thereof show relief and death benefits paid from then to 1892, at which time they joined or merged with the Jersey City Relief Association. (#20)

All of the activity in these cities stimulated the firemen of Newark to initiate some type of central organization to protect all the interests of the firemen and the charitable associations. A notice was sent out by the Newark Fire Department calling for a meeting in Newark on May 22, 1879. Nineteen (19) fire departments and fifty-five (55) firefighters responded. It was at this initial meeting that the New Jersey State Firemen's Association was organized and became a reality.

Next

Copyright © 1999-2007 New Jersey State Firemen's Association
All rights Reserved

Wednesday, October 12th, 2011

Board of Officers
Committees
Association Lists
Abridged Reports
News & Information
Membership View
Financial
Secretary Reports
Local Relief Officers
Insurance Tax
Notice of Death
Caucus & Convention
Object of Association
History
Reports
Links
Firemen's Home
Home

1700 Galloping Hill Road
Kenilworth, New Jersey
07033-1303

Phone (908) 620-1871
Toll Free 1-800-852-0137
Fax (908) 620-1874

History of Association

Chapter One

BEGINNINGS

The official records of the New Jersey Firemen's Association contain the original Notice of the organizational meeting in Newark, New Jersey, forwarded by the Board of Representatives of the Newark Fire Department. (#1) The Notice called for a meeting of the fire departments in the state and invited delegates from each to attend a meeting on May 22, 1879 in the City of Newark. The Notice called "... delegates from the several Fire Departments of the State of New Jersey to meet in Convention for the purpose of taking into consideration the feasibility of organizing a permanent Association to be known as the 'Firemen's Association of New Jersey' ...". The meeting was called by William H. Brown "Pres't. Board of Representatives" for the "... Firemen's Hall, in the city of Newark, New Jersey, on Thursday, the 22nd of May, 1879, at 12 o'clock PM." The Notice also provided, "P.S. Enclosed please find a copy of law passed March 14th, 1879 under which all premiums must be collected in the future."

The law of 1879 required the insurance agents in the respective municipalities to pay the two percent (2%) tax on foreign fire policies to the treasurer of the Benevolent Fund of the fire department of the municipality. (#2) Previous laws had required the Collector of the County (#3) or the Mayor of the City (#4) to pay over the monies collected to the Representatives of the respective fire department Benevolent Funds, but this apparently created problems and all monies were not accounted for completely.

The Notice or Call to the various fire departments throughout the state resulted in what is now called the First Convention, at the Firemen's Hall on Mulberry Street, Newark, New Jersey. Nineteen (19) departments throughout the state were represented. (#5) The first order of business was to appoint a committee of five as the committee on permanent organization. The committee recommended Wm. H. Brown of Newark as President and Bird H. Spencer of Passaic as Treasurer.

During the business of the meeting A. James Payne, a delegate from Newark advised that he had been a member of the Legislative Committee of the Newark Fire Department and "... it was the duty of this committee to look after the interests of the Benevolent Fund and the collection of the two percent (2%) tax ... the committee for various reasons had arrived at the conclusion that we were not getting all the money that was justly due ...". Apparently the Legislature passed a similar law in 1877, but the same was not signed by the Governor and failed. (#6) It was also reported that Newton and other municipal fire departments had no charitable or benevolent funds and such departments needed to organize the same and apply for a charter and see that the two percent (2%) tax was properly paid. (#7)

The name adopted at this First Convention was the "Firemen's Association of the State of New Jersey." Three (3) delegates were to be provided from each department and the Chief Engineer of each department was to be recognized as an ex-officio member, and if no chief engineer then the Senior Foreman. (#8) Finally, it was resolved "... to hold an Annual Convention at Trenton on the Fourth Wednesday in September 1879."

219

(#8)

On September 24, 1879 the second meeting of the State Association was called to order in Trenton, N.J. (#9) Some historians called this Convention in Trenton the First (1st) Convention, but that is incorrect. It was, however, the First (1st) Annual Convention and thereafter subsequent Conventions were numbered accordingly. (#10) Twenty-eight (28) departments were represented with three (3) delegates each and the additional ex-officio representatives. The Constitution and By-Laws were duly adopted at this Convention. Questions arose concerning fire departments without relief funds and after discussion it was determined that such departments were not entitled to membership, but all were encouraged to create such a fund and thereafter join the State Association. (#11) This was the obvious catalyst for departments to join what is now the expanded State Association.

Further action at the Convention resulted in an assessment of the member local relief associations to provide funds to operate the State Association. The Convention then adjourned after electing most of the same officers and designating Paterson as the next Convention site. (#12)

Interestingly the Trenton Fire Department hosted a banquet after the Convention and this was reported in the press. (#13)

The Second (2nd) Annual Convention was held in the Opera House in the City of Paterson on September 22, 1880. (#14) At this Convention nineteen (19) associations were represented. Also communication was received from Wm. H. Brown, indicating that he was declining re-election for President and the Committee on Reorganization recommended Bird W. Spencer of Passaic as President. He was duly elected and served faithfully for forty-eight (48) years in that capacity.

The Convention also appointed a Special Legislative Committee to look after the interests of "the Fire Benevolent Associations of this State" in the next session of the legislature. (#15) The Legislature was apparently reviewing a total restructuring of the statutes, system of benefits and the benevolent funds for firemen.

The Third (3rd) Annual Convention convened in the City of Burlington on September 28, 1881. Action was formally enacted to provide continuing assessments upon the local associations "for the benefit of the State Association to conduct the operations of the State Association." (#16) Although the Convention authorized the Executive Committee "... to make a pro-rata assessment upon the benevolent funds ..." there apparently was no action forthcoming or any dollar amount affixed. (#17)

Although the Executive Committee had been appointed there were no formal recorded meetings of the committee until September 26, 1883. The first scheduled meeting of the committee was in the morning immediately preceding the regularly scheduled Convention called for 11 o'clock in Dover, N.J. At this Convention the State Association was becoming more actively engaged in legislative initiatives, such as the exemption from certain taxes for firefighters, tenure in certain positions, various laws with adjoining states and general firematic efforts. (#18)

During the 1884 legislative year several Assembly Bills were introduced, A-187, A-188, A-253, and A-378. These bills impacted the reorganization of municipal fire departments and the benevolent associations. (#19) None of these bills apparently reached fruition and new or revised bills were introduced in the Senate and Assembly again in 1885. These bills A-2, A-15, A-22, A-92, A-93 and S-21 were introduced, but apparently S-21, introduced by Senator Fish, Essex County, encompassed all issues and became law. This new legislation became the enabling legislation creating the Local Relief Associations and authorized them to affiliate and create the New Jersey State Firemen's Association. (#20) This law is essentially unchanged to this day. Following the passage of the enabling law the Legislature enacted changes to the tax on foreign insurance companies to provide the two percent (2%) tax benefited the firefighters and their relief associations. (#21) All of these legislative initiatives were reported to the Eighth (8th) Annual Convention in Atlantic City, on September 30, 1885. At this Convention the Vice President of the United States, the Honorable Thomas A. Hendricks addressed the Convention. (#22) At this Convention it was reported that fifty-five (55) local associations were affiliated with the State Association.

At the Convention Counsel W. R. Weeks reported that during debate on the legislation issues concerning the constitutionality of the laws were raised. The issues raised were the same issues raised and decided in the case of Szabo v. The New Jersey State Firemen's Association in 1988. Also the Convention authorized the election of five (5) Vice Presidents and adopted the state seal.

Chapter Two

MOVING AHEAD

By 1883 the State Officers were forging the State Association into an effective statewide organization. This was clearly attributed to then President Bird W. Spencer. He not only orchestrated the passage of the state legislation in 1885, but he increased the number of local associations substantially, and by the Fiftieth (50) Anniversary there were three hundred and eighty-nine (389) associations affiliated with the state association. (#1) On May 12, 1886, shortly after the new State legislation, the Executive Committee authorized the filing of the Charter or Articles of Incorporation with the Secretary of State. This was accomplished on June 1, 1886. (#2) Thereafter the local associations followed suit and also filed their incorporation papers. At this meeting on May 12 the Executive Committee also authorized the state officers to amend the original legislation to "... provide for the burial of active firemen . . ."

President Spencer commented upon the exceptional growth of the number of local associations at the Tenth (10th) Annual Convention in New Brunswick, September 28, 1887. At that time there were sixty-five (65) local associations present and affiliated with the State Association. (#3) The officers included seven (7) Vice President or Assistant Secretaries who were elected representing the seven (7) Congressional Districts then existing in the State of New Jersey. These Vice Presidents or Assistant Secretaries, along with the other state officers, comprised the then existing Executive Committee. Also at this Tenth (10th) Annual Convention the first mention of a "... home for old and disabled firemen . . ." was recognized when the Hoboken Firemen's Relief Association introduced a Resolution calling for the establishment of a home. The resolution easily passed and was referred to the Executive Committee for further action. No action of the Executive Committee is reported, but President Spencer furthered the concept of the Firemen's Home at the Nineteenth (19th) Annual Convention in Cape May, N.J. on September 30, 1896. He proposed an outline of the organization for the home, control and operation thereof, and recommended a board of managers. Legislation providing for the Home, including many of his recommendations, passed in 1898. The present property was then acquired, and the Home opened in Boonton, New Jersey in June 1900. (#4)

Along with the continued growth of the State Association came the growth of the states larger municipalities and cities. With that growth came the expansion of their fire departments. Many departments were outgrowing the volunteer service and converting from a volunteer department to a fully paid (career) department. As a result there were various turf battles between the older, "Exempt", volunteer firefighters and the newer or younger paid firefighters. This was especially true during the organization of the paid department where new officers were elected and new positions or duties assigned within the department and salaries and monies involved. The biggest problem seemed to be the control and use of the relief funds previously accumulated while a volunteer organization. The older Exempt firefighters, many of whom had completed their term of service, seven (7) years, and were no longer active, wanted control of the new organization and the funds of the new paid relief association. The new paid or active firefighters obviously objected and complained to the State Association which in many cases resolved the same, but in others, litigation ensued such as the cities of Trenton, Passaic, Atlantic City and others. This caused disharmony and discord among firefighters. (#5)

The older "Exempt" firemen at this period of time were fighting for status and recognition. Up until 1889 there was no legislation affording official status for the Exempt Firemen, and in that year, legislation passed which authorized the creation of a State Exempt Association and Local Exempt Associations. (#6) This legislation was similar to that adopted for the relief associations, but did not provide for any funding.

Section amended.

Act inoperative until assented to by majority of legal voters of municipality, &c.

6. *And be it enacted*, That the seventeenth section shall be and is hereby amended to read as follows:

[17. *And be it enacted*, That this act shall take effect immediately, but its provisions shall remain inoperative, until assented to by a majority of the legal voters of such locality, voting at any regular municipal election of such place, or special election held for such purpose as directed by the commissioners or other governing body of such locality, of which election the clerk of such commission shall give notice of the time and place of its being held in the same way and manner as is provided for advertising the municipal elections of such locality, at which election there shall be printed or written, or partly printed and partly written, upon ballots, "For this act and the amendments," and printed or written or partly printed and partly written, upon ballots, "Against this act and the amendments," and the election officers of said election shall return to the commissioners or other governing body of such locality, a true and correct statement in writing, under their hands, of the results of said election in reference to the "Act and its amendments," the same to be entered at large upon the minutes of said commissioners, and if it be found that a majority of the ballots cast have upon them "For the act and the amendments," then this act and this supplement shall be lawful and of full effect, but if a majority of ballots cast have upon them "Against the acts and the amendments," then said act shall remain in force as before it was amended.]

Passed March 25, 1885.

CHAPTER CXXII.

An act concerning firemen's relief associations.

Firemen's relief associations, how incorporated.

I. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That in the several cities, towns, boroughs, townships and fire districts in this state in which there now are or hereafter may be organized for and doing

public fire duty one or more fire engine, hook and ladder, hose, or supply companies, or any fire association, or fire department or board of fire wardens, which said company or companies, association or department, or fire wardens shall be under the supervision or control of any common council, or township committee, or board of commissioners, or other governing board or body whatsoever, or any salvage corps (under supervision or control of any duly authorized board of underwriters), the members of which corps shall have been enlisted from among the active or exempt firemen, or any association of exempt firemen, it shall be lawful for the chief engineer, or, if there be no chief engineer, then the fire marshal, or, in case there be neither, then the senior foreman, and for the president, if any, of such fire association or department, and all members of any board of fire wardens or board of trustees or engineers of such fire association or department, and also all firemen belonging to such fire engine, hook and ladder, hose, or supply company or companies, or salvage corps, and all members of any association of exempt firemen of such city, town, borough, township or fire district, to associate themselves together and become incorporated under and by the name of "The Fireman's Relief Association," or any other name which shall indicate the object of such association using the name of the city, town, borough, township or fire district in which the same may be located; and, upon the recording of a certificate, in form as hereinafter provided in the office of the clerk of the county in which the same may be located, and the filing of such certificate in the office of the secretary of state of this state, such person shall from and after the date of the filing thereof become and be incorporated under and by the name aforesaid, as a body politic and corporate in law and by such name shall have perpetual succession and continuance, except as hereinafter provided, and be capable of suing and being sued, complaining and defending in any court of law or equity, and may make and use a common seal and alter the same at pleasure and may receive, take, hold, purchase and convey, or mortgage, invest and re-invest, real, personal and mixed estate, and may enter into, execute and enforce any contracts or agreements relating to, touching or concerning the objects of such corporation and they and

Membership of
corporation.

their successors, and all who shall associate themselves together with them shall as such corporation be entitled to all the rights, powers, privileges, benefits, advantages and immunities which now are or hereafter may be conferred upon corporations generally under any law of this state; and the membership of such corporation shall consist, without any formal election thereto, of the officers and members of such fire engine, hook and ladder, hose and supply company or companies, fire association or fire department, or board of fire wardens, as shall be under the supervision or control of the common council, or township committee, or board of commissioners or other governing board or body of the city, town, borough, township or fire district, also such of the officers and members of any salvage corps (doing duty therein, being under the supervision or control of a duly authorized board of underwriters), as have been enlisted from among the active or exempt firemen, also of the officers and members of any association therein of exempt firemen; and the whole body of the membership of such corporation shall have the same rights therein as the charter members thereof.

Certificate of
incorporation,
where recorded
and filed.

2. *And be it enacted,* That the president and secretary of such corporation when elected as hereinafter provided, shall forthwith sign a certificate, and cause the same to be recorded in the office of the clerk of the county in which the same may be located; which certificate after being so recorded, shall be filed by the said president and secretary, in the office of the secretary of state; and the said certificate, or a copy thereof, duly certified by said county clerk or by the secretary of state, shall be evidence in all courts and places, and such certificate in writing shall set forth the election of the representatives authorized to organize such corporation, the election, by such representatives, of a board of officers and a board of visitors or trustees, giving their names and official designations, the corporate name assumed and chosen to designate such corporation, the location of such corporation, and a reference to this act; but, in case of a re-incorporation under this act, the said certificate shall instead thereof set forth the former incorporation, and the date thereof, the names and official designations of the officers of such corporation, and a reference to this act.

What to set
forth.

3. *And be it enacted*, That any and all associations, organized for the purposes intended by this act, whether incorporated or not, shall be re-organized and incorporated or re-incorporated under the provisions of this act, except such corporations as may have been created or continued by any special act of the legislature of this state, which last mentioned corporations may, if they see fit, be re-organized and re-incorporated under this act; and the president and secretary thereof, in case of such incorporation or re-incorporation, shall sign, record and file a certificate, as above provided, and the said association or corporation shall thereupon become and be a body politic and corporate in law, under and by virtue of this act, and shall have all the powers and privileges conferred by this act upon corporations formed under it, and no other powers or privileges whatsoever; and any corporation which shall be re-organized and re-incorporated under this act shall succeed to and be seized of all the right, title and interest in any estate, real, personal or mixed, belonging to it under its former organization; and the representatives, visitors or trustees, and other officers of any association or corporation re-organized and incorporated or re-incorporated under this act shall continue to serve as such until the election following such re-organization, and until their successors are elected respectively, and not thereafter; and the membership thereof shall be subject to the same conditions and shall have the same rights as provided in the first section of this act in relation to the membership of corporations formed under it; and, if any such association or corporation shall not be re-organized and incorporated or re-incorporated under this act, within one year after this act shall take effect, the same shall thereupon and thereafter be deemed and held to have forfeited its charter, any law to the contrary notwithstanding.

Associations to be organized under provisions of this act.

Associations to re-organize within one year.

4. *And be it enacted*, That there shall not hereafter be more than one firemen's relief association, or other association organized for the purposes intended by this act, in any city, town, borough, township, or fire district, except in the case of a city, town, borough, or fire district being or having been set off or incorporated within the bounds of any township, in which case such an association may be organized in such city, town, borough, or fire district, and one in the

Not more than one association to be organized in city, &c.

remaining portion of such township, or one in each of the fire districts in such township.

Where two or more associations exist charter repealed

5. *And be it enacted*, That in case two or more such associations shall exist, at the time this act shall take effect, in any city, town, borough, township, or remaining portion of any township as aforesaid, or in any fire district, the charters of each and all of such associations shall forthwith be and the same hereby are repealed, any law to the contrary notwithstanding, and one firemen's relief association may be organized therein under the provisions of this act.

Moneys and property paid over to new corporation.

6. *And be it enacted*, That in case, by virtue of any of the provisions of this act, or otherwise howsoever, any of the above mentioned associations may forfeit its charter, or such charter may be repealed or expire by limitation, or such association be dissolved, or in case, in anywise howsoever, any person or persons or association or corporation shall have in possession or charge any moneys derived from any source whatever, for the relief of indigent or disabled firemen, or any balance thereof, or any property purchased therewith, or any securities in which the same may have been invested, or if any person or persons or association or corporation may be indebted for the loan or deposit of such moneys, other than the duly incorporated firemen's relief associations allowed by this act, or the treasurers thereof, then and thereafter, upon the legal organization and incorporation hereunder of a firemen's relief association in such city, town, borough, township, or remaining portion of a township as aforesaid, or fire district, there shall forthwith be paid over, assigned and conveyed, to such new corporation, any money, accounts payable, property and securities remaining in possession or charge of such old association or corporation, or of any person or persons, or association or corporation whatever, for its use or otherwise, or any money, property or securities to which it may be entitled, at law or in equity, derived as aforesaid, and an account shall be given therewith of all moneys theretofore had and received by it or them, from the sources aforesaid, and of the disposition thereof, and all such moneys expended by it or them, other than for the benefit of indigent or disabled firemen or their families, shall also be paid over to such new corporation on demand.

7. *And be it enacted*, That each and every corporation, incorporated or re-incorporated under this act, shall have authority, through its representatives, to make, adopt and use, and from time to time to alter, amend or change, such constitution or by-laws, or both, and such rules, for its government, and the regulation of its affairs, and the disposition and management of its funds and property, as shall seem to said representatives to be right and proper; *provided*, that the same shall not be inconsistent with the constitution or laws of the United States, or of this state, and especially with the provisions of this act.

Corporations may adopt constitution and by-laws.

Proviso.

8. *And be it enacted*, That on or before the second day in December, in every year, each fire engine, hook and ladder, hose and supply company, and the board of trustees or engineers of any fire association or department, and any board of fire wardens, which company or companies, fire association or department, or board of fire wardens, shall be under the supervision or control of any common council, or township committee, or board of commissioners, or other governing board or body whatsoever, and each salvage corps, (under supervision or control of any duly authorized board of underwriters), subject to the conditions aforesaid as to the members thereof, and which company or companies, fire association or department, board of fire wardens, or salvage corps shall be organized for and doing public fire or salvage duty, in any city, town, borough, township, or fire district in this state, shall choose not more than three representatives, and the exempt firemen's association, if any such there be, shall choose not more than three representatives, who, together with the president, if any, of such fire association or department, and the chief engineer, or, if there be no chief engineer, then the fire marshal, or, in case there be neither, then the senior foreman, shall constitute a board of representatives, and shall have and exercise all the powers and perform all the duties herein committed to them, and shall hold office for one year after the date of their election, and until their successors be chosen, and until their successors shall meet for the purpose of holding the annual election of officers, as hereinafter provided.

Board of representatives, when chosen and how constituted.

Powers and term of office.

9. *And be it enacted*, That the said board of representatives, on or before the third Monday in December, in every year, shall elect, by ballot, from among their own number

When officers to be elected.

or otherwise, a president, vice president, treasurer, and a secretary, (who shall be the board of officers of the corporation), and not more than five members of a board of visitors or trustees; except that, at the first election, after such incorporation or re-incorporation, there shall be elected not less than three nor more than fifteen visitors or trustees, who shall then be divided, by said representatives, by lot, into three classes, of not more than five persons each, those of the first class to hold office for one year after the date of their election, those of the second class to hold office for two years after the date of their election, and those of the third class to hold office for three years after the date of their election; so that one class shall go out of office each year, and that, in each year after such first election, not more than five visitors or trustees shall be elected, at the annual election, who shall hold office for three years after the date of their election; or said visitors or trustees may be elected in the same manner and from the same source as said representatives are chosen, and, in such case, shall be divided by said representatives, by lot, into three classes, for the terms aforesaid, and, when the term of any visitor or trustee so elected shall expire, his successor shall be selected from the same source as that from which he was chosen, and shall hold office for three years after the date of his election as aforesaid; all of said visitors or trustees shall hold office, however, until their successors are elected respectively.

Board of visitors elected.

Term of office, &c.

Failure to hold election at time specified not to dissolve corporation.

10. *And be it enacted*, That if, at any time hereafter, any of the aforesaid elections shall not be held at the time or times hereinbefore provided, the same shall be held thereafter as soon as conveniently may be; such failure, however, shall not work any forfeiture or dissolution of the corporation, nor shall such election be of none effect by reason of any delay in holding the same; but it shall be the duty of the president and secretary of such corporation, in case of failure to hold any election at the time above provided, forthwith to give reasonable notice of a time and place for the holding of such election, and, in case they fail to give such notice, or, on failure to comply therewith, any vacancy caused thereby shall be filled as hereinafter provided, and any dereliction, on the part of any representative or officer, in the performance of any known duty, in connection with the holding of or failure to hold any election,

shall be deemed a malfesance in office, and shall be punished accordingly; and, if any person shall be elected to any office, at any other than the usual time for such election, such person shall hold office only until the time for the next regular election, and until his successor shall be elected.

11. *And be it enacted*, That a majority of said board of representatives, or of said board of visitors or trustees as the case may be, shall constitute a quorum at the meetings of said boards respectively. Majority to constitute quorum.

12. *And be it enacted*, That no person shall at any one time serve on both of said boards of representatives and of visitors or trustees, but, if elected to both, shall resign one or the other as he may see fit; except that each board may delegate one of its number to sit with the members of the other board. Person not to serve on both boards.

13. *And be it enacted*, That said board of visitors or trustees shall once in each year, immediately after the election of the new members thereof, elect, by ballot, a chairman and secretary; and their chairman shall convene them when he may think proper, at least twice in each year, and also whenever so requested by any of said visitors or trustees. Chairman and secretary of board of visitors elected annually.

14. *And be it enacted*, That said board of representatives shall be convened by their president when he may think proper, at least twice in each year, and also whenever he may be requested so to do by a majority of said representatives; and said representatives may provide, in their by-laws, for regular stated meetings of said representatives and of said visitors or trustees. When board of representatives may be convened.

15. *And be it enacted*, That in case a vacancy shall occur in the office of representative, such vacancy shall forthwith be filled by the company, association, board or corps by which he was elected, for the remainder of the term for which he was elected, by a special election to be held for that purpose. Vacancy in office of representatives, how filled.

16. *And be it enacted*, That in case of a vacancy in the office of president, vice-president, treasurer, or secretary, or in the office of visitor or trustee, such vacancy shall forthwith be filled by the representatives, or by the company, association, board or corps by which he was elected, for the remainder of the term for which he was elected, by a special election to be held for that purpose. Vacancy in office of president, &c., how filled.

Secretary and treasurer to make report.

17. *And be it enacted*, That the said secretary and treasurer shall report to the board of representatives at their annual meeting, and shall further report to the board of representatives, or to the board of visitors or trustees, whenever requested by either of them; that the secretary shall, upon his election, take an oath of office, for the faithful performance of his duties, which oath shall be administered by the president; and that the treasurer shall give a bond to the corporation in such sum and with such sureties as the representatives may from time to time require.

Secretary to take oath.

Treasurer to give bond.

Application for assistance, and disposal of relief fund.

18. *And be it enacted*, That to such visitors or trustees shall be referred for their inspection and approval all applications for assistance, and they shall dispose of the relief fund of such corporation, within such limit and according to such rules and regulations as may from time to time be made and established by the board of representatives; and no bill therefor shall be contracted or paid, or assistance given without the approval of at least two of the visitors or trustees, which two visitors or trustees shall issue a warrant to the treasurer for the amount they deem necessary therefor, which warrant shall, before payment, be countersigned by the president; and no person or persons shall be given assistance, if the cause of the indigence, or the reason for the disability, or the nature or cause of the injury or sickness, shall not, in the opinion of a majority of such visitors or trustees, be such as to entitle him, her, or them to such assistance, nor in case, in the opinion of a majority of said visitors or trustees, the person or persons applying therefor may be deemed unworthy of assistance; and such visitors or trustees may refuse assistance, if upon inquiry, they deem the person or persons applying therefor not to be in any real need thereof.

Management of corporation.

19. *And be it enacted*, That the management of the business and affairs and the custody of the property and the disposal of the funds and property of such corporations, except as above provided, shall be entrusted to the board of representatives thereof.

Board of representatives may control application of funds, &c.

20. *And be it enacted*, That at any meeting of the board of representatives, they shall have the right to inquire into and control the application of the funds and property of such corporation, and to suspend any of the visitors or trustees,

or officers, if judged by them to be guilty of misconduct or malfeasance in office, until a trial thereof can be had.

21. *And be it enacted*, That if any of the said representatives, visitors or trustees, or officers shall be charged with misconduct or malfeasance in office, such charge shall forthwith be investigated by the company, association, board or corps by which he was elected, and in case on a trial thereof, at which he may be heard in his own behalf or by counsel he shall be found guilty, such company, association, board, or corps shall declare his office vacant and shall fill such vacancy as above provided.

Office of representatives, &c., guilty of misconduct to be declared vacant.

22. *And be it enacted*, That no part of the funds of such corporations shall be used for banking purposes or in any manner except as provided for in this act, and except for necessary expenses in carrying out the interests and objects of such corporations.

Funds not used for banking purposes.

23. *And be it enacted*, That the object of corporations under this act shall be to establish, provide for and maintain a fund for the relief, support, or burial of indigent exempt firemen and of their families and of such persons and of the families of such persons as may be injured or killed while doing public fire duty, or may become indigent or be disabled, or may die as the result of their doing such duty or may be prevented by such injury, or by sickness arising from their doing such duty, from attending to their usual occupation or calling.

Object of corporation.

24. *And be it enacted*, That it shall be lawful for the several duly incorporated firemen's relief associations in this state to take part, by delegates elected as hereinafter provided, in the organization and conduct of a state firemen's relief association; *provided*, that there shall not be more than one such state association, the incorporation of which is hereby authorized, the same to be known as the "New Jersey State Firemen's Association;" and such state association shall have the same rights, powers and privileges as the local firemen's relief associations, except that of sharing in the distribution of any fund for the relief of indigent or disabled firemen, other than that the expense of maintaining such state association shall be borne equally by all of the local firemen's relief associations in this state.

May elect delegates to organize state association.

Proviso.

When delegates
to meetings of
state association
chosen.

25. *And be it enacted*, That on or before the second Wednesday in September, in every year, the board of representatives of each duly incorporated local firemen's relief association in this state may and shall choose out of the whole body of the membership thereof, three delegates, who, together with the chief engineer, or, if there be no chief engineer, then the fire marshal, or, in case there be neither, then the senior foreman shall represent said corporation at the meetings of the said "New Jersey State Firemen's Association."

Officers of state
association
annually
chosen.

26. *And be it enacted*, That at each annual meeting or convention of the said "New Jersey State Firemen's Association," there shall be chosen, by ballot, a president and secretary and such other officers as the constitution and by-laws adopted by said state association may require, which president, secretary and other officers shall constitute the executive committee of said state association; and the said president and secretary, after each such election, shall file in the office of the secretary of state a sworn statement of the fact of such election and of the names of the president and secretary and other officers so chosen; and the first certificate so filed after this act shall take effect shall be deemed and taken to be the certificate of the incorporation of such state association, and shall contain a reference to this act and state the intention to incorporate thereunder, and shall have thereon an impression of the common seal of such state association.

Statement to be
filed with secre-
tary of state.

A association to
file copy of con-
stitution, &c.,
with secretary
of state associa-
tion.

27. *And be it enacted*, That each local firemen's relief association, except such as have been incorporated by any special act of the legislature of this state, shall file a copy of its constitution and by-laws and of its certificate of incorporation with the secretary of the said "New Jersey State Firemen's Association," who shall forthwith submit the same to the executive committee thereof for their inspection and approval, in order to determine which of said local firemen's relief associations have complied with the requirements of this act in relation thereto.

Association to
file annual
statement with
secretary of
state.

28. *And be it enacted*, That on or before the first day of April, in every year after the year in which this act shall take effect, each local firemen's relief association, whether incorporated under this act or otherwise howsoever, shall cause to be filed with the secretary of state a sworn state-

ment, showing the names of its representatives, visitors or trustees and other officers, with the amount of their respective fees or salaries, if any, also the names of its beneficiaries during or within the year next preceeding such statement, the amount of money paid to each of such beneficiaries, also the receipts and expenses, during such year, such expenses to be stated in detail, and the amount of money and other property in its possession at the date of making such statement, and how said money is invested or secured, or where it is deposited, a duplicate of which statement, also sworn to, shall at the same time be filed with the secretary of the said "New Jersey State Firemen's Association;" an examination of which statements shall forthwith be made, by the executive committee of the said state association, to determine which of said local firemen's relief associations have complied with the requirements of this act in relation thereto. Duplicate filed.

29. *And be it enacted*, That the secretary of said state association, on or before the first day of June, in every year after the year in which this act shall take effect, shall file in the office of the secretary of state a sworn certificate, countersigned by the president of said state association, setting forth the name and address of the treasurer of each of such local firemen's relief associations as have complied with the several requirements of this act; and no firemen's relief association, incorporated by any special act of the legislature of this state, nor any of the officers thereof, shall share in the distribution of, nor be entitled to have or receive any part of any fund for the relief of indigent or disabled firemen, unless it and they shall have complied with the requirements of this act in regard to the annual statements aforesaid, and shall be so certified to the secretary of state; and no other firemen's relief association, nor any of its officers, shall share in such distribution, nor be entitled to have or receive any part of any such fund, unless it and they shall have complied with the several requirements of this act, and shall be so certified as aforesaid to the secretary of state. Secretary of state association to file annual certificate with secretary of state.

30. *And be it enacted*, That any local firemen's relief association, incorporated or re-incorporated under this act, may be dissolved, at any meeting thereof, by a vote, by written or printed ballot, of two-thirds of the members present and voting in favor thereof; *provided*, that notice of such meeting, and of the purpose thereof, signed by at least ten of the Association may be dissolved.

members, shall have been mailed to each person entitled to vote thereat, at least twenty days previous thereto, and shall have been published, for three weeks successively, once in each week, in a newspaper circulating in the neighborhood where the said association may be located, notice of which dissolution shall forthwith be filed with the secretary of state and with the secretary of said state association.

Legislature may alter or repeal act or charter of association.

31. *And be it enacted*, That the legislature may at any time alter, modify, or repeal this act, and may also alter, suspend or repeal the charter of any firemen's relief association incorporated or re-incorporated under and by virtue of the provisions of this act.

Act not to affect certain corporations.

32. *And be it enacted*, That nothing in this act contained shall be deemed or held to repeal the charter of any incorporated association, or to dissolve any voluntary association, heretofore organized by the exempt firemen of any city in this state, or by the volunteer firemen therein previous to or at or about the time of the organization therein of a paid fire department, or to prevent the incorporation of any such associations, nor shall this act apply to or in any manner affect any funds which may have been or may hereafter be accumulated by any such associations.

Repealer.

33. *And be it enacted*, That all acts and parts of acts inconsistent with the provisions of this act, (excepting such special charters as have been granted by the legislature of this state), and especially the act entitled "An act to incorporate fire departments," approved March eighth, one thousand eight hundred and seventy-seven, be and the same are hereby repealed, and this act shall take effect immediately.

Approved March 25, 1885.

SLA # _____
 For the 1 2 3 4 Quarter 20__
 (circle one)

Do not write in this space

 For Official Use Only

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE
THE SURPLUS LINES EXAMINING OFFICE
PO Box 325, Trenton NJ 08625-0325

TAX RETURN AND CERTIFIED ACCOUNT BY SURPLUS LINES PRODUCER

To the Commissioner of Banking and Insurance of New Jersey:

1. Name of Surplus Lines Producer : _____
2. I have a bona fide office in which is kept a record of contracts of insurance issued by me located at:

 (Street Address) (City or Town) (State) (Zip Code)
3. Telephone No. () _____
4. Pursuant to *N.J.S.A.* 17:22-6.58, There is submitted on the accompanying pages a verified report, in duplicate, on the surplus lines insurance transacted during the quarter circled above, a summary of which follows:

Taxable Premium

Section A: Payable to the New Jersey State Firemen's Association:

		A.	B.	C.	D.	E.
		Premium	Rate	Tax	Prior Period Credit	Total Tax
5.	Fire Premium (on or after 7/1/09)		3%			
6.	Fire Premium (prior to 7/1/09)		3%			
7.	Total due to the NJSFA					

Section B: Payable to the State of New Jersey:

		A.	B.	C.	D.	E.
		Premium	Rate	Tax	Prior Period Credit	Total Tax
8.	Fire Premium (on or after 7/1/09)		2%			
9.	All Other Premium (on or after 7/1/09)		5%			
10.	All Other Premium (prior to 7/1/09)		3%			
11.	Total					

Section C: Non-taxable Premium

		A.	B.	C.
		(after 7/1/09)	(prior to 7/1/09)	Total
12.	Fire Premium			
13.	All Other Premium			
14.	Total Premium			

I declare under penalties of perjury that I have examined this statement including the schedules and statements attached thereto, if any, and to the best of my knowledge and belief the matter and information set forth therein are true, correct, and complete. I further certify that I am authorized to sign for the producer identified on Line 1 above.

 Contact person's name

 SIGNATURE OF SURPLUS LINES PRODUCER & DATE

 Contact person's telephone number

 NAME AND TITLE (PRINT OR TYPE)

379

2010 FINANCIAL STANDING - 538 Local Associations

RECEIPTS (Locals)	2010	2009	2008	2010	DIFFERENCE(+/-)	PERCENT
Premium Tax Distributions	\$ 24,483,412.16	\$ 23,354,026.78	\$ 24,282,410.81	\$ 928,384.03	+	3.98
Interest (all sources)	4,277,892.94	3,384,345.29	2,326,573.11	(1,057,772.18)	-	(31.25)
Subsidy	161,781.50	205,453.30	177,752.63	(27,700.67)	-	(13.48)
Miscellaneous Income	46,196.63	60,752.28	131,036.93	70,284.65	+	115.69
Total Receipts (all sources)	\$ 28,969,283.23	\$ 27,004,577.65	\$ 26,917,773.48	\$ (86,804.17)	-	(0.32)
DISBURSEMENTS (Locals)						
Relief Paid	\$ 4,873,437.16	\$ 4,935,052.48	\$ 4,991,624.04	\$ 56,571.56	+	1.15
Convention Expense	2,447,012.60	2,467,915.60	2,481,314.47	13,398.87	+	0.54
Administrative Expense	1,992,784.21	2,046,409.50	2,043,751.68	(2,657.82)	-	(0.13)
Assessment to General Relief Fund	12,731,388.45	12,144,068.90	12,626,853.63	482,784.73	+	3.98
Miscellaneous Expense	16,551.54	16,205.89	18,527.26	2,321.87	+	14.33
Total Disbursements (all sources)	\$ 22,061,173.96	\$ 21,609,652.37	\$ 22,162,071.08	\$ 592,418.17	+	2.56
ANALYSIS OF CONVENTION EXPENSE(Locals)						
Delegates Expense	\$ 1,380,533.88	\$ 1,331,725.55	\$ 1,338,679.80	\$ 6,954.25	+	0.52
Life Members Expense	1,066,478.72	1,136,190.05	1,142,634.67	6,444.62	+	0.57
Total Convention Expense	\$ 2,447,012.60	\$ 2,467,915.60	\$ 2,481,314.47	\$ 13,398.87	+	0.54
ANALYSIS OF BURIAL CLAIMS						
Claims Paid	(806)	(830)	(799)	(79)	-	-
Claims Value	\$ 7,309,891.80	\$ 7,728,687.62	\$ 7,632,759.88	\$ (95,927.74)	-	(1.24)
ANALYSIS OF SPECIAL RELIEF CLAIMS						
Claims Paid	(107)	(116)	(109)	(109)	-	-
Claims Value	\$ 119,250.00	\$ 128,000.00	\$ 122,250.00	\$ (5,750.00)	-	(4.49)
ANALYSIS OF ASSETS (Locals)						
Bank Investments	\$ 128,596,097.23	\$ 134,092,909.64	\$ 138,558,464.18	\$ 4,465,554.54	+	3.33
Government Bonds	5,862,383.63	5,763,696.49	6,053,844.35	\$ 290,147.86	+	5.03
Other Assets	3,200.00	3,200.00	3,200.00	\$ 0.00	-	-
Total Assets	\$ 134,461,680.85	\$ 139,859,806.13	\$ 144,615,508.53	\$ 4,755,702.40	+	3.40

bpc

Wednesday, October 12th, 2011

Board of Officers
Committees
Association Lists
Abridged Reports
News & Information
Membership View
Financial
Secretary Reports
Local Relief Officers
Insurance Tax
Notice of Death
Caucus & Convention
Object of Association
History
Reports
Links
Firemen's Home
Home

1700 Galloping Hill Road
Kenilworth, New Jersey
07033-1303

Phone (908) 620-1871
Toll Free 1-800-852-0137
Fax (908) 620-1874

News and Information

The New Jersey State Firemen's Association

We'd like you to know.....

General Background Information

The New Jersey State Firemen's Association was formed under New Jersey Statutes 43:17-1 et seq. Stringent rules pertain to the incorporation of local relief associations, transfer of monies, membership and holding of office in local relief associations, elections of the State Association Officers and Executive Committee, convention participation, use and investment of funds, burial claims and to conduct the affairs of the Association.

The 76,000 plus Firefighters in New Jersey who are members of the New Jersey State Firemen's Association, both career and volunteer, are indispensable to the protection of the lives and property and to the safety of our communities. Often they work without so much as basic gratitude, giving years of their lives to a humane civic cause. Their services indeed are invaluable contributions and should be rewarded with respect and consideration.

New Jersey has a unique system for aiding firefighters and their families by means of the New Jersey State Firemen's Association, created in the late 1800's by state legislation. Its purpose is to maintain a General Relief Fund that provides burial benefits and financial relief for qualified members. It is the only Association of its kind in the United States.

Our State Association is comprised of local firemen's relief associations. It is within their scope to approve and grant relief to qualified local firefighters and their families who file an application for such assistance and demonstrate a need. Money for local funds comes from a levy on all fire insurance premiums written by insurance companies chartered outside the State of New Jersey.

With the current membership of active and retired firefighters, the New Jersey State Firemen's Association has an obligation that must be maintained in a fiduciary manner. A full time staff of office personnel working in conjunction with elected

State Officers is required to manage the daily operations. All requests, for either burial benefits or relief assistance, from the local associations or from the State Association's General Fund, are thoroughly investigated under established guidelines.

A firefighter must have been between the age of eighteen (18) and prior to their forty-sixth (46th) birthday at the time of joining to qualify for benefits. When a membership application is properly filled out, submitted and approved by the State Office, only then does that firefighter receive a line number and then he or she can start

399

receiving credit toward a Qualifying Certificate. They must serve a period of 84 months, attending a minimum of 50% of all alarms and drills to receive the maximum burial benefit.

All firefighters serving towards qualification earn credit for a burial benefit. This benefit is provided to survivors and/or other approved recipients according to the pro-rated scale below.

SCALE OF PAYMENTS BASED ON QUALIFIED SERVICE AS OF JULY 1, 2011	
Under 1 year	- \$6,000
Over 1 year but under 2 years	- \$6,400
Over 2 years but under 3 years	- \$6,500
Over 3 years but under 4 years	- \$6,600
Over 4 years but under 5 years	- \$6,700
Over 5 years but under 6 years	- \$6,800
Over 6 years but under 7 years	- \$6,900
Over 7 years, and Qualified	- \$10,000

The current maximum payment of \$10,000 is provided for a qualified member of the association.

Should death occur in the **LINE OF DUTY**, to any member, the maximum benefit will be triple and payable as specified in General Relief Fund Rules Article VI, section 16-a, 16-b and 16-c.

GENERAL INFORMATION

Other states have the same tax levy on premiums written by out-of-state underwriters. In many states, that revenue is used for other purposes with little or no direct control by the firefighters who were made benefactors by law.

Our records are on file with the Secretary of State of New Jersey where all local relief associations and the New Jersey State Firemen's Association file annual reports.

Association membership is made up of any fire company or department under municipal control by ordinance. Present membership consists of 538 local associations out of the New Jersey's 566 municipalities. The roster now includes over 76,000 volunteer and career firefighters.

A twenty-one (21) member Executive Committee, representing all counties in the state elected annually at the state convention supervises the State Association and controls the funds of the local relief associations. It also oversees the legal investment of all funds and examines the annual reports of each association. All reports are subject to internal and private audits. In addition, the State Association has an appointed five (5) member Advisory Committee that acts on specific matters, such as burial claims, special relief, appeals, etc.

LOCAL RELIEF ASSOCIATION FUNDING

An assigned ISO code number to which the insurance policies are identified designates assessment payment to the local relief associations. In turn the funds are recorded and paid by the various insurance companies to the New Jersey State Firemen's Association. The funds are then distributed and forwarded to the respective local relief associations. This report is also submitted to the State Commissioner of Banking and Insurance.

FUND DISBURSEMENTS

The New Jersey State Firemen's Association annually pays in excess of seven (7) million dollars in burial benefits from the General Fund. Local relief associations

409

currently pay over \$5 million dollars in financial assistance annually to eligible firefighters and their families. This money is granted only after thorough investigation and review of the applications.

ANY MEMBER IN NEED OF FINANCIAL ASSISTANCE SHOULD CONTACT THEIR LOCAL RELIEF ASSOCIATION.

STATE GOVERNMENT REPORTING

Every year, as required by law, the New Jersey State Firemen's Association forwards to the State Commissioner of Banking and Insurance a list of all local associations that have complied with the law in all respects. In addition, the New Jersey State Firemen's Association must file an annual report for each local association with the Secretary of State of New Jersey certifying the particulars of every local association, including field examinations performed by the Executive Committee, examinations of bonds and property, and assurance of proper care, safety and custody of the funds. Local associations not meeting the requirements demanded by the office of the Secretary of State or who do not fulfill the qualifications under which local associations were chartered are not funded.

NEW JERSEY FIREMEN'S HOME

In 1898 the New Jersey State Firemen's Association recognized a need to provide a home for firefighters. The Lathrop family donated eighty-five (85) acres of land in Boonton, New Jersey located in Morris County for that purpose. Firefighters with one (1) or more years of service are eligible to enter the home. A Board of Managers representing all counties manages the Firemen's Home in conjunction with the State Department of Health and Senior Services. The Firemen's Home is funded pursuant to State Statute N.J.S.A. 54:18-8. You do not have to be a member of the New Jersey State Firemen's Association to be eligible for admittance to the Firemen's Home.

TOWARD THE FUTURE

The New Jersey State Firemen's Association has been operating effectively for more than one hundred twenty five (125) years and will continue to do so in the future. Member firefighters and their families who are in need of assistance and the next of kin of those who died naturally or in the LINE OF DUTY can fully expect to receive eligible financial assistance from the association to include:

- Burial Benefit
- Local Relief
- Special Relief
- Supplemental Relief

We will continue to strive for the best interest of all firefighters, their families and continue to encourage a fraternity of all firefighters.

BOARD OF OFFICERS

President George H. Heflich, Sr.

Vice President Frank B. Gunson, 3rd

Secretary Sanford J. Weinberg

Treasurer Barry J. Osborn, CPA

1st Asst. Secretary Jacob J. Genovay

2nd Asst. Secretary H. Lee Baker

Field Examiner William S. Maushardt

President Emeritus Ernest J. Greenwald, Sr.

Counsel Frank P. Cavallo Jr. Esq.

419

Asst. Counsel Stacy Moore

EXECUTIVE COMMITTEE

Henry W. Schoenstein, Jr. Atlantic

Robert F. Ordway Bergen

Richard K. Dreby Burlington

Norman F. Figuerca Jr. Camden

Robert C. Harvey Cape May

James F. Reeves Cumberland

Thomas J. Pelaia Essex

William J. McNulty Gloucester

Joseph D. Stauffer, Jr. Hudson

John R. Phillips Hunterdon

Joseph M. Lenarski Mercer

Carl S. Christensen Middlesex

Robert J. Kelly Monmouth

Kevin B. Finnegan Morris

Joseph T. Hankins Ocean

Donald C. Simmons Sr. Passaic

Francis X. Walker Jr. Salem

Neil J. Gallo Somerset

Charles A. Thom Sussex

Thomas Miller Union

Konrad A. Mellert Warren

New Jersey State Firemen's Association

1700 Galloping Hill Road

Kenilworth, New Jersey 07033-1303

1-908-620-1871 Fax - 1-908-620-1874

1-800-852-0137 www.njsfa.com

Revised May 14, 2011

429



Parker McCay P.A.
 Three Greentree Centre
 7001 Lincoln Drive West
 P.O. Box 374
 Marlton, NJ 08053-0974
 P. 856-596-8900
 F. 856-596-9631
 www.parkermccay.com

Frank P. Cavallo, Jr., Esquire
 P. 856-985-4074
 F. 856-810-5852
 fcavallo@parkermccay.com

October 27, 2008

File No. 1121-0050

Catherine Starghill, Esquire
 Executive Director
 New Jersey Government Records Council
 Post Office Box 819
 Trenton, New Jersey 08625-0819

Re: New Jersey State Firemens Association

Dear Ms. Starghill:

The purpose of this letter is to request an Advisory Opinion as to whether the New Jersey State Firemens Association is a public agency subject to the requirements of the Open Public Records Act, N.J.S.A. § 47:1A-1 et seq. ("OPRA"). It is the Association's contention that it does not meet the criteria as a public agency, however, we call upon your expertise for guidance so that measures may be taken to comply if necessary.

OPRA defines a public agency to include "...the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch..." N.J.S.A. § 47:1A-1.1

Through our review of past GRC decision, it is apparent that the Government Records Council has considered the public agency question on numerous occasions. For example, it has determined that the New Jersey Sports and Exposition Authority (GRC 2004-142), the Seaside Heights Business Improvement District (2005-50) and the Montclair Community Pre-K Center (2005-130) are each public agencies subject to OPRA requirements. Conversely, it has determined that the Children's Hospital of New Jersey (2006-13) and the Union County Alliance (2006-73) are not public agencies. Unfortunately, except as noted below, these decision shed little insight into the analysis utilized to reach these determinations

The New Jersey Supreme Court found a private, non-profit development corporation was a public agency subject to OPRA and also subject to the Open Public Meetings Act as a "public body." Times of Trenton v. Lafayette Yard Comm. Deve. Corp., 183 N.J. 519 (2005). While the definition of public body differs from public agency under the separate legislative schemes, the court found that the functions of the development corporation were enough to require adherence to both statutory enactments.

In Lafayette Yard, the court held that the corporation, although private and non-profit: (1) was created for the express purpose of redeveloping property; (2) was comprised of members



October 27, 2008

Page 2

exclusively appointed by the local governing body; (3) had a policy which mandated reversion of assets, repayment of debt and liquidation of assets to that city; and (4) had the authority to issue tax-exempt bonds. Lafayette Yard at 442. The Supreme Court found these characteristics enough to subject the corporation to the OPMA and then equated a public body to a public entity to require OPRA requirements as well.

In strong reliance on Lafayette Yard, the Government Records Council considered whether the Association of Retarded Citizens, Union County, Inc. was subject to OPRA. (GRC 2005-136.) ARC-Union's relationship with the State of New Jersey is contractual only. It was not created by the State. According to its Bylaws, Arc-Union was created to "promote the welfare of all mentally retarded citizens and their families, and to cooperate with public and private agencies and other groups and organizations having similar purposes." The GRC determined that, unlike the development corporation in Lafayette Yard, the interest of the public was not implicated by ARC-Union's actions, and the governmental appointment and oversight requirements were lacking. The Complainant's interest in requesting the records was personal rather than implicating a public purpose - i.e. contrary to the letter and spirit of OPRA. The GRC could not stretch those facts to subject ARC-Union to the OPRA requirements.

When evaluating whether the State Firemen's Association is subject to OPRA, we recognize that the Association exists through enabling legislation of N.J.S.A. § 43:17-40 et seq. On its face, this characteristic leans toward subjecting the Association to the requirements of OPRA. However, once created by the Legislature, the membership is filled by individuals of the twenty-one counties, not appointed by government entities. The Association's exclusive purpose (providing relief to retired firefighters and their families) is not akin to performing a government function. The Association is not supported by government funds. Its function, analogous to that of ARC-Union, does not affect the rights, duties, obligation, privileges and benefits of other persons.

Based upon these characteristics, there is a strong argument to suggest that the New Jersey State Firemen's Association is not encompassed with the definition of a public agency subject to OPRA requirements.

We eagerly await your conclusion as to whether the Association is encompassed within the statute's definition.

Very truly yours,


FRANK P. CAVALLO, JR.

FPC/gmm

449



State of New Jersey
GOVERNMENT RECORDS COUNCIL

ROBIN BERG TABAKIN, Chairman
COMMISSIONER JOSEPH V. DORIA, JR.
COMMISSIONER LUCILLE DAVY
DAVID FLEISHER
CATHERINE STARGHILL Esq., Executive Director

101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

Toll Free: 866-850-0511
Fax: 609-633-6337
E-mail: grc@dca.state.nj.us
Web Address:
www.nj.gov/grc

December 30, 2008

Frank P. Cavallo, Jr., Esquire
Parker McCay P.A.
Three Greentree Centre
7001 Lincoln Drive West
P.O. Box 974
Marlton, NJ 08053-0974

RE: October 27, 2008 Request for Advisory Opinion

Dear Mr. Cavallo:

Thank you for your letter of October 27, 2008, in which you requested that the Government Records Council issue an Advisory Opinion as to whether the New Jersey State Firemens Association is a public agency subject to the requirements of the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. ("OPRA").

The Government Records Council considered your request at its December 18, 2008 Council meeting.

N.J.S.A. 47:1A-7.b. states in pertinent part that the Government Records Council shall "issue advisory opinions, *on its own initiative*, as to whether a particular type of record is a government record which is accessible to the public[.]" (Emphasis added). Moreover, N.J.A.C. 5:105-4.1(a) states in pertinent part that "[t]he Council shall, *in its discretion*, issue advisory opinions as to whether a particular type of record is a government record which is accessible to the public pursuant to N.J.S.A. 47:1A-7.b." (Emphasis added). Additionally, N.J.A.C. 5:105-4.1(b) provides that "[a]dvisory opinions address whether general categories of records are disclosable and do not serve as complaint-specific decisions of the Council."

The Government Records Council therefore declines to issue an Advisory Opinion as to the issue raised above.

Sincerely,

Karyn Gordon, Esq.
In House Counsel

459

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
SUMMARY	1
STATEMENT OF FACTS	2
Origin of State Firemen’s Association	2
State Firemen’s Association Today	5
State Firemen’s Association’s GRC Inquiry	6
John Paff’s Record Request	6
ARGUMENT	7
I. State Firemen’s Association Violated OPRA	7
A. The Purpose of OPRA is to Maximize Public Knowledge of Public Affairs So That the Public Can Knowledgeably Exercise its Sovereignty	7
B. State Firemen’s Association is an OPRA “Public Agency”	8
1. Municipal Fire Departments Created the State Firemen’s Association in 1879	8
2. In the Alternative, the State Legislature and Municipal Fire Departments’ Municipal Firemen’s Relief Associations Created the State Firemen’s Association in 1885	10
C. OPRA Requires the Appointment of a Record Custodian and Adoption of a Record Request Form	12
D. OPRA Requires a Response to a Record Request “as Soon as Possible, but Not Later Than Seven Business Days After Receiving the Request”	12
E. OPRA Expressly Requires the Disclosure of “the Amount and Type of Any Pension Received”	13
II. State Firemen’s Association Violated the Common Law Right of Access to Public Records Because the Public and John Paff’s Need to Know the Expenditure of State Taxes on Public Employees’ Pensions Outweighs the Need for Secrecy	13

TABLE OF AUTHORITIES

Cases

Asbury Park Press v. Ocean Cnty. Prosecutor's Office, 374 N.J. Super. 312
(Law Div. 2004)7, 8

Daily Journal v. Police Dep't of Vineland, 351 N.J. Super. 110 (App. Div. 2002) 14

Fair Share Housing Center, Inc. v. New Jersey State League of Municipalities,
___ N.J. ____, (2011)1, 8, 11

Irval Realty, Inc. v. Bd. of Pub. Util. Comm'rs, 61 N.J. 366 (1972) 14

Keddie v. Rutgers, 148 N.J. 36 (1997) 14

Michelson v. Wyatt, 379 N.J. Super. 611 (App. Div. 2005) 15

Taxpayers Ass'n of Cape May v. Cape May, 2 N.J. Super. 27 (App. Div.1949) 14

Times of Trenton Publishing Corp. v. Lafayette Yard Community Development Corp.,
183 N.J. 519 (2005) 7

Statutes and Rules

N.J.S.A. 47:1A-1 3-5,6

N.J.S.A. 47:1A-1.12,3

N.J.S.A. 47:1A-6 2

SUMMARY

The Open Public Records Act expressly requires disclosure of “the amount and type of any pension received.” N.J.S.A. 47:1A-10. John Paff requested “the amount and type of pension received by each [former] member of the Executive Committee” of the New Jersey State Firemen’s Association, an organization that oversees the distribution of State tax money to indigent, injured and deceased municipal firefighters. The State Firemen’s Association denied John Paff access to the requested pension records on the grounds that it is not a “public agency” under OPRA.

OPRA’s definition of “public agency” is “broadly written so that a wide variety of entities fall within the compass of that term.” Fair Share Housing Center, Inc. v. New Jersey State League of Municipalities, ___ N.J. ___, ___ (2011) (slip op. at 18). Moreover, OPRA expressly states that “any limitations on the right of access accorded by [OPRA] shall be construed in favor of the public’s right of access.”

OPRA expressly defines a “public agency” to include any “instrumentality . . . created by a . . . combination of political subdivisions.” N.J.S.A. 47:1A-1.1. According to the State Firemen’s Association, it was created in 1879 by nineteen municipal fire departments. Therefore, the State Firemen’s Association is a “public agency” under OPRA, and its denial of access to its pension records violated OPRA.

Despite its detailed admissions describing how it was created in 1879 by municipal fire departments, the State Firemen’s Association asserted in letters to the Government Records Council and to John Paff’s attorney that it was created six years later by legislation. But even if the State Firemen’s Association were created pursuant to the 1885 legislation, it would still be a “public agency” under OPRA. Pursuant to the 1885 legislation, municipal fire departments

formed local firemen relief associations, which, in turn, incorporated the State Firemen's Association.

STATEMENT OF FACTS

The New Jersey State Firemen's Association distributes public funds to needy firefighters and to its own employees.

Origin of State Firemen's Association

The legislative precursor of the State Firemen's Association was an 1826 law that imposed a tax on out-of-state fire insurance companies to be paid to the State and went into the general treasury of the State of New Jersey. (Pa18.). By 1850 some of the State tax was being earmarked for municipal fire departments' charitable, benevolent or disability funds for, or operated by, firefighters. (Pa18-19). Different municipalities operated differently. (Pa19.) Most of the charitable, relief, disability or benevolent funds were haphazard, with little or no oversight. (Pa19.)

In 1867 the Legislature required that the tax money received by the Secretary of State from the fire insurance companies was to be given to the charitable associations of municipal fire departments for the "benefit of disabled or incapacitated firemen or their families." (Pa19.) In 1871, the State's Department of Insurance was created and it took from the Secretary of State most of the supervision. (Pa19.) However, the regulations and laws pertaining to the fire departments' charitable associations were still somewhat haphazard and disjointed. (Pa19.) An 1879 law required the insurance agents in respective municipalities to pay the two percent tax on foreign fire insurance policies to the treasurer of the benevolent fund of the fire department of the municipality. (Pa20.)

In 1879 a state-wide meeting of New Jersey fire departments was held in Newark to

create a state-wide organization to protect the interest of the firefighters and their charitable associations. (Pa21.) Nineteen fire departments throughout the state were represented. (Pa21.) A delegate from the Newark Fire Department, which had called the meeting, stated that the Legislative Committee of the Newark Fire Department had concluded that Newark Fire Department's Benevolent Fund was not "getting all the money that was justly due." (Pa21.) It was also reported that Newton and other municipal fire departments had no charitable or benevolent funds, and such departments needed to organize such funds in order that they receive the two percent state tax. (Pa21.)

It was at this First Convention that the New Jersey State Firemen's Association was organized and became a reality. (Pa20.) It was initially named the "Firemen's Association of the State of New Jersey." (Pa21.) In the future, each municipal fire department would send four delegates, one of whom would be the fire chief ("chief engineer") and, if no fire chief ("chief engineer"), then the senior foreman. (Pa21.) Annual conventions followed on September 24, 1879, September 22, 1880, September 28, 1881 and annually thereafter (Pa21-22.)

By 1883, the State Firemen's Association's officers were forging the State Association into an effective statewide organization. (Pa23.) At the September 26, 1883 Annual Convention, the State Firemen's Association "was becoming more actively engaged in legislative initiatives." (Pa22.) The State Firemen's Association's President Bird W. Spencer orchestrated the passage of the state legislation in 1885 that codified the structure, powers and duties of the existing organization in order to ensure that the maximum amount of the two percent tax benefited firefighters and their relief associations. (Pa22-36.) L. 1885, c. 122. That law is essentially unchanged to this day. (Pa22.)

Section 1 authorized the fire chief ("chief engineer"), president, board and members of

municipal fire departments and volunteer fire associations under municipal supervision or control to form local fireman's relief associations, whose membership would include, without any formal election required, all officers and members of those fire departments and volunteer fire associations. (Pa24-25.)

Section 3 provided that any pre-existing firemen's relief organizations would be re-organized and re-incorporated under the provisions of the 1885 Act. (Pa27.)

Section 4 and 5 provided that there would be only one local firemen's relief association in any one particular municipality. (Pa27-28.)

Section 8 provided that each municipal fire department and volunteer fire association under municipal supervision or control shall be governed by a board of representatives consisting of the president, fire chief ("chief engineer") and three elected representatives. (Pa29.)

Section 9 provided that each board of representatives shall elect a board of officers and a board of visitors or trustees. (Pa29-30.)

Section 18 provided that the board of visitors or trustees shall approve all applications for assistance and dispose the relief funds. (Pa32.)

Section 19 provided that the board of representatives would manage the relief funds. (Pa32.)

Section 23 provided that the purpose of the local relief corporations was to maintain a fund for the relief of indigent exempt firemen and their families and of exempt firemen injured or killed while doing public fire duty and their families. (Pa33.)

Section 24 authorized the local firemen's relief associations to organize and conduct a New Jersey State Firemen's Association, which would be the only state firemen's relief association. It would have all the powers of the local firemen's relief association, except that of

distributing relief funds to indigent or disable firefighters. The State Firemen's Association's expenses would be borne by all of the local firemen's relief associations. (Pa33.)

Section 25 provided that each local firemen's relief association's board of representatives would choose four delegates to the New Jersey State Firemen's Association, one of whom would be the fire chief ("fire engineer"). (Pa34.)

Section 26 concerned the organization of the New Jersey State Firemen's Association. (Pa34.)

Section 29 provided that no local firemen's relief association would receive any of the relief funds unless it complied with the requirements of the Act. (Pa35.)

State Firemen's Association Today

The current version of the 1885 Act governing the State Firemen's Association and its subordinate "local firemen's relief associations" is N.J.S.A. 43:17-1 through 43:17-47. They are similar to the original 1885 Act. N.J.S.A. 43:17-41 through 43:17-47 provide for the organization and operations of the State Firemen's Association.

The tax has increased to five percent. The out-of-state fire insurance companies pay three percent to the State Firemen's Association and pay two percent to the State of New Jersey. The State of New Jersey's Department of Banking and Insurance collects the tax. N.J.S.A. 17:22-6.59; N.J.S.A. 54:18-1. A tax return form is attached. (Pa37.) In 2010 the tax produced \$12,626,071.08 (52%) for the State Firemen's Association and \$11,656,339.73 (48%) for the local firemen's associations. (Pa38.)

The State Firemen's Association's pension plan for its own employees as of January 1, 2009, had a total actuarial present value of \$5,180,341.00. (Pa11-12.) Present membership of the State Firemen's Association consists of 538 local associations out of New Jersey's 566

municipalities. The roster includes over 76,000 career and volunteer firefighters. (Pa40.)

State Firemen's Association's GRC Inquiry

The State Firemen's Association on October 27, 2008, asked the Government Records Council to issue an advisory opinion as to whether the Association is a public agency subject to the requirements of OPRA. The State Firemen's Association contended that it was not a public agency under OPRA. (Pa43-44.) The Government Records Council declined to issue the requested advisory opinion. (Pa45.)

John Paff's Record Request

On September 23, 2011, John Paff mailed the State Firemen's Association a record request under OPRA and the common law right of access. (Pa1-2.) Paff explained that he was a Life Member of the Association. He requested the following records from the Association:

No. 1. N.J.S.A. 47:1A-5(f) requires the custodian of every public agency to adopt a records request form for the public to use for requesting records. I'd like a copy of the form adopted by the custodian for the Firemen's Association.

No. 2. I am informed, perhaps, erroneously, that after a person who is selected by a county caucus to serve on the Executive Committee serves in that position for more than one term, he or she is eligible for a pension. I would like two specific classes records: a) records that shows the amount and type of pension received by each member of the Executive Committee who served immediately prior to the current members of the Executive Committee (see N.J.S.A. 47:1A-10); b) any record that establishes the number of years that a member of the executive Committee must serve in order to be entitled to a pension.

No. 3. The detailed bills for legal services rendered during March of 2011 submitted by any and all attorneys and law firms retained by or on behalf of the Association. I have requested these records from numerous government agencies and they typically show the date of service, a brief description of the specific services rendered and the amount of time spent on that service.

The State Firemen's Association received Paff record request on September 26, 2011.

(Pa3.) Not having received any response from the State Firemen's Association, Paff's attorney faxed the Association a letter on October 12. He noted that the Association's response was overdue, in violation of OPRA. He warned that Mr. Paff would seek his legal remedies if he did not receive the State Firemen's Association response by October 17, 2011. (Pa4.)

The next day, the State Firemen's Association's general counsel wrote Paff's counsel asserting that the Association was not a public agency under OPRA and therefore did not have a record custodian or a record request form. The letter also stated that it was inclosing the records requested in No. 2(b) and No. 3 because Paff is a Life Member of the Association. The letter denied access to Request No. 2(a). (Pa5-13.)

ARGUMENT

I. State Firemen's Association Violated OPRA

A. The Purpose of OPRA is to Maximize Public Knowledge of Public Affairs So That the Public Can Knowledgeably Exercise its Sovereignty

In passing OPRA, the Legislature declared that it is the State's public policy that "government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions, for the protection of the public interest." N.J.S.A. 47:1A-1. It added that "any limitations on the right of access accorded by [OPRA] shall be construed in favor of the public's right of access." Ibid.

"The purpose of OPRA 'is to maximize public knowledge about public affairs . . . and to minimize the evils inherent in a secluded process.'" Times of Trenton Publishing Corp. v. Lafayette Yard Community Development Corp., 183 N.J. 519, 535 (2005), (quoting Asbury Park Press v. Ocean Cnty. Prosecutor's Office, 374 N.J. Super. 312, 329 (Law Div. 2004)). "Those who enacted OPRA understood that knowledge is power in a democracy, and that without access

to information contained in records maintained by public agencies citizens cannot monitor the operation of our government or hold public officials accountable for their actions.” Fair Share Housing (slip op. at 16-17). An underlying premise of OPRA is that society as a whole suffers when "governmental bodies are permitted to operate in secrecy." Asbury Park Press, supra, 374 N.J. Super. at 329.

B. State Firemen’s Association is an OPRA “Public Agency”

OPRA’s definition of a “public agency” to which OPRA applies “is broadly written so that a wide variety of entities fall within the compass of that term.” Fair Share Housing, (slip op at 18). Moreover, OPRA expressly requires that “any limitations on the right of access accorded by [OPRA] shall be construed in favor of the public’s right of access.” Thus, OPRA’s definition of a “public agency” is to be broadly construed in order to maximize citizens’ access to records.

1. Municipal Fire Departments Created the State Firemen’s Association in 1879

According to OPRA, “public agencies” include “any . . . instrumentality . . . created by a . . . combination of political subdivisions [of the State], and any independent . . . instrumentality . . . created by a . . . combination of political subdivisions.” N.J.S.A. 47:1A-1.1. That plain language places the State Firemen’s Association squarely within the term “public agency.”

The State Firemen’s Association was created in 1879 by nineteen municipal fire departments. It was to be an instrument of those, and other, municipal fire departments to ensure that a maximum amount of the two (now three) percent State tax be given to needy firefighters. (Pa21.) Thus, the State Firemen’s Association is a “public agency” for OPRA purposes. Fair Share Housing, (New Jersey State League of Municipalities meets the definition of “public agency” for OPRA purposes because it is an instrument created by a combination of municipalities).

The State Firemen’s Association asserted in its October 27, 2008, letter to the Govern-

ment Records Council and in its October 13, 2011, letter to John Paff that OPRA does not apply to it because it is not a “public agency” as defined by OPRA. (Pa5-7, 43-44.) In its letters, the State Firemen’s Association claimed that it was created pursuant to the 1885 legislation. (Pa5,44.)

But the State Firemen’s Association existed prior to the 1885 legislation. The State Firemen’s Association has publicly admitted that “[i]t was at this [1879] First Convention that the New Jersey State Firemen’s Association was organized and became a reality. (Pa20.) On May 22, 1879, a state-wide meeting of New Jersey fire departments was held in Newark to create a state-wide organization to protect the interest of the firefighters and their charitable associations. (Pa21.) Nineteen fire departments throughout the state were represented. (Pa21.) A delegate from the Newark Fire Department, which had called the meeting, stated that the Legislative Committee of the Newark Fire Department had concluded that Newark Fire Department’s Benevolent Fund was not “getting all the money that was justly due.” (Pa21.) It was also reported that Newton and other municipal fire departments had no charitable or benevolent funds, and such departments needed to organize such funds in order that they receive the two percent state tax. (Pa21.)

This meeting was the First Convention of the New Jersey State Firemen’s Association. (Pa21.) The organization was initially named the “Firemen’s Association of the State of New Jersey.” (Pa21.) In the future, each municipal fire department would send four delegates, one of whom would be the fire chief (“chief engineer”) and, if no fire chief (“chief engineer”), then the senior foreman. (Pa21.) Annual conventions followed on September 24, 1879, September 22, 1880, September 28, 1881 and annually thereafter (Pa21-22.)

By 1883, the State Firemen’s Association’s officers “were forging the State Association into an effective statewide organization.” (Pa23.) At the September 26, 1883 Annual Convention,

the State Firemen’s Association “was becoming more actively engaged in legislative initiatives.” (Pa22.) The State Firemen’s Association’s President Bird W. Spencer “orchestrated the passage of the state legislation in 1885,” that codified the membership, structure, powers and duties of the existing organization in order to ensure that the maximum amount of the two percent tax benefited firefighters and their relief associations. (Pa22-23.) Thus, not only did the State Firemen’s Association predate the 1885 Act, it was instrumental in its passage.

2. In the Alternative, the State Legislature and Municipal Fire Departments’ Municipal Firemen’s Relief Associations Created the State Firemen’s Association in 1885

If, however, the State Firemen’s Association’s October 27, 2008, and October 13, 2011, letters are correct in claiming that it was first created pursuant to the 1885 legislation, it would still satisfy OPRA’s definition of “public agency.” OPRA defines “public agency” to include “any office, board, bureau or commission . . . created by the Legislative Branch” and “any division, board, bureau, office, commission or other instrumentality . . . created by a . . . combination of political subdivisions [of the State], and any independent authority, commission, instrumentality or agency created by a . . . political subdivision.” N.J.S.A. 47:1A-1.1.

The 1885 legislation created an organizational structure for the payment of the two percent tax to needy firefighters. Municipal fire departments were authorized to form municipal firemen’s relief associations, which in turn, were authorized to form the State Firemen’s Association. (Pa24-36.) While the 1885 legislation was written in terms of authorization, not compulsion, the practical effect of the legislation was to mandate the creation of the State Firemen’s Association because the municipal fire departments’ failure to create the State Firemen’s Association in the manner authorized by the 1885 legislature presumably would have cause those municipal firefighters to lose the considerable financial benefits flowing from the

two percent tax. Thus, in practical terms, if the State Firemen's Association was created pursuant to the 1885 legislation, it was created in part by the Legislature.

In addition, if the State Firemen's Association was created pursuant to the 1885 Legislation, it was created by the municipal firemen's relief associations as well as the Legislature. (Pa24-36.) Because the municipal firemen's relief associations, in turn, were created by the municipal fire departments, the municipal fire departments indirectly created the 1885 State Firemen's Association.

Baseless is the State Firemen's Association's assertion, "[t]here is no municipal (i.e. government) involvement in the establishment of a local fire relief association." (Pa5.) According to the State Firemen's Association, the local relief associations are created by individuals, not state actors. (Pa6.) But a local relief association is created by all of that municipality's fire department employees, including the fire chief, which is the practical equivalent of the fire department.

Also baseless is its assertion that the definition of "public agency" requires that the agency exercise "government powers." (Pa6.) Fair Share Housing, (slip of. at 21-23). Be that as it may, the State Firemen's Association does exercise governmental powers by overseeing the compensation of government employees.

As previously noted, OPRA's definition of a "public agency" is "broadly written so that a wide variety of entities fall within the compass of that term," Fair Share Housing, (slip of. at 18), and OPRA expressly requires that "any limitations on the right of access accorded by [OPRA] shall be construed in favor of the public's right of access." Thus, the State Firemen's Association is included within the broad OPRA definition of "public agency" as including "any . . . instrumentality . . . created by a . . . combination of political subdivisions, and any independent . . .

instrumentality . . . created by a . . . combination of political subdivisions.” N.J.S.A. 47:1A-1.1.

C. OPRA Requires the Appointment of a Record Custodian and Adoption of a Record Request Form

The State Firemen’s Association admitted in its October 13, 2011, letter that “the Association does not have a ‘records custodian’ as required of public agencies under the Act,” and “it has never named or appointed a record custodian.” (Pa5.)

OPRA expressly provides, “‘Custodian of a government’ or ‘custodian’ means in the case of a municipality, the municipal clerk and in the case of any other public agency, the officer officially designated by formal action of that agency’s director or governing body, as the case may be.” N.J.S.A. 47:1A-1.1. The various duties of the custodian are set forth in N.J.S.A. 47:1A-5.

In response to John Paff’s Request No. 1 for its record request form, the State Firemen’s Association admitted that “it has never adopted an OPRA form.” (Pa5.) As Paff noted in his record request, (Pa1), a record request form is required by N.J.S.A. 47:1A-5(f). (“The custodian of a public agency shall adopt a form for the use of any person who requests access to a government record held or controlled by the public agency.”)

Thus, the State Firemen’s Association has violated OPRA by failing to appoint a record custodian and adopt a record request form.

D. OPRA Requires a Response to a Record Request “as Soon as Possible, but Not Later Than Seven Business Days After Receiving the Request”

The State Firemen’s Association received John Paff’s record request on September 26, 2011, (Pa3), but did not respond until October 13, 2011, (Pa5), twelve business days later, after receiving Paff counsel faxed letter noting the Association’s violation of OPRA’s deadline and warning of litigation. (Pa4.)

As Paff's counsel noted in his letter, OPRA requires a record response "as soon as possible, but not later than seven business days after receiving the request." N.J.S.A. 47:1A-5(i). Thus, the State Firemen's Association violated OPRA's deadline to respond to a record request.

The State Firemen's Association's letter asserts that it "timely" asked its general counsel to review Mr. Paff's record request. (Pa5.) Contrary to the State Firemen's Association's apparent understanding, the OPRA deadlines are deadlines for the record custodian to respond to the record requestor, not for the record custodian to ask her attorney to respond to the record requestor. If the State Firemen's Association reading were correct, the OPRA deadlines would be meaningless because the custodian's attorney would be free to not respond to the custodian, and thus the custodian would be free to not respond to the record requestor, for eternity.

E. OPRA Expressly Requires the Disclosure of "the Amount and Type of Any Pension Received"

John Paff requested access to "records that shows the amount and type of pension received by each member of the Executive Committee who served prior to the current members of the Executive Committee (see N.J.S.A. 47:1A-10)." (Pa1-2.) The State Firemen's Association denied Paff's record request for the individual pension records. (Pa6.)

But, as Paff indicated, N.J.S.A. 47:1A-10 expressly provides, "an individual's name, title, position, salary, payroll record, length of service, date of separation and the reason therefor, and the amount and type of any pension received shall be a government record" (emphasis added). Thus, the State Firemen's Association violated OPRA by denying Paff access to the requested pension information.

II. State Firemen's Association Violated the Common Law Right of Access to Public Records Because the Public and John Paff's Need to Know the Expenditure of State Taxes on Public Employees' Pensions Outweighs the Need for Secrecy

New Jersey provides access to public records in three ways: (1) the common law right of access; (2) the statute OPRA; and (3) civil discovery. Irval Realty, Inc. v. Bd. of Pub. Util. Comm'rs, 61 N.J. 366, 372 (1972). As regards the common law right of access, "in furtherance of good government the right of interested citizens and taxpayers to inspect public records should be broadly recognized." Taxpayers Ass'n of Cape May v. Cape May, 2 N.J. Super. 27, 31, (App. Div.1949).

In order to access government records under the common law, a citizen must meet three requirements. "(1) [T]he records must be common-law public documents; (2) the person seeking access must establish an interest in the subject matter of the material; and (3) the citizen's right to access must be balanced against the State's interest in preventing disclosure" (internal citations omitted). Keddie v. Rutgers, 148 N.J. 36, 50, (1997).

Under the common law, public records available for inspection "include any records made by public officers in the exercise of their functions. As such, they include almost every document recorded, generated, or produced by public officials, whether or not required by law to be made, maintained, or kept on file" (citations omitted). Daily Journal v. Police Dep't of Vineland, 351 N.J. Super. 110, 122 (App. Div. 2002). The records sought in the present case satisfy that definition for the same reason that they are public records under OPRA.

The need of the record requestor can be either a personal interest or a public interest. "As one citizen or taxpayer out of many, concerned with a public problem or issue, he might demand and be accorded access to public records bearing upon the problem, even though his individual interest may have been slight." Irval Realty, 61 N.J. at 372. As a Life Member of the State

Firemen's Association, (Pa1), John Paff has an interest in the amount of the pensions paid to his Association's employees. In addition, the public has an interest in how State taxes are spent.

The State Firemen's Association asserts that the 3% tax consists of "fire insurance premiums," not "tax dollars." (Pa6.) But the fire insurance companies do not voluntarily contribute to the firefighters. On the contrary, the tax is imposed by State statute, N.J.S.A. 17:22-6.59, N.J.S.A. 54:18-1, and is administered by the State of New Jersey's Department of Banking and Insurance. (Pa37.)

The final step in the process is to balance the requestors' need for transparency versus the government's need for secrecy. Michelson v. Wyatt, 379 N.J. Super. 611, 624 (App. Div. 2005). There are few government records that the public has a greater need to know than records of government expenditures, particularly public funds being paid to public employees. For that policy reason OPRA makes an exception from its personnel records exemption for salary, payroll and pension records. N.J.S.A. 47:1A-10. Both the general public and John Paff, as a Life Member of the State Firemen's Association, have a significant interest in learning the amount of State tax money being paid to specific firefighters for State Firemen's Association pensions. The more awarded in State Firemen's Association pensions means the less awarded to injured, deceased and indigent fire fighters.

Respectfully submitted,

Richard Gutman