

NOT-FOR-PROFIT CORPORATION LAW § 1402; TOWN LAW §§ 176(11),
176-a.

The establishment of qualifications to hold line offices in a fire department of a fire district are established solely by the board of fire commissioners of the fire district.

October 27, 1997

Anthony M. Parlatore, Esq.
Setauket Fire Department
Home Federal Bank Building
356 Middle Country Road
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Informal Opinion
No. 97-49

Dear Mr. Parlatore:

You have asked whether the board of fire commissioners of the Setauket Fire Department is authorized to amend unilaterally the fire department's by-laws to designate the qualifications for company and fire department line officers.

Volunteer fire companies constituting the fire department of a fire district are either unincorporated associations or corporations formed under the provisions of the Not-for-Profit Corporation Law. Not-for-Profit Corporation Law § 1402. Typically, they have constitutions and by-laws and elect officers such as a president, vice-president, secretary and treasurer responsible for the internal affairs of the not-for-profit corporation or association. Id. These officers are not directly involved in firefighting but are responsible for the civil operations of the company as a not-for-profit corporation or as an unincorporated association. Op Atty Gen (Inf) No. 83-25.

In contrast, firefighting operations are fire district activities governed by provisions of the Town Law and by the rules and regulations enacted by the board of fire commissioners, the governing body of the fire district. Not-for-Profit Corporation Law § 1402(e); Town Law §§ 176(11), 176-a. The fire chief and the line officers of the fire department, such as the captains and lieutenants, have specific roles in firefighting operations under the exclusive control of the board of fire commissioners. Op Atty Gen (Inf) No. 83-25. Therefore, the firefighting roles of the line officers under State law are not governed by the by-laws of the companies but by general provisions of State law and rules and regulations of the board of fire commissioners. The establishment of qualifications to hold

line offices falls within this grant of authority to the board of fire commissioners.

We conclude then, that the qualifications to hold line offices in a fire department of a fire district are established solely by the board of fire commissioners of the fire district.

The Attorney General renders formal opinions only to officers and departments of State government. This perforce is an informal and unofficial expression of the views of this office.

Very truly yours,

JAMES D. COLE
Assistant Attorney General
In Charge of Opinions