



Legislation Text

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120739 SUBSTITUTE 1

ALD. HAMILTON

Substitute resolution relating to the City's participation in proceedings upon appeal of the decision and order of the Dane County Circuit Court in the matter of *Madison Teachers, Inc., et al. v. Scott Walker, et al.* (Case No. 11CV3774).

This resolution authorizes the City Attorney to represent the City's interests in appellate proceedings reviewing the Decision and Order of the Dane County Circuit Court dated September 14, 2012, in the matter of *Madison Teachers, Inc., et al. v. Scott Walker, et al.* (Case No. 11CV3774). In this litigation the Circuit Court found, *inter alia*, that certain provisions of 2011 Wisconsin Act 10 are unconstitutional as applied to the Milwaukee Employee's Retirement System (ERS).

The decision of the Circuit Court was consistent with prior opinions of the City Attorney and the independent legal opinions secured by the City and the ERS. The City was not formally a party to the litigation. This resolution directs the City Attorney to take necessary and appropriate action to represent the City's interests consistent with prior legal advice and opinions.

Whereas, By Decision and Order of the Dane County Circuit Court dated September 14, 2012, in the matter of *Madison Teachers, Inc., et al. v. Scott Walker, et al.* (Case No. 11CV3774), the Circuit Court found, *inter alia*, that Part 167 of 2011 Wisconsin Act 10, creating a new s. 62.623, Wis. Stats., violates the Home Rule Amendment, Art. XI, s. 3(1), of the Wisconsin Constitution, and is an unconstitutional intrusion into a matter reserved to the City of Milwaukee, namely, the allocation of responsibility for contributions to the Milwaukee Employee's Retirement System (ERS); and

Whereas, Section 62.623, Wis. Stats., requires employees of cities of the first class, with certain exceptions, to pay all required employee contributions for the funding of their pension benefits and further prohibits their employers from making these contributions; and

Whereas, The Circuit Court found that these provisions of 2011 Wisconsin Act 10 impermissibly altered the contractual rights of employees under Ch. 36 of the City Charter in violation of the protections against impairment of contracts provided in the U.S. and Wisconsin Constitutions; and

Whereas, The City Attorney, in an opinion dated February 28, 2011, opined that provisions in pending state legislation that were eventually enacted as s. 62.623, Wis. Stats., would not be legal and enforceable under doctrines of constitutional home rule and impairment of contracts; and

Whereas, In a separate opinion, issued on May 17, 2011, the law firm of White, Hirschboeck, Dudek, S.C., opined to the Annuity and Pension Board of the ERS that the provisions of 2011 Act 10 that bear on the benefits of plan members should be interpreted in a manner consistent with the terms and conditions of the benefit contracts of these same members; and

Whereas, By Resolution File Number 110875, adopted October 14, 2011, the Common Council

sought an independent legal opinion to review legal issues germane to the passage of s. 62.623, Wis. Stats.; and

Whereas, By correspondence to the Mayor and Common Council dated October 26, 2011, the law firm of Reinhart Boerner Van Deuren s.c. opined that the City may not unilaterally choose to impose additional employee contributions on current ERS members as required by passage of s. 62.623, Wis. Stats., based upon grounds that include constitutional protections of contractual and vested rights; and

Whereas, The Common Council finds that consistency and certainty in the interpretation of contractual and vested rights inures to the benefit of the City and its employees; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee, that the City Attorney is authorized to take such action as the City Attorney deems necessary and appropriate to assert and defend the interests of the City in appellate proceedings relating to the Decision and Order of the Circuit Court of Dane County in the matter of *Madison Teachers, Inc., et al. v. Scott Walker, et al.* (Case No. 11CV3774), consistent with the prior advice and opinions provided by the City Attorney.

City Attorney
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Richard L. Withers
10/3/2012