Fire GUARD

www.niafpd.org

A Publication of the Northern Illinois Alliance of Fire Protection Districts

Winter 2019

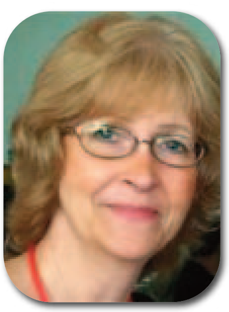
Letter from the President

Let me begin by wishing each and every one of our members, supporters and readers a very Happy New Year. Every new year brings with it the hope and optimism that we will be finding success and happiness in the next 12 months. I, for one, am looking forward to another banner year for the NIAFPD; one of growth and renewed enthusiasm as we continue working together, moving ahead in our mission to make northern Illinois fire protection districts the best informed and safest.

If you look at our upcoming conference program you will see that we are continuing to bring focus and increased awareness to a very important issue that is only recently receiving long overdue attention. More and better studies are now presenting us with the data that are confirming our suspicions - cancer in the fire service is not only real but more prevalent than we knew. As administrators, we need to arm our front-line personnel with not just the equipment but also the policies and procedures required to keep them healthy. And, if we hope to do this, it's critical that we inform and educate ourselves on these topics.

We brought an impactful presentation on this subject to our Fall Educational Seminar in October and most in attendance were stunned by what we learned. As I said, this is important. So important that, at our annual conference, we have dedicated the full Friday afternoon program to it. None of us can afford to miss this or, for that matter, any of the other sessions being offered.
So, whether you are a District Trustee, Commissioner, Pension Trustee, Chief, Administrative Professional or any combination of these, there's plenty for all of us throughout the weekend and I look forward to joining all of you there. Nick Kosiara

Letter from the Executive Director



Happy New Year to everyone! I look forward to seeing you as we start out the year with our Annual Conference at the Hilton Oak Brook Hills Resort and Conference Center. The most current Conference Program can be found on the website www.niafpd.org. This can help you decide on what workshops you would like to attend during the conference.

Each year I receive numerous phone call from members who can't find their signed CEU verification sheet. After the conference a Certificate of Attendance will be sent to your fire district that can be used to document your completed CEU hours.

Does your District have any photos of your personnel at work or your Board of Trustees working on district business? We are looking for photos to add to the NIAFPD website.

I am happy to answer any questions you may have or direct you to someone who can, regarding the NIAFPD.

Kathleen Haage
Executive Director

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Using tax dollars to support lobbying efforts does not violate the First Amendment

by Ryan R. Morton, Ottosen Britz Kelly Cooper Gilbert & DiNolfo, Ltd.

Last year, public sector unions were dealt a blow when the United States Supreme Court determined "agency"—or "fair share" –fees violated the First Amendment in Janus v. AFSCME. In Illinois, two unions recently tried to use that same logic to their benefit, arguing that a municipality's use of funds to support right-to-work zones was also unconstitutional. Dixon O'Brien v. Village of Lincolnshire, 2018 WL 6533852. The federal court disagreed, however, because government speech is different from private speech.

The Supreme Court's decision last year in Janus v. AFSCME changed the way public unions operated throughout Illinois and the country. Unions could no longer collect fair share fees from non-dues paying members. The Court based its decision on the First Amendment's guarantee of freedom of speech, holding that a citizen cannot be forced to spend his money on a cause he did not support. That is the equivalent of compelled speech. Consequently, public employees who did not want to be in a union no longer had to make any payments.

In an attempt to make lemonade out of lemons, two labor unions sued the Village of Lincolnshire using a similar argument. Plaintiffs from the local chapters of the AFL-CIO and the United Brotherhood of Carpenters and Joiners of America alleged their tax dollars were being used to fund improper lobbying activities. Specifically, the plaintiffs stated that the Village paid dues to the Illinois Municipal League ("IML"), which in turn campaigned for right-to-work zones, which the plaintiffs opposed. Therefore, the plaintiffs argued the Village violated their First Amendment rights of free speech and free association, as well as their right to equal protection under the Constitution.

The plaintiffs' case went before the Federal District Court of the Northern District of Illinois. The Village and IML moved to dismiss the case, arguing the plaintiffs were unable to succeed at trial. On December 7, 2018, the court agreed with the defendants and dismissed the case.

The Village first argued the plaintiffs had no standing to sue, which means the plaintiffs had no ability under the law to bring this type of lawsuit. To sue as taxpayers, the Village argued, the plaintiffs must show some financial injury affecting them directly, rather than all residents combined.

The court, however, decided the Village's argument was misplaced. While a direct and immediate injury is often needed to sue the federal or state government for misuse of taxpayer funds, the burden is much lower for a municipal taxpayer to challenge municipal actions. A local taxpayer merely needs to make a good-faith allegation that some expenditure of tax dollars was unconstitutional. The same permissive rule would apply to a resident suing a fire district.

Although the plaintiffs were allowed to sue the municipality, that did not mean they were entitled to a judgment in their favor. The Village argued that the Janus ruling did not apply to this situation. In that case, the plaintiff was arguing against being forced to pay money to a private union, while here the plaintiffs object to paying taxes.

The court agreed with the Village's argument, distinguishing Janus based on the type of speech involved. In Janus, the Supreme Court held that it was unconstitutional to force individuals to support private expenditures with which they disagree. Those expenditures amount to private speech, which cannot be compelled by the government. In this case, however, government speech was at issue. The plaintiffs challenged that their tax dollars were being used to support a municipality's public expenditures. The Supreme Court has routinely held that there is no similar First Amendment right for government speech.

The key difference is that citizens have a choice about whether they want to support certain private causes. They do not have a choice in paying taxes. Therefore, while the plaintiff in Janus could not be compelled to pay money to a private organization, the plaintiffs in this case were forced to pay taxes to the Village of Lincolnshire. What the Village chose to do with those funds was within its governmental discretion, as long as no laws were violated (Illinois law specifically allows municipalities to pay dues to the IML).

The plaintiffs tried to work around this government speech protection by alleging that because the IML was a private entity, the taxpayers' dollars were being used for private speech. The court, however, extended the government speech doctrine to the IML, because that organization is comprised solely of

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Springfield Legislative Update

By: Liz Brown-Reeves, NIAFPD Lobbyist

It was certainly a Blue Wave in Illinois.

Democrat J.B. Pritzker has been elected governor of Illinois beating incumbent Governor Bruce Rauner, 54 percent to Rauner's 39 percent. Democrat Kwame Raoul easily defeated Erika Harold for Attorney General as the Democrats swept the statewide offices.

Congressional Democrats picked up two seats with Democrat Sean Casten defeating Representative Peter Roskam in the 6th and Democrat Lauren Underwood defeating Rep. Randy Hultgren in the 14th.

Speaker Madigan regained his veto-proof majority after picking up +7 seats (losing one and flipping 7). Madigan lost the Democratic deep south seat held by Representative Natalie Phelps Finnie. President Cullerton picked up +3 seats in the Senate.

House of Representatives
74 Democrats - 44 Republicans

House of Representatives Seats That Flipped
House Dist. 45 - Rep. Christine Winger (R) lost to Diane Pappas (D-Itasca). Pappas is an attorney.

House Dist. 48 - Rep. Peter Breen (R) lost to Terra Costa Howard (D-Glen Ellyn). Costa Howard works as an attorney.

House Dist. 49 - Karina Villa (D-West Chicago) defeated Republican Tonia Khouri in retiring Rep. Mike Fortner's (R) seat. Villa is school social worker.

House Dist. 51 - Appointed Rep. Helene Miller Walsh (R) lost to challenger Mary Edly-Allen (D-Libertyville). Edly-Allen works as a bilingual school teacher.

House Dist. 53 - Mark Walker (D-Arlington Heights) defeated Republican Eddie Corrigan in retiring Rep. David Harris (R) seat. Walker returns to the General Assembly and is a veteran and business owner.

House Dist. 61 - Joyce Mason (D-Gurnee) defeated incumbent Rep. Sheri Jesiel. Mason works in Human Resources

House Dist. 76 - Incumbent Rep. Jerry Lee Long (R) lost to Lance Yednock (D-Ottawa). Yednock is a member of Operating Engineers Local #150.

House Dist. 81 - Incumbent Republican Rep. David Olsen lost to Anne Stava-Murray (D-Naperville). Stava-Murray is a Consultant.

House Dist. 118 - The lone Democrat loss. Rep. Natalie Phelps (D) lost to Republican Patrick Windhorst. Windhorst is currently a State's Attorney in Southern Illinois.

State Senate
40 Democrats – 19 Republicans

Senate Seats That Flipped

Sen. Dist. 21 - Sen. Michael Connelly (R) lost in a very close race to Laura Ellman (D-Naperville). Ellman works as an analyst at Argonne National Library.

Sen. Dist. 24 - Sen. Chris Nybo (R) lost to Suzie Glowiak (D-Western Springs). Glowiak's occupation is a Mechanical Engineer.

Sen. Dist. 27 - Sen. Tom Rooney (R) lost to Ann Gillespie (D-Arlington Heights) Gillespie is a retired attorney.

Legislative Liaison NIAFPD

By: Ronald Kubicki, Legislative Liaison NIAFPD

As winter moves on and the new 101st General Assembly is sworn in we will get our first look at what is in store for the people of Illinois. As everyone knows by now the Democrats won a veto proof House and Senate along with all the top State offices. I personally have never been in favor of either party having this much power because then there is no real check and balance in the state. I say this not because I favor one party over the other but because I believe that the system was put into place to protect the taxpayers of our state from a dictatorship. A one-party system has never worked anywhere in the world. But we will see, I guess now the people can't blame the Republicans for the condition in which our state is in anymore.

I was looking over the results of the election and we did lose some very big supporters of the Fire Service. We lost the Co-Chair of the Caucus, Representative Carol Sente, who chose not to run for re-election. We also lost Representative David Olsen, a Republican from Downers Grove who you might remember served on our legislative panel at last years Conference. Representative Elaine Nekritz a Democrat from Northbrook who also chose not to run for re-election. Representative John Cavaletto a Republican and Co-Chair of the Caucus. On the Senate side we lost Senator Pam Althoff a Republican from Crystal Lake and Senator Christine Radogno from Lemont. All except for Representative Olsen have received our Legislator of the Year Award.

So you might ask what does this mean for the NIAFPD and the Fire Caucus? Well as I stated in my last report, we as members of the Fire Service and as a member of the NIAFPD must make the effort to reach out to all the new legislators and let them know who you are and what we do. Invite them out to your district to meet the men and woman who serve them and the public with no fear for themselves. They need to know what we do as trustees of the major fire districts in the state. They need to know how important the issues we bring before them mean to us and our taxpayers. Please put aside any political bias we might have for either side and find some common ground that will help support the fire service in the State of Illinois. The Illinois Fire Caucus will be holding a meet and greet with the legislators in Springfield on January 30, 2019 to let them know more about the IL Fire Caucus and a little about each organization that makes up its membership.

I would also like to remind you that the IL Fire Caucus has a new chairman Retired Franklin Park Fire Chief Steve Lovinelli. As I have stated in the past, I have known Chief Lovinelli for many years and have worked with him on many issues here in Illinois and in Washington DC and found him to be an ultimate professional. I can as sure you that the Illinois Fire Service Association will be in good hands now and in the future. Should you have any questions about the Fire Caucus please feel free to give him a call.

In closing all I can say is let the fun begin and let's all get to work on making the IL Fire Service the best in the country.

26th ANNUAL NIAFPD CONFERENCE

IF YOU HAVEN'T REGISTERED YET YOU NEED TO DO IT NOW !
YOU ONLY HAVE A FEW DAYS REMAINING BEFORE THE 2019 CONFERENCE

The 26th Annual NIAFPD Conference is only days away from convening at the Hilton Chicago/Oak Brook Hills Resort and Conference Center in Oak Brook Hills. The 2019 program is filled with some outstanding and current topics pertaining to fire district and pension issues that will assist you in managing your fire districts more efficiently. The conference faculty consists of excellent speakers that are very knowledgeable and well versed in the programs they will be presenting.

There are programs for everyone within your district ensuring they will all benefit from the conference. District trustees, chief officers, administrative staff, commissioners and pension board trustees will have several programs to choose from. One program of particular interest will be *"Taking Action Against Cancer in the Fire Service"*. This session will cover a very important issue affecting the fire service today. Trustees attending can obtain their required training hours to maintain certification. Pension board members that attend the entire conference will meet their annual training requirement of 16 hours.

One of the most valuable aspects of our conference is the networking opportunities available to you and your peers from other districts. Why reinvent the wheel when you can take advantage of the knowledge of your peers that may have already experienced an issue you are trying to address? You'll have several opportunities to network throughout the conference, including the Friday evening sponsors reception and the Saturday closing reception which is the major reception of the conference, so be sure to attend this outstanding reception.

If you have already registered we look forward to seeing you January 24 - 27, 2019 at the conference. If you haven't yet registered we urge you to do so **immediately** so you can be part of the only conference in northern Illinois dedicated to educating and training fire protection district trustees, administrative personnel and pension board trustees.

You should have already received the conference program that was sent to you electronically or it is available on our website at ***www.NIAFPD.ORG***. Registration can also be accomplished on line. Should you encounter any problems you should contact Executive Director Kathleen Haage at (224) 355-9778 or via e-mail at khaage@comcast.net . If you prefer to do a paper registration these forms are also available on the web-site.

We look forward to seeing all of you at your 2019 NIAFPD 26th Annual Conference.

The State of the Affordable Care Act (ACA): What You Need To Know for 2019

As we've all come to expect, the controversy and confusion surrounding the ACA continues. Here's a recap of late 2018 and what you need to know for 2019.

For now, **the ACA remains in place** and **the Department of Health and Human Services (HHS) will continue administering and enforcing the ACA**; however, there was quite a bit of buzz around a December court case leaving employers with questions about the future of the ACA.

On December 14th, in Texas v. Azar, Federal Judge Reed O'Connor ruled the ACA invalid. He declared that, with the repeal of the "individual mandate", the remaining provisions of the ACA are unconstitutional. In the days following his ruling, Judge O'Connor then issued a stay pending the Order's appeal.

So what does this mean for the ACA? While the "individual mandate" penalty does go away in 2019, the other parts of **the ACA will remain in effect and continue to be enforced.**

"INDIVIDUAL MANDATE" PENALTY ELIMINATED

The ACA "individual mandate" is eliminated effective January 1, 2019. ***Individuals*** and their families are no longer subject to a penalty under the ACA for failing to have qualified health insurance coverage. This does ***not*** impact the ACA's employer shared responsibility. The remaining provisions of the ACA remain in place and continue to be enforced by the Department of Health and Human Services (HHS) and the IRS.

KNOW YOUR APPLICABLE LARGE EMPLOYER (ALE) STATUS

As a reminder, according to the IRS and under the ACA, an employer is considered an ALE:

*"If an employer **has at least 50** full-time employees, including full-time equivalent employees, on average during the prior year, the employer is an ALE for the current calendar year, and is therefore subject to the employer shared responsibility provisions and the employer information reporting provisions.*

If your Fire District is on the border of being an ALE for 2019, or if you are unsure whether your District was an ALE for 2018, follow the steps below to determine your status. Note that the ALE status determination is based on the preceding calendar year, so your ALE status in 2018 is based on your 2017 figures and your ALE status in 2019 is based on your 2018 figures.

✓ Calculate the number of "full-time employees" for each calendar month in the *preceding* calendar year. A full-time employee is an employee who works, on average, at least 30 hours per week (or 130 hours for the month).

✓ Calculate the number of "full-time equivalent" employees (FTEs) for each calendar month in the preceding year by calculating the total hours worked (not to exceed 120 hours per employee) for all employees who were **not** already counted as full-time for that month. Divide that total by 120.

✓ Add the number of full-time employees and FTEs (including fractions) calculated above for each month in the preceding calendar year. Then add the monthly numbers and divide that total by 12. Disregard fractions.

✓ If your result is 50 or more, you are likely an ALE for the following year.

If you're not familiar with this process, it can be cumbersome and confusing. You can always reach out to your Benefits Advisor, Tax Accountant, or Payroll Partner for assistance.

ACA REPORTING

ALEs as well as NON-ALEs that offer self-insured health plans are required to comply with ACA reporting requirements under Sections 6055 and/or 6056.

On November 29th, the IRS issued a notice extending the deadline for ALEs to provide individuals with the 2018 Forms 1095-B and 1095-C; however, the deadlines for reporting information to the IRS remain the same. Deadlines are as follows:

✓ **March 4, 2019** - Forms 1095-B and 1095-C are due to individuals. This date was extended from the original January 31, 2019

✓ **February 28, 2019** – Forms 1094-B, 1095-B, 1094-C or 1095-C are **due to the IRS if filing on paper**

✓ **April 1, 2019** – Forms 1094-B, 1095-B, 1094-C or 1095-C **are due to the IRS if filing electronically**

The same November 29th notice also extended "transition relief" from penalties to ALEs that, in good-faith, comply with the ACA reporting requirements for 2018 by providing information to both individuals and the IRS by the deadlines (as extended). This relief applies to penalties that would normally be assessed due to missing and/or inaccurate information, such as date of birth or SSN as well as other information that is required on the Forms. While this relief exists, it is not guaranteed, so do your best to comply – the IRS determines whether the ALE has made a reasonable effort to comply in good-faith.

IRS ENFORCEMENT OF THE EMPLOYER SHARED RESPONSIBILITY ("PAY OR PLAY" MANDATE)

In late 2018 and into 2019, the IRS began issuing letters enforc-

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Bonds Rally as Equities Stumble

By: Thomas S. Sawyer, Managing Partner, Sawyer Falduto Asset Management, LLC

Key Points

- **Federal Reserve:** The Federal Reserve (Fed) raised short-term interest rates again in December moving the target range to 2.25% - 2.50%. While the rate increase was expected, the equity markets reacted negatively to FOMC comments that trimmed economic projections.

- **Economy:** The final estimate of 3rd Quarter growth for the U.S. economy came in at an annualized 3.4% according to the most recent release from U.S. Department of Commerce, slowing a little from the 4.2% pace posted during the 2nd Quarter.

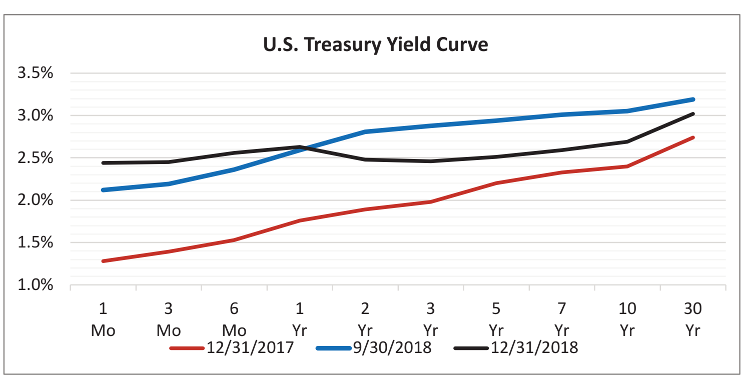
- **Equities:** Stock prices declined sharply during the 4th Quarter largely due to ongoing disputes over trade policies and the implications for global growth. S&P 500 December investment results were the worst since 1931.

Bond Yields

The U.S. Treasury yield curve flattened during the 4th quarter by 5 basis points for maturities between two and ten years.

- The yield curve inverted at the short-end fueling investor uncertainty about the direction of the economy. Equity markets certainly took note of the inversion as well.

- Those same fears pushed the yield on the 10 Year U.S. Treasury note back below 3.0% to close out the year at 2.69%. It's worth noting that flat or inverted yield curves are often associated with periods of slowing economic growth.



Many readers of FireGuard maintain short-term, or limited maturity, fixed income portfolios for cash management purposes. The recent increases in short-term interest rates have pushed limited maturity portfolio yields refreshingly above the 2.5% mark. In terms of portfolio structure for our limited maturity fixed income portfolios, the relatively short average maturity results in a high level of principal stability while allowing for the timely reinvestment of maturities and cash flows at higher yields.

Regarding portfolios that are managed to longer investment time horizons, with only 20 basis points of incremental yield between the 2-year and 10-year U.S. Treasury notes, there is little incentive to extend duration. We continue to position portfolio durations conservatively and maintain above average credit quality.

"The allocation to equities, fixed income and all available asset classes should be determined with careful consideration given to factors such as investment time horizon, liquidity requirements, diversification and risk tolerance. The resulting asset allocation should be well documented in your investment policy statement and guidelines. Information contained in this commentary is solely the opinion of the author and obtained from sources believed to be reliable. Accuracy can not be guaranteed. Past performance is not predictive of future returns."

LEGAL

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elected officials representing municipalities. Much like the NI-AFPD, the court stated that the IML is "a formal vehicle through which elected officials act together on behalf of their government entities."

If membership in the IML was compelled by the state, then the plaintiffs might have had a better argument, because there was no opportunity for the Village to represent its residents in a different way. However, the Village could choose at any time to end its association if it disagreed with the IML's lobbying efforts. Instead, the elected officials of the Village—answerable to the voters – determined paying the IML was in the Village's best interests. As the court stated, "If the Village of Lincolnshire's residents disagree with its decision to join the IML based upon this activity, they can express this opinion at ballot box."

The implication for fire protection districts is that while taxpayers might be able to challenge certain official actions, the basis of their arguments would likely not be the First Amendment. Trustees can rest assured they are allowed to support organizations that lobby on their behalf, regardless of whether some residents disagree with those efforts. The most important consideration is whether the board of trustees is acting in a way that it believes would benefit the district.

Ryan R. Morton is an associate with the law firm of Ottosen Britz Kelly Cooper Gilbert & DiNolfo, Ltd. in Naperville. He graduated from the John Marshall Law School in June 2017 and holds an undergraduate degree in journalism from Northwestern University. Prior to earning his law degree, Ryan worked for six years as a radio news director, covering local governments throughout Northern Illinois. He focuses his practice in the areas of municipal, school, and fire district law, as well as public pension and public labor and employment law.

INSURANCE UPDATE

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ing the "pay or play" mandate with ALEs for the ***2016 calendar year.*** These letters inform employers of their ***potential*** liability based off the information reported by the employer to the IRS on Forms 1094-C and 1095-C as well as the individual income tax returns filed by their employees. If you receive one of these letters, you are required to respond to the IRS by the date shown on the letter. While there are instructions for responding included with the letter, it's a good idea to also review the letter and your 2016 filing with your Tax, Legal, and/or Benefits Advisors.

While the "individual mandate" penalty was eliminated and appeals to ACA rulings are pending, your Organization should continue to comply with all other ACA requirements. Government monitoring, enforcement, and penalties will continue until final decisions are made. Stay tuned, we'll be sure to keep you posted!

Kalli Ortega
Corkill Insurance Agency, Inc.

NIAFPD OFFICERS

President

Nicholas Kosiara 630-414-7674
Glenside FPD - Trustee
njkosi@comcast.net

Past President

William Hoffmeister 708-641-9672
Frankfort FPD - Trustee
hoffmeister@frankfortfire.org

Directors

Brent Frank 708-703-4745
Lisle-Woodridge FPD - Trustee
bfrank@lwfd.org

Juan Manuel Giron 312-488-1630
Pleasantview FPD - Trustee
JuanManuel@gironbooks.com

Marshall Gray, Jr. 847-638-0400
Bloomingdale FPD - Commissioner
Mlgrayjr279@gmail.com

Nick Kotchou 708-703-4745
Manhattan FPD - Trustee
nkotchoumanhattanfire.org

Secretary/Treasurer

Bonnie Bayser 847-515-1602
Huntley FPD - Trustee
bbayser@foxvalley.net

Executive Director

Kathleen Haage 224-355-9778
Deerfield-Bannockburn FPD
(Retired)
khaage@comcast.net

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Northern Illinois Alliance of Fire Protection Districts
P.O. Box 5819
Buffalo Grove, IL 60089