

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

JAMES E. SWEENEY, F. WARREN BENTON,  
SAM ORANS, BRIAN PAYNE, RAY  
MALDONADO, DAN HEUBEL, PAUL J.  
ABRAHAMSEN, CHRISTOPHER MACDONALD  
and MICHAEL WEINER,

Plaintiffs,

-against-

ELIZABETH N. FELD, Mayor, MARLENE  
KOLBERT, Trustee, ANNE McANDREWS, Trustee,  
JIM MILLSTEIN, Trustee, RICHARD WARD,  
Trustee, constituting the Village of Larchmont Board  
of Trustees and RICHARD HEINE, "Chief" of the  
Fire Department of the Village of Larchmont,

Defendants.

Index No.: 9480/07

**AFFIDAVIT OF  
JOHN H. GALLIGAN**

STATE OF NEW YORK            )  
  ) ss:  
COUNTY OF WESTCHESTER    )

JOHN GALLIGAN, being duly sworn, deposes and says:

1. I am employed by the New York State Conference of Mayors ("NYCOM"), a statewide voluntary membership organization of approximately 581 municipalities representing more than 7000 local government officials. NYCOM was founded in 1910 and is an unincorporated association of cities and villages. One of the services the organization provides is advising municipal officials on pending issues, including litigation. NYCOM frequently appears as an amicus curiae in litigation on subjects of interest to our members. We also maintain regular contact with entities that interact with local governments, including the State Comptroller, the Attorney General, and the State Legislature.

2. In order to serve our members, the organization employs individuals who have expertise in specific areas relating to municipal government. For more than 30 years, I have been NYCOM's staff member for labor and employment matters, including civil service topics and issues relating to paid and volunteer fire departments. In this capacity, I regularly conduct training programs for government officials on fire department matters and have done so for more than 16 years. For more than 30 years, I have edited a monthly labor relations publication which is distributed to NYCOM members. Information on volunteer firefighters is included in the publication, as I consider them to be a human resources asset for municipalities. Included in that publication are summaries of court decisions and new legislation affecting public sector employment matters. Statutory changes and decisions involving volunteer firefighters are regularly included in the publication. I also consult with municipal officials to ensure that they are in compliance with applicable provisions of law.


3. I am familiar with the litigation which is currently before this Court since I personally consulted with Larchmont Village officials over their proposed changes in their fire department, including hiring a professional fire chief and placing the operations of the Fire Department under his jurisdiction. Villages, including the Village of Larchmont, are specifically permitted under §10-1020 of the Village Law to place all apparatus and personnel of a volunteer department under the leadership and supervision of paid firemen. While the statute refers generically to the employment of "firemen," in practice, in many municipalities the paid firemen who assume the management responsibility over a department are often officers up to and including the rank of chief of the department. I am familiar with many village volunteer fire departments that are under the jurisdiction of a paid chief and have consulted with the Executive Director of the State Fire Chiefs Association on that subject.

4. In advising municipal officials on the operations of volunteer fire departments and in conducting educational programs on that issue, I regularly review decisions of the Attorney General and State Comptroller and have occasion to speak to representatives of those agencies. I am aware of no legal opinion from either agency or the courts which would prohibit a village from placing the management of a volunteer fire department including the supervision of all personnel under the supervision of a paid chief. As the last clause of §10-1020 provides, a board of trustees may determine that "the voluntary department shall act under the orders of such paid fireman or firemen."

5. The last recodification of the Village Law took effect January 1, 1973. Section 10-1020 derives from the former §211 of the Village Law. Section 10-1020 is virtually identical to the former section, the only difference being the addition of an authorization for a board of trustees to act by resolution in employing firefighters and fixing their salary. In effect, the substantive wording of §10-1020 and its predecessor have existed for decades. Over the years, there have been opinions issued by the Comptroller advising that a volunteer fire chief can not receive a monetary payment for services rendered as chief. However, in the event someone is employed to serve as the chief of a volunteer fire department, the individual would not be a volunteer and would be paid a wage for services rendered. An opinion which serves to highlight this distinction is Op. St. Compt. No. 80-544. A copy of it has been attached to this affidavit.

6. The issue that is currently before this Court is of substantial importance to members of this organization since many village governments provide fire protection services under the exact model which has now been implemented by the Village of Larchmont. A ruling by this Court against the authority of a village to place its volunteer fire department under the jurisdiction of a paid chief would create uncertainty for other municipalities with respect to an

area of law which has been settled. There is no basis of which I am aware for the challenge before this Court.

  
\_\_\_\_\_  
JOHN H. GALLIGAN

Sworn to before me this  
5<sup>th</sup> day of June, 2007

  
\_\_\_\_\_  
Notary Public

DONNA M.C. GILIBERTO  
Notary Public, State of New York  
No. 4839623  
Qualified in Albany County  
Commission Expires February 28, 20 10

"Furnished under the Freedom of Information Law. This opinion has not been reviewed and may not reflect subsequent court decisions or statutory changes pertaining to the subject matter of the opinion or current policy of the Office of the State Comptroller."

September 10, 1980

Opn No. 80-544

VILLAGE LAW, §§10-1006, 10-1012: Volunteer firemen, including the chief and assistant chief or chiefs of a village fire department, may not be compensated for their services.

Mr. Richard J. Campbell  
Village Treasurer  
Municipal Building  
Croton-on-Hudson, New York 10520

Re: Village of Croton-on-Hudson

Dear Mr. Campbell:

This is in reply to your letter regarding the propriety of certain payments being made by the village to the chief and assistant chiefs of the volunteer village fire department. We have been informed by one of our examiners that the vouchers on which the payments were based state that such payments were made in return for services as fire chief and assistant chiefs, respectively. The question is whether it is proper for the village to make payments for such services.

Members of a volunteer fire department, including the chief and assistant chief or chiefs, generally are not considered employees of the village (cf. Hunt v Board of Fire Commissioners, 68 Misc2d 261, 327 NYS2d 36). They are private citizens who volunteer their service to a private organization, the volunteer fire company or department (see 33 Opns St Comp, 1977, p 18). There is no statutory authority for a village to compensate volunteer firemen, including the chief and assistant chief or chiefs, for their services and, therefore, it is our opinion that any such payments for services rendered as volunteer firemen would be improper.

Of course, the village could engage officers or members of its volunteer fire department as call or part-time paid firemen (see Village Law, §10-1000(8)). However, while engaged as paid

village firemen, they would not be entitled to receive the benefits accorded to volunteer firemen under the Volunteer Firemen's Benefit Law (Volunteer Firemen's Benefit Law, §5 (2) (d)).

You have also asked us to comment on where potential liability might lie in the event that the village continues to compensate the chief and assistant chiefs. It is beyond the scope of an advisory opinion for this Department to comment upon potential liability for improper expenditures of municipal funds - this is a matter for the courts. However, we can say that the illegal expenditure of village moneys could subject the officer or officers responsible to prosecution pursuant to the provisions of section 51 of the General Municipal Law.

We trust that the above will be of assistance to you.

Sincerely,

EDWARD V. REGAN  
State Comptroller

By

Theodore M. Berns  
Chief Municipal Consultant

Bandel/gj

PLEASE take notice that the within is a (*certified*) true copy of duly entered in the office of the clerk of the within named court on.

Dated,

Yours, etc.

**McCULLOUGH, GOLDBERGER & STAUDT, LLP**

*Attorneys for*

*Office and Post Office Address*

1311 Mamaroneck Avenue, Suite 340  
White Plains, New York 10605

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Defendants.

NOTICE OF SETTLEMENT  
PLEASE take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ M.

Dated,

Yours, etc.

**McCULLOUGH, GOLDBERGER & STAUDT, LLP**

*Attorneys for*

*Office and Post Office Address*

1311 Mamaroneck Avenue, Suite 340  
White Plains, New York 10605

**AFFIDAVIT OF JOHN H. GALLIGAN  
IN OPPOSITION TO APPLICATION  
FOR PRELIMINARY INJUNCTION**

**McCULLOUGH, GOLDBERGER & STAUDT, LLP**

*Attorneys for Defendants*

*Office and Post Office Address, Telephone*  
1311 Mamaroneck Avenue, Suite 340  
White Plains, New York 10605  
(914) 949-6400

To \_\_\_\_\_

*Attorney(s) for*

Service of a copy of the within

is hereby admitted.

Dated,

*Attorney(s) for*