

Fire GUARD



A Publication of the Northern Illinois Association of Fire Protection Districts

Winter 2010

Letter from the President



Hello again, I hope you had a wonderful holiday season. Now it's time to get back to the task of serving and protecting those who elected or appointed us and doing it with less money. As most of you know by now, the CPI for the year is 1/10 of 1%, which translates into no new money for the coming year. The taxpayers are looking to us to be very creative in the way we go about our work. I think this means we must start to live and think outside the box. Those of us who think of new and better ways to get things done, and stop complaining about it will be successful. Here is where the NIAFPD can help. I hope by now you have registered for the upcoming NIAFPD Conference to be held on February 4 through the 7, 2010 at the Double Tree Hotel in Oak Brook, IL.

We have put together a great conference to help you get through these tough times. We have brought in some great speakers such as Bob Porter from Ancel Glink to help you better understand your budget and save money in doing so. We also have a new speaker this year. Barbara Heller from Pros Consulting will work with you to eliminate any waste in your budgets. It has been said that on average most budgets have about 25% waste and she will be teaching us about new ways to fix that. Again this year, we will have a number of topics on computers and how you need to protect yourself from identity theft and scams. Also, we will have information on the new 4G network that has just been introduced to the Chicagoland area. Mary Spiegel will be informing us on all the new laws to the Freedom Information Act that we will need to know. In all, it's a conference you will not want to miss.

On the legislative front, we have been very busy working with our partners in the fire caucus to put together new legislation to introduce in Springfield in January for the upcoming legislative session. On Saturday at the conference, Chuck Vaughn will be holding a session to keep you up to date on just what has been passed and what is proposed. If you should have any questions please feel free to call Bill Hoffmeister, our Legislative committee chairman, or you can always call me.

As always, if you should have any questions about the NIAFPD or maybe you would like to author an article for the Fire Guard, please don't hesitate to call Kathy Haage, or myself so we can do our best to help you. Please don't forget to check out our web site: www.niafpd.org. Have a safe and enjoyable winter and I hope I will see you at the conference. Please take a moment when you are there to say hi and introduce yourself to me. I know most of you but there are always new faces I would like to meet.

Ronald P. Kubicki

President, Northern Illinois Alliance of Fire Protection Districts

Message from the Executive Director



Happy New Year to everyone! The NIAFPD year will start out with our Annual Conference. Included in this newsletter are the workshop topics as they stand today. Visit our web site www.niafpd.org for updated conference information.

I had promised to get the directory out before 2009 ended however, too many of our district and associate members have not submitted their current information. We thought it was best to wait and provide you with the most current information. Members should be receiving the 2009/10 membership directory via e-mail before the end of January. If you would like to receive the membership directory on a CD please let me know.

If I can be of help to anyone please give me a call at 847-945-4120 or e-mail me at khaagedbfd@syn.net. I look forward to seeing everyone at our upcoming conference.

Kathleen Haage

Executive Director, Northern Illinois Alliance of Fire Protection Districts



Appellate Court Protects Testing Materials from FOIA Disclosure

Donald L. Potts, Ottosen Britz Kelly Cooper & Gilbert, Ltd.

In *Kopchar v. City of Chicago* (2009 WL 3739338), the Illinois Appellate Court recently considered a challenge from an applicant for a firefighter position seeking disclosure of testing materials from the hiring process. The court determined the materials were exempt from disclosure under the Freedom of Information Act ("FOIA").

In 1995, the Plaintiff, Charles Kopchar, applied for a firefighter position with the City of Chicago and passed the written test. Over ten years later, in 2006, the City notified Kopchar he was eligible to participate in the next phase of testing - the physical abilities test - to be conducted by a third-party testing administrator. Kopchar took the test, and the City later notified him that he did not pass and was therefore not eligible for a firefighter position. Kopchar requested that the City review the results because he believed he had passed the test. The City responded that the test administrator had recalculated the results and found no error. Kopchar then sent a FOIA request to the City for "the test results of the Firefighter Physical Abilities Test" and "the criteria that the Department uses to determine pass/fail." The City denied the request, citing Section 7(1)(j) of the FOIA, which exempts from disclosure "test questions, scoring keys and other examination data used to ... determine the qualifications of an applicant for a license or employment." (5 ILCS 140/7(1)(j)) In response to this and other requests, the City ultimately identified the test administrator and provided Kopchar with his score for the test and a copy of the Firefighter's Physical Abilities Test Guide, but denied further requests for information.

Subsequently, Kopchar filed suit against the City and the test administrator, alleging the City violated the FOIA, and the City and test administrator negligently or intentionally misreported the test results. The trial court dismissed the complaint, finding (1) the information Kopchar requested was exempt from release under the FOIA, and (2) the test administrator was immune because it performed a quasi-judicial function in administering the test. Kopchar filed an amended complaint regarding his FOIA claim, and the trial court granted summary judgment to the City.

Kopchar appealed the trial court's decision, claiming that Section 7(1)(j) applies only to written or psychological tests, and not to physical tests. Upon review, the appellate court affirmed the trial court's ruling, holding that the plain language of the statute exempts "test questions, scoring keys and other examination data used ... to determine the qualifications of an applicant" without narrowing the types of examinations covered.

Although the City relied only on Section 7(1)(j) in its initial denial, during litigation it also raised two other exemptions: "information related solely to the internal personnel rules and practices of a public body," (5 ILCS 140/7(1)(w)); and "information specifically prohibited from disclosure by federal or State law." (5 ILCS 140/7(1)(a)) The court agreed that test criteria and scoring processes relate to internal personnel practices and held that Section 7(1)(w) exempted the test materials from disclosure. The City contended the Illinois Personnel Records Review Act is a state law prohibiting disclosure of the test materials. The Personnel Records

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Review Act grants employees the right to review their personnel records, but does not apply to "any portion of a test document, except that the employee may see a cumulative test score...." (820 ILCS 40/10) The City claimed this exemption fit the requirement of Section 7(1)(a). The court agreed, finding all three exemptions claimed by the City were applicable.

Kopchar argued the City could not raise new exemptions in court, but could only rely on those exemptions included in its denial letter to him. The appellate court disagreed, stating that the FOIA provides for broad judicial review to determine whether any exemption applies, not just the exemptions initially claimed by the City. (5 ILCS 140/11(f))

Regarding the trial court's decision to dismiss the complaint against the test administrator, Kopchar argued that the quasi-judicial privilege does not apply because there was no hearing or quasi-judicial proceeding. The appellate court agreed with Kopchar that the quasi-judicial privilege did not apply, but found that a different privilege, the deliberative process privilege, did apply. The court held that the deliberative process privilege is encompassed in Section 7(i)(f) of the FOIA, which exempts pre decisional materials used by a public body in its deliberative process. (5 ILCS 140/7(1)(f)) The court concluded, "the administration of the physical test and the interpretation of the test results ... was a preliminary document

in relation to the decision by the City fire department to deny admission to plaintiff and is protected by the deliberative process privilege."

Municipalities and fire protection districts have a significant interest in safeguarding test materials and related information from disclosure to protect the integrity of the process and to avoid the expense incurred with developing or contracting for new tests and procedures if existing testing processes become public knowledge. In Kopchar, the appellate court recognized that interest and identified four exemptions from the FOIA that permit municipalities and fire protection districts to withhold testing information from disclosure.

The General Assembly recently completed a comprehensive overhaul of the Freedom of Information Act, which becomes effective January 1, 2010. Although the internal rules and policies exemption have not been included in the new FOIA, the other exemptions the court applied in Kopchar still exist in the new version of the FOIA. Therefore, even after January 1, 2010, records used in the testing process are still exempt from release under the FOIA.



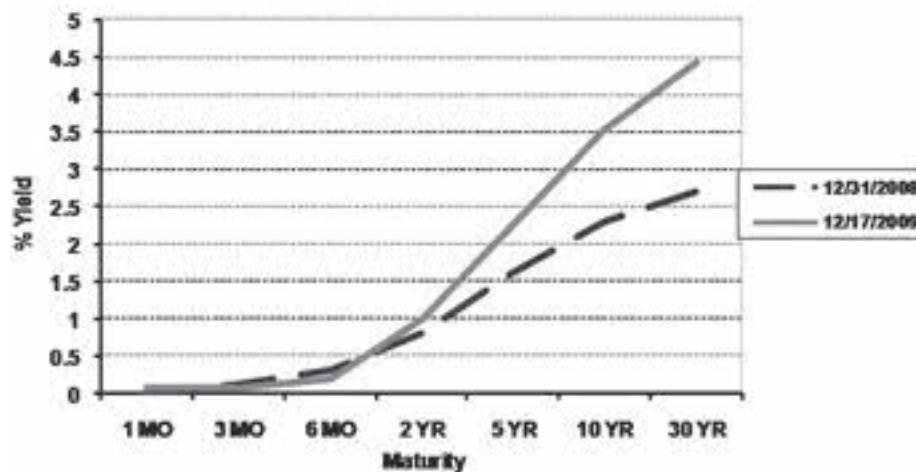


Short-Term Interest Rates Likely to Stay Under Pressure

Thomas S. Sawyer, Sawyer Falduto Asset Management, LLC

As 2009 draws to a close, it seems worthwhile to look back at the rather dramatic changes to the maturity/yield relationships over the last year. Yields for intermediate to longer maturities have moved higher with U. S. Treasuries leading the rise. At this writing, the benchmark 10 Year Treasury note yields 3.52%, increasing by more than 140 basis points (1.40%) from the historic low levels of December 2008.

While longer term yields have moved significantly higher, short-term interest rates remain exceptionally low reflecting the continuing commitment of accommodative monetary policy by the Federal Reserve. The annual yield on the 3 Month Treasury Bill is currently at 0.067%. That equates to just \$17 of interest on a \$100,000 investment for three months. The net result is that the slope of the U.S. Treasury yield curve has steepened dramatically this year.



The current structure of interest rates creates a difficult environment for investors seeking a home for liquid, operating capital investments. While there is certainly a yield advantage for assuming some maturity risk in a portfolio, our outlook continues to call for higher interest rates in the future. Additionally, maturities need to be in the range of two to four years to gain any meaningful incremental yield relative to short-term alternatives.

Illinois Fire Protection Districts, as a matter of investment policy, invest the majority of their assets in short-term fixed income securities. The following yield comparisons are an average of selected current offerings at the time of this writing.

	Treasury	U.S. Gov't Agency	Certificates of Deposit
1 Year	0.52%	0.76%	0.65%
2 Years	0.99%	1.30%	1.70%
3 Years	1.28%	1.75%	1.95%
5 Years	2.26%	2.85%	3.00%

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Session Report

Charles R. Vaughn, Vaughn Consulting Services

As NIAFPD has grown, in numbers and impact, we see a new set of dynamics in the legislative process. Since the state has little prospects for cash in the near future I do not believe we will see benefit growth for labor for several years. More probable is a two-tiered pension system for reducing what is granted for new hires. Maintaining head-count will be job one for most unions. I also believe that unions will turn their focus to rules and regulatory matters where they can claim victory for members. Rules on organizing, limits on our ability to review disability status, and reaches into the budget process are a few ways to do this. Safety (something we all value highly) will become a possibly expensive battle field.

Our 2010 program will seek relief from expensive law and rule changes, and we will look for long-term, stable funding sources. Greater emphasis

will continue on fiduciary duties to pension funds and to financial training for trustees. As our internal training grows we will continue to offer an even better class of trustees to do your important job.

I think we will soon have a bill to remedy some of the inequities in the program that covers extreme disabilities that force one out of the fire service, but that leave him/her able to work (and to be insured) elsewhere.

If , and when , money ever shows up in Springfield we will begin to rework our program to reflect the changes. NIAFPD is beautifully positioned to react like this. I look forward to be ing a part of your team in these trying times. Thank you for your confidence in me.



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Little has changed in our assessment of short-term alternatives. The flattening of the short-end of the yield curve continues to inch out to longer maturities as yield hungry investors are willing to take on additional maturity risk. For those Fire Districts that have a time horizon that justifies some additional maturity risk, the incremental increase in yield is meaningful.

As always, we encourage Illinois Fire Protection Districts to manage reserve fund portfolios with proper consideration given to investment time

horizon, current liquidity needs, diversification, safety and legal constraints. Please feel free to contact us directly should you have any questions.

¹ The information in this article is obtained from sources believed to be reliable. Information in this article is the opinion of the author and should not be construed as investment advice or a guarantee of future returns.



silent AUCTION

We will once again hold a silent auction at
the
NIAFPD Annual Conference.

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someone who would, please contact

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