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February 20, 2026

Alderman Sharlen P. Moore
Alderman Scott Spiker
City Hall
200 E. Wells Street, Room 205
Milwaukee, WI 53202

Re: Salary Ordinance Footnote for Police & Fire Chief

Dear Alderman Moore and Alderman Spiker:

On January 29, 2026, the City Attorney's Office ("CAO") issued a memorandum to Alderman Sharlen P. Moore relating to Common Council File Number ("CCFN") 250946 and Board of Fire and Police Commissioners of the City of Milwaukee ("FPC") file FPC212244. These legislative files deal with a footnote applying to the Chief of Police position title that provides that recruitment for such position may be at any rate in the pay range (referred to herein as "Footnote (1)"). After our advice was provided and following the February 4, 2026, meeting of the Common Council's Finance and Personnel Committee ("F&P") two things occurred: First, Alderman Moore agreed that CAO could share the information in the January 29, 2026, memorandum with other F&P committee members. Second, Alderman Scott Spiker submitted further questions to CAO related to Footnote (1). Based on those events, CAO provides this legal opinion of the City Attorney, which contains the advice in the January 29, 2026, memorandum, and which is responsive to the questions raised by Alderman Spiker.^{1, 2}

¹ The text of the January 29, 2026, memorandum, is largely reproduced in this memorandum, but we have made some revisions and corrections.

² To provide this advice, CAO gathered information from several offices, including the Board of Fire and Police Commissioners, Department of Employee Relations, and the Office of the City Clerk; however, the information in this Opinion attributed to these offices should not be taken to be their official positions.



BACKGROUND

In the 2026 salary ordinance, Pay Range 4ZX covers two position titles: Chief of Police and Fire Chief. The wage rate table applicable to Pay Range 4ZX provides that the minimum bi-weekly salary is \$6,830.75 (\$85.38 hourly and \$177,599.50 annually), and the maximum bi-weekly salary is \$9,849.61 (\$123.12 hourly and \$256,089.86 annually).

Next to the Chief of Police position title in the salary ordinance is the number one in parentheses. This number corresponds to text underneath the wage table that states: “(1) Recruitment may be at any rate in the pay range.” CCFN 250698, *Actual File Text - 2026 Salary Ordinance* at 94. This footnote, referred to herein as “Footnote (1),” is significant because, in the absence of a footnote authorizing a recruitment rate, appointments must be made at the minimum of the applicable pay range pursuant to the introductory paragraph of Part II, Section 3 of the salary ordinance. *Id.* at 143. Furthermore, Part II, Section 3, Paragraph A of the salary ordinance provides, in part: “to recruit qualified persons, appointment of a person to a position may be at a rate above the minimum rate within the established pay range *provided it is determined by the Common Council that such rate is necessary and provided there is a footnote authorizing it.*” *Id.* at 144 (emphasis added).

CCFN 250946 is a communication file entitled “[c]ommunication from the Department of Employee Relations relating to classification studies or other studies scheduled for Fire and Police Commission action.” Attached to CCFN 250946 is a letter from the Department of Employee Relations (“DER”) to F&P outlining an amendment to the 2025 salary ordinance that would give recruitment flexibility to the Fire Chief position by extending Footnote (1) to the Fire Chief position title. DER also proposes an amendment to Footnote (1) to specify that FPC will be the body that approves the recruitment rate at which the Chief of Police and Fire Chief positions are appointed.

QUESTIONS PRESENTED

The questions presented in this memorandum are the following:

1. Whether it is legal to extend Footnote (1) to the Fire Chief position title;
2. Whether Footnote (1) was properly included in the salary ordinance;
3. If Footnote (1) was not properly included in the salary ordinance, what options exist regarding its removal;
4. Whether the Board of Fire and Police Commissioners of the City of Milwaukee (“FPC”) had the authority to unilaterally decide the Chief of Police’s salary and, if so, under what legal authority; and,

5. Whether Footnote (1) can be amended to state that the recruitment for the Chief of Police position title may be at any rate in the pay range with the approval of the Common Council.

CONCLUSIONS

In accordance with the analysis below, this opinion contains the following conclusions:

1. Footnote (1) may be extended to the Fire Chief position title, provided the Common Council determines such footnote to be necessary;
2. Footnote (1) has legal effect given that it remained in the text of the ordinance as enacted, signed, and published;
3. The removal of Footnote (1) on a prospective basis is possible. Removal of Footnote (1) should not have application to the current incumbent in the Chief of Police position title due to uncertainty with regard to whether the Chief of Police is subject to the provisions of Wis. Stat. § 62.50(10), which limits the Common Council's ability to decrease the salaries of members of the police force.
4. Pursuant to Wis. Stat. § 62.50(6), FPC has a statutory duty to appoint the chiefs of the fire and police departments and, while the Common Council may change the salary and compensation of all members of the force in the police and fire departments, FPC made an appointment within the limits provided in the salary ordinance.
5. It is possible to create a salary ordinance footnote for the Chief of Police position title that requires approval of the Common Council (more commonly in the salary ordinance such approval is by the Chair of the Finance and Personnel Committee) but a major concern is whether the granting or denying of such approval would, in some cases, frustrate the FPC's requirement to appoint. An additional concern related to this proposal is the time which it may take for the Common Council to take an appropriate action to give its approval or non-approval.

ANALYSIS

A. The Common Council may extend Footnote 1 to the Fire Chief Position Title.

We know of no legal reason that would preclude the Common Council from extending Footnote (1) to the Fire Chief position title, assuming that such action is the decision of the Common Council and that an appropriate ordinance making such change is duly enacted by the Common Council, signed by the Mayor, and published. Based on the

current version of the salary ordinance, the Common Council is required to determine that application of Footnote (1) to the Fire chief position is necessary.

According to the DER, the Common Council has the ability to set salaries, despite those salaries appearing as “approved” by the City Service Commission (*see, e.g.*, CCFN 231403) or by FPC (*see, e.g.*, FPC211467). DER’s position is reflected in the following state statutes: Wis. Stat. § 63.23(2) provides that the City Service Commission may receive “expert study or recommendation of the classification, allocation and compensation of offices and positions in the service of the city and transmit the same with or without the commission’s recommendations, to the common council”; Wis. Stat. § 63.45 provides that the City Service Commission’s certification with regard to pay includes the Commission’s determination that the rate of salary or wage is in accordance with the rate “established by the proper authorities”; Wis. Stat. § 62.57 provides that the Common Council may adopt a uniform and comprehensive salary or wage ordinance; and Wis. Stat. § 62.50(10) provides that the salary and compensation of all members of the force shall be at all times subject to change by the Common Council except with regard to decreases. These statutes show, generally, that the Common Council is the body that sets salaries.

The same conclusion has also been noted in Opinions of the City Attorney. Recently, CAO noted that “[t]he common council’s legal authority over the public service consists chiefly of the *legislative* power to create or eliminate positions and to establish the salaries to be paid such positions.” City Att’y Op., Dec. 15, 2025, at 2 (citing City Att’y Op., Nov. 19, 1979, at 3).

Given the Common Council’s power to set salaries, we are not aware of any legal reason that would preclude the Common Council from extending Footnote (1) to the Fire Chief position title, save the requirement in the salary ordinance that requires the Common Council to make a determination that a specified recruitment rate is necessary.³

B. History of Footnote (1).

In 2007, the Common Council file proposing the 2008 salary ordinance, CCFN 070604, listed the Chief of Police position title within Salary Grade 018.⁴ Salary Grade 018 had an

³ A basic limitation applying to the salary ordinance is that provision must be made in the budget of the current year for the total sum of money required for the payment of the salaries and wages included in the salary ordinance. Wis. Stat. § 62.57. CAO inquired with the budget office as to its process for estimating the “total sum of money required for the payment of the salaries” and are not concerned that the application of Footnote (1) to the Fire Chief position title would create an issue.

⁴ In the 2008 salary ordinance, Salary Grade 018 also included the Fire Chief position title. The Chief of Police position title and the Fire Chief position title have since been included in the same salary grade or, in later versions of the salary ordinance, pay range.

Official Rate Biweekly broken out into 12 steps, with the lowest step at \$4,152.82 and the highest step at \$5,813.81.

Also in 2007, a Common Council communication file, CCFN 070808, included a report by DER that recommended amending the salary ordinance to allow the appointment of the Chief of Police at any step within Salary Grade 018. As noted in the report, CCFN 070808 coincided with FPC's then-underway search to recruit a new Chief of Police. The report claimed that the Chief of Police position could be appointed at a rate equal to the 7th step based upon the approval of DER and the Chair of the Finance and Personnel Committee.⁵ The report further claimed that the recruitment at a higher step could be authorized by the Common Council, provided that it did not violate the prohibition on salaries exceeding that of the Mayor. Despite these then-existing recruitment rate allowances, the report recommended that the recruitment rate be allowed "at any step of Salary Grade 018, \$105,856 – 148,195, subject to other salary restrictions established by the Salary Ordinance."

The Common Council took action to implement the recommendation in the report from DER. Pursuant to CCFN 070812 (a substitute ordinance further amending the 2007 salary ordinance), a footnote was placed within Salary Grade 018 to apply to the Chief of Police that provided, "[r]ecruitment may be at any step in the Salary Grade." Though it appears that the footnote was not included in the 2008 salary ordinance, it was provided in the 2009 salary ordinance, CCFN 080521, and onwards.⁶

In the 2013 salary ordinance,⁷ the Chief of Police position title was placed into Pay Range 4SX. As in prior versions of the salary ordinance, Footnote (1) applied to the Chief of Police position title. The Chief of Police position title and Footnote (1) were listed in Pay Range 4SX in the 2014 salary ordinance and in each subsequent annual salary ordinance until 2024.⁸

⁵ The word "claimed" here is used not to necessarily contradict the statement but because there is no footnote in the 2007 salary ordinance, CCFN 060493, with regard to Salary Grade 018 that seems to allow for appointment at the 7th step or beyond based on certain approvals, and we have been unable to ascertain where this authority is otherwise provided.

⁶ See CCFN 090457 (2010 salary ordinance), CCFN 100413 (2011 salary ordinance), CCFN 110440 (2012 salary ordinance).

⁷ The 2013 salary ordinance appears to be CCFN 120742, but this file does not include the correct attachment with the actual 2013 salary ordinance. Making matters more confusing, subsequent files amending the 2013 salary ordinance reference CCFN 120741, which appears to be the 2013 positions ordinance. A version of the 2013 salary ordinance is available on the City's MINT website at <https://city.milwaukee.gov/AdministrativeResour4083/Salary-Ordinance-Archives.htm> (last visited January 28, 2026).

⁸ See CCFN 130419 (2014 salary ordinance), CCFN 140625 (2015 salary ordinance), CCFN 150504 (2016 salary ordinance), CCFN 160596 (2017 salary ordinance), CCFN 170680 (2018 salary ordinance), CCFN 180628 (2019 salary ordinance), CCFN 190613 (2020 salary ordinance), CCFN 200536 (2021 salary ordinance).

i. Creation of Pay Range 4ZX and inclusion of Footnote (1).

In late 2023 and early 2024, the Common Council heard two files, CCFN 231364 and CCFN 231321, related, in minor part, to the Chief of Police position title being placed within Pay Range 4ZX. CCFN 231364 is a communication file from DER relating to the rates of pay for elected officials and leadership classifications. CCFN 231321 is a substitute ordinance to further amend the 2024 rates of pay of offices and positions in the City Service.

Within CCFN 231364, DER transmitted a report “approved” by the CSC and the FPC by way of Attachment 4. City Wide Leadership FPC and CSC Classification Report.⁹ This attachment lists various leadership positions, including the Chief of Police position title, and recommends new pay ranges with corresponding rates of pay. In most instances, the new pay ranges include a minimum recruitment rate. With regard to the Chief of Police position title, the minimum recruitment rate was \$191,527.

Also within CCFN 231364 is Attachment 10. Addendum – Salary and Position Ordinance Changes (within the actual document, the file is titled “Memo 231364 Addendum”). This attachment provides text to be repeated in a substitute ordinance file amending the salary ordinance. In this instance, Attachment 10. Addendum – Salary and Position Ordinance Changes caused text to be placed in CCFN 231321, a substitute ordinance to further amend the 2024 rates of pay of offices and positions in the City Service.

We note that CCFN 231364 Attachment 4. City Wide Leadership FPC and CSC Classification fails to include any language showing that the Chief of Police position title in Pay Range 4SX included Footnote (1), nor did this attachment reflect that Footnote (1) would be placed in Pay Range 4ZX. Conversely, we note that Attachment 10. Addendum – Salary and Position Ordinance Changes did include instructions to create, under Pay Range 4ZX, Footnote (1) with application to the Chief of Police position title.

During the January 17, 2024, meeting of the Common Council, and in relation to CCFN 231321, Alderwoman Milele A. Coggs offered a simple amendment, moving to “delete the recruitment rate footnotes for all non-elected positions in Memo 231364 Addendum

ordinance), CCFN 210760 (2022 salary ordinance), CCFN 220650 (2023 salary ordinance), CCFN 230639 (2024 salary ordinance).

⁹ The .pdf file labeled City Wide Leadership FPC and CSC Classification, also titled Job Evaluation Report within the .pdf document itself, refers to an approval by Civil Service Commission on January 9, 2024, and an approval by the FPC on January 5, 2024. See also CCFN 231403 and FPC212244.

attached to Common Council Communication File Number 231364.”¹⁰ As stated previously, Memo 231364 Addendum is the title provided on the .pdf file within Attachment 10. Addendum – Salary and Position Ordinance Changes.

Following the enactment of CCFN 231321, DER prepared, for CCFN 231364, Attachment 8. Addendum (Amended by Common Council) – Salary and Position Ordinance Changes. In this version, Pay Range 4ZX no longer included the minimum recruitment rate specified in Attachment 4. City Wide Leadership FPC and CSC Classification (i.e., \$191,527); however, Footnote (1) remained.

DER advised CAO that in preparing Attachment 8. Addendum (Amended by Common Council) – Salary and Position Ordinance Changes, footnotes offering “flexibility” were excluded from the deletion of recruitment rate footnotes.¹¹ While it seems plausible that DER heeded the Amendment by removing the recruitment *rate* footnotes, by leaving Footnote (1) in place, Footnote (1) permitted the recruitment rate for the Chief of Police position title to be up to the maximum wage rate of Pay Range 4ZX. It appears that DER may have interpreted the Amendment to only require removal of those footnotes actually providing a recruitment rate (i.e., a wage rate number).

Therefore, as a result of the Amendment to CCFN 231321, the “recommended” recruitment rates shown in CCFN 231364 Attachment 4. City Wide Leadership FPC and CSC Classification appear to have been removed from the text of CCFN 231321. This is most clear by comparing Attachment 8. Addendum (Amended by Common Council) – Salary and Position Ordinance Changes against Attachment 10. Addendum – Salary and Positions Ordinance Changes. As such, it is a reasonable inference that DER was strictly construing the text of the Amendment by deleting only recruitment *rate* footnotes and not making changes to other recruitment “flexibility” footnotes.

¹⁰ The Amendment was not posted in Legistar. The City Clerk provided CAO with the prepared draft version made ready for the Common Council’s meeting on January 17, 2024. The analysis of the motion provides, “this motion removes the recruitment rate footnotes for all non-elected leadership positions in Memo 231364 Addendum attached to Common Council Communication File Number 231364. This will set the minimum recruitment rate for these positions to the minimum of their newly-assigned pay ranges.”

¹¹ At least one other position title affected by CCFN 231364 and CCFN 231321 was given similar treatment as Footnote (1). The Assistant Chief of Police position title in CCFN 231364 Attachment 4. City Wide Leadership FPC and CSC Classification was listed in Pay Range 4RX. Attachment 4 does not provide any footnotes in Pay Range 4RX, despite the fact that in the 2023 salary ordinance, CCFN 220650, the Assistant Chief of Police was subject to a footnote providing that “recruitment may be at any rate in the pay range with the approval of the Employee Relations Director and the Chair of the Committee on Finance and Personnel.” Attachment 8. Addendum (Amended by Common Council) – Salary and Position Ordinance Changes shows that, after the Amendment, pay range 4XX continued to contain these footnotes.

i. Legal effect of applying Footnote (1) to the Chief of Police position title in Pay Range 4ZX.

Now turning to the legal implications of Footnote (1) remaining in the 2024 salary ordinance and in the 2025 salary ordinance, it is the opinion of the City Attorney that, because Footnote (1) was codified in the 2025 salary ordinance, CCFN 240764, effective December 22, 2024, it was in force when FPC appointed the former incumbent Chief of Police on or about June 26, 2025, to a new term beginning on or about November 15, 2025. FPC conveyed to CAO that recruitment rate established by FPC was equivalent to an annual salary of \$243,000.

“In the interpretation of ordinances, the rules of statutory interpretation apply.” *Marris v. Cedarburg*, 176 Wis. 2d 14, 32, 498 N.W.2d 842 (1993) (citation omitted). The Wisconsin Supreme Court has explained that “statutory interpretation begins with the language of the statute. If the meaning of the statute is plain, [a court] ordinarily stop[s] the inquiry.” *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110 (citations omitted). “Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning.” *Id.* (citations omitted).

Additionally, “statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.” *Id.* ¶46 (citations omitted). “Where statutory language is unambiguous, there is no need to consult extrinsic sources of interpretation, such as legislative history.” *Id.* (citations omitted).

This method of statutory interpretation places the focus of the inquiry on the text and the context of the text. Here, the text is “[r]ecruitment may be at any rate in the pay range.” As such, regardless of the involved legislative history of Footnote (1) in Pay Range 4ZX, a court is likely to construe the meaning of Footnote (1) solely based on its text, and it is not likely that a court would invalidate Footnote (1) because the Common Council may have intended, pursuant to the Amendment, that it be deleted.

C. Implications Surrounding the Removal of Footnote (1) Due to Wis. Stat. § 62.50(10).

The term of the Chief of Police is subject to Wis. Stat. § 62.50(6) which provides, in part, that the FPC “shall appoint the person to a term of office the number of years and commencement date of which shall be set by the city of the 1st class by ordinance and

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which may not exceed 10 years, or for the remainder of an unexpired term.” Milwaukee Code § 312-01 provides that the term of office for the Chief of Police is 4 years. As stated above, the incumbent to the Chief of Police position was most recently appointed in June 2025 for a term beginning on or about November 15, 2025.

Section 62.50(10), Wis. Stat. provides, in part, that

[t]he salary and compensation of all members of the force in such departments shall be at all times subject to change by the common council, but the salary or compensation of the members of the force in the service of either department may not be decreased, except upon the previous recommendations of such change made in writing by the board to the common council.

Wis. Stat. § 62.50(10) (2023-24).

Only one appellate court case has addressed Wis. Stat. § 62.50(10): *Milwaukee Police Supervisors’ Organization v. City of Milwaukee*, 2012 WI App 59, 341 Wis. 2d 361, 815 N.W.2d 391. In this case, the Court briefly mentioned that Wis. Stat. § 62.50(10) “allows the Common Council to decrease salaries for police officers when the decrease is preceded by a written recommendation for the decrease by the board of the Fire and Police Commission.” *Id.* ¶23.

The Court noted no other case law construing the meaning of Wis. Stat. § 62.50(10). *Id.* ¶24.¹² Our research has uncovered no appellate court opinion construing Wis. Stat. § 62.50(10) prior to or after *Milwaukee Police Supervisors’ Organization*.

A significant, unanswered question is whether the phrase “members of the force” as used in Wis. Stat. § 62.50(10) includes the Chief of Police. There are arguments for and against the proposition that “members of the force” includes the Chief of Police; therefore, we emphasize here that there is not a clear answer from the statutes or case

¹² The Court of Appeals considered, under Wis. Stat. § 62.13(7), a statute applying to police and fire commissions in 2nd, 3rd, and 4th class cities, whether a Chief of Police’s salary was reduced when the amount of his overall compensation did not decrease though longevity pay increases were phased out. *Gold v. City of Adams*, 2002 WI App 45, 251 Wis. 2d 312, 641 N.W.2d 446. As to the Chief of Police position title in the City of Milwaukee, a 1st class city, the fact that Wis. Stat. § 62.13(7) clearly references chiefs with regard to decreases in pay is not controlling.

law.¹³ If a court finds that “members of the force” includes the Chief of Police, such finding would prevent the incumbent’s salary and compensation from being decreased without a previous written recommendation from the FPC.

We now turn to the question of whether Footnote (1) can be removed and conclude that the answer is likely yes, subject to the limitations of Wis. Stat. § 62.50(10), which, as we have pointed out, may preclude the salary and compensation of the incumbent Chief of Police from being decreased without a previous written recommendation of the FPC to the Common Council.

We begin by noting that Footnote (1) relates to the wage rate set at recruitment, i.e., at the commencement of the appointment. As the commencement of the appointment for the incumbent Chief of Police has passed and the salary been established, removal of the footnote would not appear to change the incumbent’s salary or compensation going forward; instead, removal of the footnote would have effect with regard to future incumbents appointed to the Chief of Police position. Because the removal of the footnote would not serve to decrease the current incumbent’s salary, we know of no reason why it would be impermissible to remove the footnote as it would otherwise apply to future incumbents whose salaries and compensation are not yet determined.

Another option is to amend Footnote (1) by replacing the text with the actual name of the incumbent and stating that the named incumbent is to be paid at a rate equivalent to \$243,000 annually. The benefit to this type of modification is to effectively remove the footnote but, at the same time, make abundantly clear that the change to the footnote does not affect the current incumbent. Unfortunately, this raises a new concern: it is conceivable that the incumbent Chief of Police may apply for and may potentially obtain an appointment for a future term (e.g., a term beginning in 2029). And, having a footnote that provides, in essence, that the current incumbent is to be paid at an annual rate equivalent to \$243,000 may well restrict the Common Council with regard to setting a lower wage rate should the current incumbent receive a future appointment.

If the footnote provides that the incumbent shall be paid at a rate equivalent to \$243,000 for the remainder of the 2025-29 term, some legal uncertainty still arises. There may be some argument that a chief’s current salary does not determine his or her salary in a future appointment. However, given the absence of case law construing Wis. Stat. § 62.50(10), a decrease in salary occurring upon a future appointment of the current

¹³ In *Milwaukee Police Ass’n v. Bd. of Fire & Police Comm’rs of the City of Milwaukee*, 787 F. Supp. 2d 888 (E.D. Wis. 2011), the district court noted that “[t]he term ‘member of the force’ has no specific statutory definition and used a dictionary definition of the word member to determine that a probationary recruit was not a “member of the force” entitled to certain processes afforded under Wis. Stat. § 62.50.

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incumbent may still spur a claim by the incumbent Chief of Police that a lower salary in a future term violates Wis. Stat. § 62.50(10).

For the above referenced reasons, a claim raised by the incumbent Chief of Police is least likely if the incumbent's salary and compensation are preserved at the current rate without end date, less likely if the incumbent's salary and compensation are preserved until the time of next appointment, and highly likely if the incumbent's salary and compensation are decreased during the incumbent's current term.

D. Given the wording of Footnote (1) as stated in the salary ordinance, it was not legally wrong that the FPC fixed a recruitment rate when such rate was within the limits of Pay Range 4ZX.

The FPC's mandate to appoint a chief upon the occurrence of a vacancy in the office of the chief of police or the office of the chief engineer of the fire department dates back to the year 1885. As CAO noted in an Opinion of the City Attorney,

[u]nder the Charter of the City of Milwaukee as set forth in Chapter 184 of the Laws of 1874, it was provided . . . that the chief of police was to be appointed by the Mayor and subject to the approval of the common council for a term of two years and thereafter may be removed by the Mayor with the approval of the common council. . . .

Amendments to the 1874 Charter [of the City of Milwaukee] have progressively insulated the chief of police and the department from control by the common council or the mayor. . . . Section 1, Chapter 378 of the Laws of 1885 created a board of fire and police commissioners. . . . Section 6 of Chapter 378 provided that whenever a vacancy was to exist in the office of the chief of police, it was the duty of the board to appoint a proper person to fill such office

City Att'y Op., Nov. 29, 1978 at 2.

Today, the FPC's duty to appoint a chief is found in Wis. Stat. § 62.50(6), which provides as follows:

If a vacancy exists in the office of chief of police or in the office of chief engineer of the fire department, the board by

a majority vote shall appoint proper persons to fill such offices respectively. When filling a vacancy in the office of chief of police or in the office of chief engineer of the fire department occurring after June 15, 1977, the board shall appoint the person to a term of office the number of years and commencement date of which shall be set by the city of the 1st class by ordinance and which may not exceed 10 years, or for the remainder of an unexpired term.

Wis. Stat. § 62.50(6) (2023-24).

The power to fix a salary has been associated with the power to appoint.¹⁴ For example, under the Laws of 1909, Chapter 546, the Wisconsin Supreme Court was tasked by the legislature with appointing a revisor of statutes.

Doubtless with the idea that this work would be of great assistance to the court and that the justices of this court and the attorney general would or should be exceptionally well informed as to the abilities of possible appointees as well as to the nature of the work to be done, the legislature provided that such officers should make the appointment, fix the appointee's salary (within a certain limit), have the power of removal, and approve the appointment of the revisor's assistants, as well as approve the printing of any compilation of statutes, index, or notes ordered by the legislature.

In re Appointment of Revisor, 141 Wis. 592, 595, 124 N.W. 670 (1910).

With specific regard to the fixing of the salary, the court overruled an objection contending that the “fixing of salaries is exclusively a legislative power which cannot be delegated to a court.” *Id.* at 610-611.

As we have already seen, a court may properly be given power to provide for the doing of such administrative acts as are necessary and proper to enable it to satisfactorily perform its purely judicial duties, and may, under legislative sanction, appoint necessary or proper officers and agents for those purposes. *State ex rel. Gubbins v.*

¹⁴ See, e.g., Wis. Stat. § 230.06(1)(b) (2023-24).

Anson, supra. Now, if this be conceded, it seems illogical to say that the power to fix compensation or salary in advance may not accompany the power of appointment.

Id. at 611.

Indeed, insofar as the FPC is required to appoint a chief, it appears consistent that FPC be able to “fix” the salary of a chief within the restrictions of the salary ordinance as established by the Common Council.

E. It is possible to condition Footnote (1) on the approval of the Common Council but doing so raises several concerns.

We first note that we are unaware of any footnote in the salary ordinance which requires a recruitment rate to be approved by the Common Council. To the contrary, there are several position titles whose recruitment rate may be at any point in the relevant range with the approval of, among others, the Chair of F&P.¹⁵ Our second concern is that the meeting schedule of the Common Council may not allow for quick approvals to be given.

The third and overarching concern, however, is that the FPC’s power to appoint may very well include the fixing of the salary (within the limits set by the Common Council). In the Wisconsin Supreme Court opinion discussed above, the court noted

The power of appointment is doubtless given because it is deemed that it will be best exercised by the court, since the duties affect the conduct of judicial business, and the judges may be supposed to have better knowledge of the qualifications of possible appointees. But if not accompanied with the power to fix a salary in advance, it might well be that the purposes of the law would be defeated, either because the desired appointee would not accept the compensation fixed by the legislature, if one be fixed, or would be unwilling to work without knowing in advance what he was to receive.

Id. at 611-12.

¹⁵ See CCFN 250698, Pay Range 4SN (footnote (3)), Pay Range 4TN (footnote (3)), Pay Range 4XX (footnote (5)), Pay Range 1HX (footnote (1)), Pay Range 1IX (footnote (1)), Pay Range 1JX (footnote (1)), Pay Range 1KX (footnote (1)), Pay Range 2LX (footnote (1)), Pay Range 2MX (footnote (1)), and Part II, Section 3, Paragraph B.

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Like the court noted above in *In re Appointment of Revisor*, it would be questionable whether a recruitment rate that is subject to the approval of the Common Council would defeat “the purpose of the law.” In other words, approval by the Common Council could be seen as intruding into or manipulation of the FPC’s appointment decisions. As previously noted, the FPC has had the power to appoint chiefs since 1885.

Additionally, as FPC is likely the body that the legislature has determined to have “better knowledge of the qualifications of possible appointees,” we cannot conclude that it is entirely inappropriate for FPC to have some role in fixing the salary of a chief; however, whatever authority (i.e., discretion) given to the FPC to fix the salary must be in harmony with the Common Council’s role in setting the compensation and salary of all members of the force in the fire and police departments, pursuant to Wis. Stat. § 62.50(10). For this reason, it is the opinion of the City Attorney that it would be appropriate for the FPC to exercise whatever discretion with regard to the fixing of the salary given to it by the Common Council through provisions of the salary ordinance. What discretion, if any, the Common Council deems appropriate to provide to FPC as part of the appointment process is a policy determination for the Common Council.

Very truly yours,



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