

After concerns were raised regarding the efficiency of the billing practices of the Richland Fire Department (“Department”) and the obligations imposed on municipalities, I was asked to review the contract, and then further directed to issue an opinion on the document, as well as recommend revisions or other changes as appropriate. After reviewing the governing documents (as there are more than one) for the Fire District, I have a number of concerns and proposals, ranging from simply updating language to urgent revisions necessary to bring the practices of the Department - or rather, its Board of Directors (“Board”) - into compliance with statute. The following is a summary of my findings.

Documents Reviewed

- Unsigned 2002 Fire Protection and Emergency Services Agreement of the Richland Fire Department (“2002 Agreement”), with Exhibits. This was potentially a draft, though is not marked as such.
- A signed version of the above Agreement dated November 3, 2003 and effective January 1, 2004 (“2004 Agreement”).
- Amendment #1 to the 2004 Agreement, signed and effective on July 8, 2013 (“Agreement Amendment #1”).
- Amendment #2 to the 2004 Agreement, signed and effective February 14, 2022 (“Agreement Amendment #2”).
- Bylaws of the Board of Directors of the Richland Fire Department (“Bylaws”), dated November 3, 2003.
- Amendment #2 to the Bylaws, dated July 18, 2013.
- Memo from City Attorney Karen Fowell, dated May 29, 2000.
- Various other documents related to the creation and operation of the Department and the Board not relevant to this analysis.

My analysis and recommendations will be based on the most recent version of a given document available to me.

Urgent Concerns

1. “Informal Discussions”: Section 3, Paragraph 5 of the Agreement and Article VI, Section 10 of the Bylaws contain a provision that in my opinion carries great potential for, or is a blatant violation of, Wisconsin’s Open Meetings Law¹ (“OML”). Both documents contain a provision that states “[u]pon motion, a meeting of the Richland Fire Department may be temporarily suspended, to allow for informal discussion among the members.” There are a number of concerns here, some of which relies on conclusions found later in this document, but the essence is that while a governmental body² may recess for a period of time, there is no mechanism under law that allows for “informal discussion,” especially when that discussion regards or leads to action by the body once it reconvenes. As written, this provision not only creates the risk of an illegal quorum of up to three

¹ Wis. Stat. ch. 19, sub. V.

² Wis. Stat. § 19.82(1).

separate governmental bodies (as will be explained), but seems to encourage exactly that. If the members of the body need a break, the power to recess is inherent and does not need to be spelled out. Otherwise, any discussion about matters of business before the Board should be taking place in a properly-noticed, open (or closed under an allowed exemption) session of the Board.

2. Agendas: Agendas for the Board may violate the public notice requirements of OML. While this is likely a matter of lack of training, rather than any intentional act, strict adherence to OML is only to the Board's benefit. Any action taken by a governmental body during a meeting which is found to have violated OML may be reversed by a court. Currently, the Board's agendas contain two items, "New Business" and "Old Business," that lack sufficient specificity to meet the standards of OML. In some cases, there are agendas items inserted below these headings which do provide the requisite level of detail, but as can be found in a comparison of the May 12, 2025 agenda and meeting minutes, there can also be discussion and action taken on items with no detail provided. In that case, the Board voted to refer a matter to the City Attorney and sell some surplus tools, with neither action being sufficiently noticed.

Every public notice of a meeting must give the "time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session, in such form as is reasonably likely to apprise members of the public and the news media thereof."³ The Wisconsin Attorney General's Open Meetings Compliance Guide⁴ provides an examination of the factors by which a court will weigh the sufficiency of the notice provided, which includes "[1] the burden of providing more detailed notice, [2] whether the subject is of particular public interest, and [3] whether it involves non-routine action that the public would be unlikely to anticipate." In the example above, it cannot be argued that adding "a. Discussion and possible action on 707 truck repairs" and "b. Discussion and possible action on sale of surplus equipment" to the agendas would have been burdensome. Whether or not those subjects are of particular interest to the public is more subjective, but I can say that in my tenure as City Attorney the Board has never referred a matter to me, meaning at least the 707 repairs resulted in a non-routine action. Again, solving these deficiencies is likely just a matter of training the presiding officers (the pluralization to be explained below) and Secretary-Treasurer on proper agenda preparation.

3. Document Deficiencies: The Board does not follow its own governing documents. Fortunately, that has actually protected them against some violations discussed above, but ultimately means that either the documents themselves or the education of Board members of their contents is deficient. While urgent, that education is part of the purpose of this document, and may lead to revisions which correct the documents themselves.

³ Wis. Stat. § 19.84(2).

⁴ Found at: https://www.wisdoj.gov/Open%20Government/OML_guide.pdf

Notable Provisions

As mentioned previously, the Board does not follow its own governing documents. Having attended a limited number of Board meetings and discussed operations with a number of Board members, I am of the opinion that many of them are (or were, prior to my involvement), unaware of the contents of those documents. In my examination of the Bylaws and Agreement, I found the following provisions notable:

1. Two Votes: The Board, which consists of representatives from 14 municipalities, only allows for 2 votes. That isn't a vote on each of two subjects, but rather that for each item of business before the Board, there is one vote from the representative(s) of Richland Center, and one vote from the representative(s) of the Rural Fire District ("Rural District"), which represents the other 13 municipalities. My observations and review of the Board's minutes shows that members other than the Co-Chairs (who would, in normal practice, pass the votes for their respective bodies) cast their votes, apparently unaware that beyond the two recognized by these documents all other votes are superfluous. In the event of a tie, the motion before the body fails.

The way this system is meant to operate is that the designee of the City and that of the Rural District would each cast the vote decided upon by their respective bodies. The only way that would work legally, however, is if the City's representatives all met prior to the Board's meeting, or during a recess thereof⁵ if properly announced, and the Rural District's representatives did the same, and then the designee of each subunit would report the results of their respective votes during the meeting of the Board as a whole. It may have been the intention of the "informal discussion" provision highlighted above to allow for such meetings, but again there is already an authority for them to do so without the inclusion of that language.

2. Representation Not Defined: The Agreement and Bylaws allow the City and the Rural District to "designate representatives to serve on the Board, pursuant to applicable law, or the [Agreement]." There is no guidance on how many representatives each body may designate, and even if there were, the Bylaws allow the City, Rural District, and/or Board to change that number at will. In researching this matter, I asked one appointing official how they knew to appoint the number of individuals they had as representatives to the Board, and they simply said it was the number they were told when they assumed office. Additionally, since the District appoints the representative(s) for its constituent municipalities, there could be a situation wherein one or more such municipalities was not represented at all on the Board should the Rural District or Board vote for less representatives than there are municipalities.

The documents do at least provide a minimum number of representatives. That's

⁵ Wis. Stat. § 19.84(6).

because both the City and the Rural District are each entitled to one Co-Chair and one Vice-Co-Chair. Additionally, the Chief is entitled to a representative at each meeting, though that appears to be more of an *ex officio* position than a voting representative. Finally, the Board may select a Secretary-Treasurer, who may or may not be a representative.

3. Billing: The catalyst to this discussion is the billing practices written into the documents. When the Department responds to a call, they bill the municipality wherein the response was required. That municipality has thirty days to reimburse the Department, and then are free to try and collect on those costs as they see fit and as allowed by law. My understanding of the complaint is that municipalities cannot anticipate (and therefore budget for) how many calls it may be responsible for, and if they are not able to collect from the party needing the response from the Department, they simply eat those costs. Additionally, there is an administrative redundancy in the Department generating an invoice for a call, sending it to the municipality, then that municipality needing to generate its own invoice to send to the appropriate party.

Beyond the summary of my understanding of the complaints, I have no opinion on this matter, except that whatever process is decided upon must be lawful. In my experience, collection efforts are a mixed bag at best, and so likely the Department, the municipalities, or some combination of the two will end up with unreimbursed expenses. If that burden falls on the Department, it risks an impact to their operational viability. If the municipalities, it impacts their ability to provide other services to its citizens. However, if the Board as a whole is unwilling to change the current practice then each municipality will need to decide whether it is willing to accept that risk or if they need to find an alternative provider for fire services.

4. Outdated Language: Even if nothing of the substance of these documents changes, an effort should still be made to ensure their contents reflect certain changes that are inevitable with the passage of time. An example of language which should have been updated in one or more of the Amendments is Section 5 of the Agreement, Appointment of the Fire Chief, which begins "...at the present time, the Richland fire (sic) Department shall be served by the current Fire Chief, previously hired by the City of Richland Center, whose term continues indefinitely." That language may have applied to the Chief who was serving in 2004 when the Department was formed, but has not to any of his successors. Other language may have been necessary to bind the parties to, for example, the transfer of property, but as those transfers have long since been achieved that language is no longer necessary.

Summary and Recommendations

Overall, the structure and intent of the Board is clear: ensure all the constituent municipalities have a voice in the way their fire service is run. At the time they were created, the governing documents and the processes they describe may have made sense, but even though those documents have been amended over time, the base language was never updated to reflect

current conditions. Therefore, the only recommendation I can make is to rewrite the Agreement and Bylaws. This will allow the concerning provisions to be removed, the language to be updated to reflect current conditions, the incorporation of amended language, and should prompt an overall discussion on the function of the Board and District, which is a healthy process for any organization to undergo from time to time. Assuming such reviews and revisions are undertaken with the Board's participation, it will also serve to educate the Board on its basic functions and operations. Ensuring the currentness and functionality of its oversight body will then allow them to best contribute to the ongoing function and effectiveness of the Department.