

Josh:

Thanks for your patience awaiting this feedback. Here are brief responses to the follow-up questions. Let me know if you would like to setup a means for a more detailed review, which could take the form of a more formal opinion letter or a meeting/discussion at a convenient time.

- It seems that the Fire Department would like to remain as a hybrid, where they are somewhat independent but also a Town Department that follows the rules of the Town. Is there a way that this can be set up legally and with proper and clear rules and guidelines? Or is it better to choose that it be either a fully private organization or a Town department?

A clear choice of one or the other should be made. That said, a town fire department can be staffed by volunteers who control when and whether they work (training, incident calls, etc.).

- We currently pay firefighters by the hour for hours spent on a call and at training. The Chief and Assistant Chief get paid hourly for other administrative duties. No one in the department currently gets paid for attending meetings. How does payment by the hour affect FLSA and volunteer status?

Subject to further evaluation, my initial response is that the current pay system likely makes the RVFD firefighters employees who must be paid minimum wage and overtime. If the firefighters are being paid at least \$12.55/hr and are never working more than 40 hours per week, then it is unlikely the Town has violated wage and hour laws to date.

- You note that the Chief and Assistant Chief are appointed by the Selectboard and while that may not make them employees it does make them town officials. If we determine that we want to move in the direction of having the department as a Town Department would the Chief and Assistant Chief be both, Town Officials and Town Employees? If it is a hybrid or a separate department would they be Town Officials but not Town Employees?

Likely the only scenario under which the Chief and Asst. Chief would not be Town officials is if the RVFD became a true private volunteer fire department.

- Currently members vote on accepting individuals into the department and also vote to remove individuals from the department. The Fire Department would like to retain a right to vote even if this becomes a Town Department. But, I think that these duties would fall to the Chief if this becomes a Town Department, correct? They asked if that is the case could they retain this as an advisory vote to the Chief? My concern about this is that if there are clear guidelines for joining the department and clear guidelines for removal from the department it would be up to the Chief to

enforce those guidelines, not up to a vote of the members. Allowing for an advisory vote could cause friction if the Chief makes a decision that goes against the results of an advisory vote.

Allowing a town department to be controlled and governed by its employees is not advisable. Votes of any kind are not recommended. There is no per se legal issue with soliciting input from employees about department heads, and employees should have an outlet for issues with department heads (such as exists in the Town's "grievance" process you and I recently discussed), but having employees participate in selection and appointment of co-workers or supervisors is problematic in our view. If the fire fighters want to be able to control who its members are, that calls for them to be a private entity with full self-control. A town can still financially support a private volunteer fire fighting company. A town can treat such a company as a vendor such that it can impose certain requirements as conditions of support/contract, but it cannot control the day-to-day affairs or personnel matters.

- The Fire Department currently has a separate bank account which they manage separately from the Town. Fundraising money goes into this account, such as the money raised at the coin drops. If the department becomes a municipal department is there a way to keep this separate account? The Department would currently like to switch banks for this account but needs a tax ID to do so. But they don't have a tax ID. I assume they would have to be set up as a separate entity from the Town to get a tax ID, correct?

I am familiar with private charitable corporations existing for support of fire departments which are town departments. That model may be the most effective way to allow the fire department to have its own fundraising and discretionary funds. I recommend consulting with the Town's accountant/auditors over this question.

- The Fire Department has a strong desire to keep their bylaws. I recall in a separate conversation that you advised that Town Departments do not have bylaws. So, again, is there a way to set this up as a hybrid situation? If not and they become a full Town Department should we examine the bylaws and incorporate what we can into a Fire Department Policy?

Generally, bylaws are not applicable to town departments because town departments are not governed employees. However, there is no reason that current bylaws provisions – in general – cannot be considered in connection with determining and adopting personnel policy/rules which are applicable to a municipal fire department which has a history of having been a private volunteer fire department.

Best regards,

John