

## Volume 11 - Opinions of Counsel SBRPS No. 82

### Opinions of Counsel

#### **Volunteer firefighters and volunteer ambulance workers exemption [Onondaga County] (service requirement) (length of service award program) - General Municipal Law, §§ 217, 219-e; Real Property Tax Law, § 466-g:**

A municipality may define an “enrolled member” for purposes of the volunteer firefighters and ambulance workers exemption available to members who have served for five years and continue to so serve (Real Property Tax Law, § 466-g(2)) as one who is eligible under the municipality’s length of service award program [LOSAP].

Our opinion has been requested concerning the volunteer firefighters/ambulance workers exemption for Onondaga County and its constituent municipalities (Real Property Tax Law, § 466-g [added L.2005, c.419]). <sup>(1)</sup> The issue is as to the meaning of the statutorily-used term “enrolled member” to whom the exemption may be granted.

In 11 Op.Counsel SBRPS Nos. 31 and 51, we interpreted the term to mean a “currently active” member for purposes of the five-year minimum service exemption (see, RPTL, § 466-g(2)) and a “formerly active” member for purposes of the lifetime exemption following 20 years of active service (see, § 466 g(3)). As we stated in the latter of those two opinions: “We assume [the term enrolled member] is intended to refer to ‘active volunteer members’ as that term is defined in sections 3(1) of the Volunteer Firefighters’ Benefit Law and the Volunteer Ambulance Workers’ Benefit Law.”

Nevertheless, several Onondaga County municipalities, including the County itself, have defined “enrolled member” in their local laws, ordinances, or resolutions adopting the exemption to mean active members eligible for the Length of Service Award Program [LOSAP] under the General Municipal Law. That law’s definition is more stringent and requires firefighters to earn points to be program eligible.

The definitional dichotomy is presenting a problem for local assessors in that some applicants appear to qualify for one municipal tax purpose (in a municipality following our recommended definition) but not for County purposes. The question is which definition is appropriate. In our opinion, both are acceptable.

Volunteer firefighters and volunteer ambulance workers may be eligible for service award programs as provided by statute (General Municipal Law, Arts. 11-A and 11-AA, respectively; 27 NY Jur2d, Counties, etc., §§ 1188-89). Such programs are not mandatory, but may be adopted locally (General Municipal Law, §§ 217, 219-d).

As the State Comptroller has explained:

Article 11-A of the General Municipal Law (§ 214 *et. [sic] seq.*) authorizes certain “political subdivisions” to establish, and thereby become the “sponsor” of, service award programs for volunteer firefighters (General Municipal Law §§ 215[10], 216[1], [2], 216-a). The purpose of these programs is to facilitate the recruitment and retention of volunteer firefighters, through the payment of a form of municipally-funded deferred compensation for the performance of certain

activities in connection with providing fire protection and other emergency services to the local government sponsor of the program (Op.State Compt. No. 2002-2). <sup>(2)</sup>

As the Comptroller noted in another opinion:

General Municipal Law, § 217(c) provides that a “year of firefighting service” must be credited under a service award program for each calendar year after the establishment of the program in which an “active volunteer firefighter” accumulates at least 50 points. Points must be granted for the performance of certain designated activities, in accordance with a system established by the sponsor (*id.*). Such activities **may** include participation in department responses (see General Municipal Law, § 217(c)(vi))(Op.State Compt. No. 1993-16; emphasis added).

Section 217(c)(vi) of the General Municipal Law awards 25 points for participation in a minimum number of responses by volunteer firefighters (Op.State Compt. 95-9), while section 219-e(g) awards 25 points for similar responses by volunteer ambulance workers. We assume that the awards program(s) in question do indeed include the award of 25 points for responses by volunteers. This award, however, presumably applies only to the currently active members, since the Comptroller has opined that retired members of a fire department may not participate in an awards program unless they are still subject to being called to duty under the department’s rules and regulations (Op.State Compt. 94-33).

Assuming that a service awards program has been established and that such program awards 25 points for responses by volunteers, linking the exemption offered under section 466 g(2) to such program is not unreasonable. Yet, the fact that such awards programs are available only at local option and the award of points for responses is also optional (although we assume it is included in most, if not all, such programs), we still adhere to our previously expressed opinion as to the meaning of “enrolled member.” That is, in the absence of further legislation or a controlling judicial interpretation of the statutory meaning of “enrolled member,” either definition might be used.

Insofar as an assessor’s administration of the exemption, where two municipalities served by such assessor define “enrolled member” differently, we note that section 466-g(2)(d) makes it the duty of the municipality authorizing the exemption “to determine the procedure for certification.” We also note that other exemptions also authorize municipalities utilizing the same assessment roll to exercise different exemption options. For instance, section 467(3)(a) permits municipalities granting the senior citizens exemption to exclude (1) the cost of unreimbursed medical expenses or prescription drugs, (2) veterans disability compensation, or (3) both (1) and (2), from the definition of income to be used in determining exemption eligibility (see *also*, RPTL, §§ 421 f(7), 485-b(7)-(12)). As such, it is not uncommon for a parcel to qualify for exemption for one taxing purpose while not being eligible to receive it for another.

As noted, in the absence of clarifying legislation or judicial interpretation, the meaning of undefined statutory terms remains elusive. We recognize that litigation may ensue if a particular volunteer is granted the exemption for one municipal tax purpose while denied it for another because different statutory standards are applied for each purpose. It appears that this issue is therefore one that must await litigation (probably commenced by such a volunteer) or further legislation for resolution.

February 23, 2006

{1} This is one of many similar but not identical exemptions which have been enacted, generally on a county-by-county basis, currently denominated (often redundantly) as sections 466-a through 466-g. [Ed. note: Additional counties have been added and enumerated as section 466-h or 466-i.]

{2} Encouraging membership in volunteer fire and ambulance companies is, of course, a stated legislative purpose of the various volunteer firefighters and volunteer ambulance service exemptions (see, e.g., the sponsor's memorandum for Putnam County's exemption (RPTL, § 466-c [added L.2002, c.428] reprinted at 2002 NYS Legislative Annual, p.240).

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