



Office of the City Clerk

Ronald D. Leonhardt
City Clerk

Carolyn Hill Robertson
Deputy City Clerk

December 21, 2005

Mr. Grant Langley
City Attorney
Room 800
City Hall

Dear Mr. Langley,

Attached, please find a proposed substitute for Common Council File Number 050095, a substitute resolution creating a task force to study pay equity in city government. The original was introduced by title to the Common Council on May 3, 2005 (copy attached). Substitute 1, a copy of which is also attached, was submitted to my office on December 8, 2005. The file has not yet been scheduled for committee action.

As you can see, Substitute 1 reserved \$25,000 in the Department of Employee Relations' operations account for the purpose of purchasing certain contractual services. Substitute 2 alters this by reserving the same \$25,000 in the Common Council Contingent Fund.

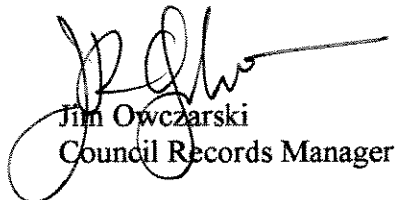
I have attached a copy of an opinion from your office dated February 6, 1987 pertaining to the changes that may be licitly made to a file by a standing committee once it is introduced to the Common Council. If I read this opinion correctly, a standing committee may not, by substitution, insert a provision allocating funds or authorizing their expenditure into a file that did not contain such a provision when it was first introduced. I realize that the Substitute 1 for this file did include a provision reserving funds for the same purpose envisioned in Substitute 2. The funds reserved in Substitute 2, however, are taken from a completely different source, one for which special legislative requirements exist.

Given the foregoing, I would ask the following questions:

- Is Substitute 2 as presented for this file legal?
- Does reserving funds in an account constitute creating a charge against a fund or an appropriation that is subject to s. 4-21 of the City Charter or to the *Gilman* case cited in your February 6, 1987 opinion?
- Does it remain the opinion of your office that, if a file does not include an appropriation or a charge against a municipal account at the time of its introduction that an appropriation or charge may not be added by substitution or amendment at committee?
- If the answer to the above question is yes, must files received by title only indicate in their titles that the file will create a charge against a municipal account or appropriate funds; if it is anticipated that the file, when filled, will contain such a charge or appropriation?
- Finally, if a file contains an appropriation or charge against a city account, must that fact be reflected in the title of the file?

Thank you for your attention to this matter. Should you require further information, please do not hesitate to contact me. My extension is x2998. My e-mail address is jowcza@milwaukee.gov.

Sincerely,



Jim Owczarski
Council Records Manager

Cc: Ronald D. Leonhardt
Barry J. Zalben
Marianne Walsh
Terry MacDonald

..Number

050095

..Version

SUBSTITUTE 2

..Reference

..Sponsor

ALD. ZIELINSKI AND BAUMAN

..Title

A substitute resolution creating a task force to study pay equity in city government.

..Analysis

This resolution creates a task force to examine gender pay equity in City of Milwaukee government. The task force shall determine if there is pay inequity in city employment, and present its findings and recommendations to the Common Council within 18 months of adoption of this resolution. Upon submission of the report, the task force shall automatically be dissolved.

..Body

Whereas, The City of Milwaukee is dedicated to fostering pay equity; and

Whereas, Pay equity, also called comparable worth, means eliminating discrimination in pay for female dominated jobs; and

Whereas, Despite the Equal Pay Act of 1963 and Title VII of the 1964 Civil Rights Act, which make discrimination in wages illegal, full-time female workers are still earning less than that of full-time male workers; and

Whereas, A comparable worth study evaluates salaries based on the skill, effort and responsibility each job requires relative to other jobs in an organization, and a city-wide study could result in more uniform pay equity in city government; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee, that a pay equity task force is created composed of 15 members:

1. One member of the Common Council, to be appointed by the Common Council President.
2. Two citizen members to be appointed by the Common Council President.
3. Three citizen members to be appointed by the Mayor.
4. The director of the YWCA of Greater Milwaukee or the director's designee.
5. The director of the Executive Board of Milwaukee AFSME District Council 48 or the director's designee.
6. The director of the University of Wisconsin-Milwaukee, Center for Economic Development or the director's designee.
7. The director of the Women's Fund of the Greater Milwaukee Foundation or the director's designee.
8. The director of the FairVote-Center for Voting and Democracy or the director's designee.

9. The director of the Institute for Wisconsin's Future or the director's designee.
10. The director of the 9to5, National Association of Working Women or the director's designee.
11. The director of the Marquette University Department of Management or the director's designee.
12. The director of the University of Wisconsin-Milwaukee Department of Financial Aid or the director's designee.

; and, be it

Further Resolved, That the Common Council President shall designate the Chair of the pay equity task force; and, be it

Further Resolved, That the purpose of this task force shall be to:

- a. Determine, through conducting a study, if there is a pay equity discrepancy in city government.
- b. Make recommendations to the Common Council regarding potential remedies to possible pay inequity in city government.

; and, be it

Further Resolved, That a sum of up to \$25,000 shall be reserved within the 2005 Common Council Contingent Fund (09-910-8000) for the purposes of contractual services so that the task force may engage a consultant to assist in the study where appropriate; and, be it

Further Resolved, That the Department of Employee Relations and the City Clerk's Office shall provide staff assistance; and, be it

Further Resolved, That all departments are authorized and directed to provide assistance to this task force as needed; and, be it

Further Resolved, That the task force shall submit a report of its findings and recommendations to the Common Council within 18 months, and, upon submission of the report, the task force shall automatically be dissolved.

..Requestor

..Drafter
LRB05183-3
AEH
12/14/2005



City of Milwaukee Common Council

Legislative File Number 050095 (version 1)

Title

A substitute resolution creating a task force to study pay equity in city government.

Body

Whereas, The City of Milwaukee is dedicated to fostering pay equity; and

Whereas, Pay equity, also called comparable worth, means eliminating discrimination in pay for female dominated jobs; and

Whereas, Despite the Equal Pay Act of 1963 and Title VII of the 1964 Civil Rights Act, which make discrimination in wages illegal, full-time female workers are still earning less than that of full-time male workers; and

Whereas, A comparable worth study evaluates salaries based on the skill, effort and responsibility each job requires relative to other jobs in an organization, and a city-wide study could result in more uniform pay equity in city government; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee, that a pay equity task force is created composed of 15 members:

1. One member of the Common Council, to be appointed by the Common Council President.
2. Two citizen members to be appointed by the Common Council President.
3. Three citizen members to be appointed by the Mayor.
4. The director of the YWCA of Greater Milwaukee or the director's designee.
5. The director of the Executive Board of Milwaukee AFSCME District Council 48 or the director's designee.
6. The director of the University of Wisconsin-Milwaukee, Center for Economic Development or the director's designee.
7. The director of the Women's Fund of the Greater Milwaukee Foundation or the director's designee.
8. The director of the FairVote-Center for Voting and Democracy or the director's designee.
9. The director of the Institute for Wisconsin's Future or the director's designee.
10. The director of the 9to5, National Association of Working Women or the director's designee.
11. The director of the Marquette University Department of Management or the director's designee.
12. The director of the University of Wisconsin-Milwaukee Department of Financial Aid or the director's designee.

; and, be it

Further Resolved, That the Common Council President shall designate the Chair of the pay equity task force; and, be it

Further Resolved, That the purpose of this task force shall be to:

- a. Determine, through conducting a study, if there is a pay equity discrepancy in city government.
- b. Make recommendations to the Common Council regarding potential remedies to possible pay inequity in city government.

; and, be it

Further Resolved, That up to \$25,000 from the Department of Employee Relation's operations account is reserved for contractual services so that the task force may engage a consultant to assist in the study where appropriate; and, be it

Further Resolved, That the Department of Employee Relations and the City Clerk's Office shall provide staff assistance; and, be it

Further Resolved, That all departments are authorized and directed to provide assistance to this task force as needed; and, be it

Further Resolved, That the task force shall submit a report of its findings and recommendations to the Common Council within 18 months, and, upon submission of the report, the task force shall oversee any recommendations that are implemented.

Drafter

LRB05183-2
AEH
12/7/2005

Analysis

This resolution creates a task force to examine gender pay equity in City of Milwaukee government. The task force shall determine if there is pay inequity in city employment, and present its findings and recommendations to the Common Council within 18 months of adoption of this resolution. Upon submission of the report, the task force shall oversee any recommendations that are implemented.



City of Milwaukee
Text File
Resolution

200 E. Wells Street
Milwaukee, Wisconsin
53202

Introduced: 5/3/2005

File Number: 050095

Status: In Committee

Version: 0

Sponsors: Zielinski



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PATRICK J. LUBENOW
LYNNETTE M. PARKER

February 6, 1987

Ald. John R. Kalwitz
President
The Honorable Common Council
of the City of Milwaukee
Room 205, City Hall

Dear Ald. Kalwitz:

On May 6, 1986, Common Council File No. 86-110-a, being a resolution relative to approving \$1.5 million in contingent borrowing authority in implementing Phase II of the Milwaukee Resource Recovery Project, was introduced into the Common Council. The resolution would have approved in principle recommendations of the Resource Recovery Cogeneration Project Feasibility Study. It would have made a finding that the estimated costs of completing the two sequential phases of Phase II of the study were reasonable and acceptable. The resolution would have allocated up to \$1.5 million in contingent borrowing authority for implementing Phase II, and would have authorized and directed the Comptroller to include \$500,000 in borrowing in the forthcoming mid-year financing.

The file was referred to the Committee on Finance and Personnel. Thereafter, on July 23, 1986, the Committee reported the file to the Common Council with a recommendation for the adoption of Substitute #1, being a resolution relative to approving \$350,000 from the Common Council Contingent Fund to complete certain preliminary environmental, engineering, and financial planning activities for the proposed Milwaukee Resource Recovery Project. The substitute was adopted by the Common Council at its meeting of July 29, 1986.

The substitute did not approve the Resource Recovery Cogeneration Project Feasibility Study. Instead, it authorized City officials to review the study, to prepare an ownership and financing plan and to report back with recommendations as to whether the City should proceed with the plan. \$350,000 was appropriated from the Common Council Contingent Fund to implement the resolution.

On January 20, 1987, you wrote this office asking the following questions:

"Was the substitute resolution adopted by the Common Council germane to File Number 86-110-a?"

"Was the notice of the substitute resolution in compliance with acceptable standards of law?"

"Assuming that the action taken was not germane and that the notice was deficient, what remedy would your office advise the Common Council to take in this matter?"

Insofar as pertinent, sec. 4.21 of the Milwaukee City Charter, 1971 compilation as amended, provides as follows:

"All resolutions appropriating money, or creating any charge against any of the funds of said city, and all accounts and ordinances, shall be referred to appropriate committees and shall only be acted on by the common council at a subsequent meeting not held on the same day, on the report of the committee to which the same were referred; provided, however, that when a committee shall report by resolution upon a matter referred to them by the common council, action upon such resolution may, in the discretion of the council, be taken without a further reference;..."

In Gilman v. The City of Milwaukee, 61 Wis. 588 (1884), citizens engaged in organizing a soldiers' reunion in the city presented a petition to the common council praying that the city furnish the reunion camp with water from the water works of the city. The petition was referred to the committee, and the committee reported a series of resolutions, one of which related to authorizing temporary water distribution pipes on the reunion grounds and another of which authorized permanent water mains along streets adjacent to the reunion site. The Supreme Court held that the subject matter of laying permanent water mains was not embraced in the petition presented to the common council. As a consequence, the court held that the resolution relative to permanent water mains was before the common council for the first time at the time of its passage, and therefore passage was in violation of sec. 4.21 of the City Charter.

In the instant case, both the original resolution and the substitute adopted relate to the Resource Recovery Project. The original resolution would not have authorized an appropriation, nor would it have authorized a charge being placed against any City fund. Although it would not have authorized borrowing for purposes of the project, it would have directed that borrowing be included as part of a normal City financing. The substitute appropriated Common Council contingent funds.

The underlying purpose of sec. 4.21 of the City Charter is to give Council members and the public advance notice of all appropriations, etc. Gilman, supra. In our opinion, adoption of the substitute violated sec. 4.21 not because the public did not have advance notice of the subject matter of Resource Recovery, but rather because the public did not have advance notice of the appropriation.

Given the invalidity of the resolution, the Common Council has several options. First, the Council can correct the deficiency by ratifying its earlier actions. This would require the introduction of a new file and a 1987 appropriation. A

Ald. John R. Kalwitz

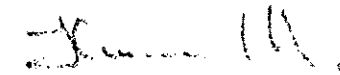
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February 6, 1987

substitute to Common Council File No. 86-1730 would serve this purpose. Second, the Common Council can do nothing, in which case no additional work should be authorized based upon the earlier appropriation. Under this option, contractors may retain compensation for benefits conferred to date based upon the principle of unjust enrichment. Blum v. City of Hillsboro, 49 Wis. 2d 667, 183 N.W. 2d 47 (1971).

Very truly yours,


GRANT F. LANGLEY
City Attorney


THOMAS E. HAYES
Special Deputy City Attorney

TEH:cfs

CC: Ald. Michael R. McGee

CC: Mr. James A. McCann

CC: Ald. Sandra Hoeh-Lyon

CC: Ms. Rose Gretenhardt

CC: Mr. David A. Kuemmel