

CITY OF MILWAUKEE

Form CA-43



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February 6, 2003

Mr. Jim Owczarski
Legislative Research Analyst
Legislative Reference Bureau
Room B-11, City Hall

Re: Suspension of Milwaukee Police Department Rules
(§§ 62.50(3)(a) and (3)(am), *Wis. Stats.*)

Dear Mr. Owczarski:

This letter will respond to your request of this office dated November 18, 2002 as to the question of whether the Common Council may legally suspend any of the Milwaukee Police Department's Rules or only those that have been specifically enacted by the Board of Fire and Police Commissioners ("Commission"). In this respect, you refer to §§ 62.50(3)(a) and (3)(am), *Wis. Stats.*, which govern the review, adoption, suspension, and modification of such rules. These statutory provisions read as follows:

(3) RULES. (a) The board may prescribe rules for the government of the members of each department and may delegate its rule-making authority to the chief of each department. The board shall prescribe a procedure for review, modification, and suspension of any rule which is prescribed by the chief, including, but not limited to, any rule which is in effect on March 28, 1984.

(am) The common council may suspend any rule prescribed by the board under par. (a).

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At first glance, § 62.50(3)(am), *Wis. Stats.*, appears to draw a distinction between rules “prescribed by the board” and rules prescribed by the Chief of either the Fire or Police Department. This distinction, however, is mooted by both the second sentence of § 62.50(3)(a), *Wis. Stats.*, and by the Commission’s current rules governing review and adoption of rules applicable to the operations of the Fire and Police Departments. The former requires that the Commission adopt a “procedure” for review, modification, and suspension of any rule that is prescribed by the Chief. This suggests that a rule that may originally be issued by a Chief of either the Fire or Police Department will be subsequently reviewed (and, if appropriate, modified or suspended) by the Commission in every case—and, if it is ultimately adopted either in its original or in a modified form, will thereby become a rule prescribed by the Commission itself. This conclusion is confirmed by current Commission Rule II entitled “Scope of Authority,” § 3(c), which states as follows:

- (c) The Chief of each department may propose rules for the governance of the department. Any rule proposed by a Chief shall be subject to review and approval by the Board. **Any rule proposed by a Chief shall not take effect until the rule is reviewed and approved by the Board.**

(Emphasis added).

For your convenience, we have enclosed the appropriate page of the rules of the Commission and all subsequent amendments thereto.

Thus by operation of the review and approval procedure prescribed by § 62.50(3)(a), *Wis. Stats.*, and adopted by the Commission as a component of its own Rules, we conclude that every rule governing the operation of the Fire and Police Departments constitutes a “rule prescribed by the board” as defined in §§ 62.50(3)(a) and (3)(am), *Wis. Stats.*, excepting only those rules that were in effect on March 28, 1984 and that have not been modified by the Commission subsequent to that date. Accordingly, and in conformance with the latter provision, the Common Council possesses the authority to suspend any rule not falling within the excepted category. There is, therefore, no

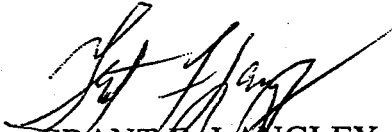
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need to distinguish between rules that have been adopted by the Commission on its own initiative from those originally prescribed by a Chief of either the Fire or Police Departments, but ultimately reviewed and approved by the Board.

Please note that the scope of this opinion is confined to rules, which are the only provisions referenced by the pertinent subparts of § 62.50, *Wis. Stats.*, and does not extend to other forms of "procedures" not within the purview of that statute.

If you have any further questions concerning this matter, please contact this office for guidance.

Very truly yours,



GRANT F. LANGLEY
City Attorney



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