

CITY OF MILWAUKEE

Form CA-43

GRANT F. LANGLEY
City Attorney

RUDOLPH M. KONRAD
PATRICK B. McDONNELL
LINDA ULISS BURKE
Deputy City Attorneys



OFFICE OF CITY ATTORNEY
800 CITY HALL
200 EAST WELLS STREET
MILWAUKEE, WISCONSIN 53202-3551
TELEPHONE (414) 286-2601
TDD (414) 286-2025
FAX (414) 286-8550

THOMAS O. GARTNER
BRUCE D. SCHRIMPF
ROXANE L. CRAWFORD
SUSAN D. BICKERT
HAZEL MOSLEY
STUART S. MUKAMAL
THOMAS J. BEAMISH
MAURITA F. HOUREN
JOHN J. HEINEN
MICHAEL G. TOBIN
DAVID J. STANOSZ
SUSAN E. LAPPEN
JAN A. SMOKOWICZ
PATRICIA A. FRICKER
HEIDI WICK SPOERL
KURT A. BEHLING
GREGG C. HAGOPIAN
ELLEN H. TANGEN
MELANIE R. SWANK
JAY A. UNORA
DONALD L. SCHRIEFER
EDWARD M. EHRlich
LEONARD A. TOKUS
VINCENT J. BOBOT
MIRIAM R. HORWITZ
MARYNELL REGAN
G. O'SULLIVAN-CROWLEY
KATHRYN M. ZALEWSKI
MEGAN T. CRUMP
ELOISA DE LEÓN
ADAM STEPHENS
KEVIN P. SULLIVAN

Assistant City Attorneys

February 24, 2006

Mr. Ronald D. Leonhardt
Office of the City Clerk
City Hall - Room 205

Attention: James Owczarski
Council Records Manager

Re: Common Council File No. 050095

Dear Mr. Leonhardt:

In a December 21, 2005 communication, Mr. Owczarski of your staff asked a series of questions about a proposed substitute for a file which has been introduced into the Common Council. According to Mr. Owczarski, the original file was introduced as a title only file on May 3, 2005. The title was "resolution creating a task force to study pay equity in City government." A Substitute 1 to the file was submitted on December 8, 2005. The title to the December 8 Substitute 1 was "a substitute resolution creating a task force to study pay equity in City government." Apparently, Substitute 1 was the first time the file was filled. That substitute contained a resolution which had a "further resolved" stating: "that up to \$25,000 from the Department of Employee Relations Operations Account is reserved for contractual services so that the task force may engage a consultant to assist in the study where appropriate."

According to Mr. Owczarski, a Substitute 2 has now been presented to your office. That substitute altered the above "further resolved" by reserving the \$25,000 from the "Common Council Contingent Fund" rather than the Department of Employee Relations Operations Account.

Based upon the above facts, Mr. Owczarski asked the following questions:

Mr. Ronald D. Leonhardt
February 24, 2006
Page 2

1. Is Substitute 2 as presented for this file legal?
2. 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?
3. 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?
4. 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?
5. Finally, if a file contains an appropriation or charge against a city account, must that fact be reflected in the title of the file?

We will answer the questions in the collective. In the case of *Gilman v. City of Milwaukee*, 61 Wis. 588 (1884),¹ the Supreme Court dealt with the situation in which the Milwaukee Common Council considered a matter that had not initially authorized an appropriation or charge against any City fund, but was later amended, at committee, to include a charge for the cost of a water distribution system. As we noted in our February 6, 1987 opinion regarding that case:

“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 the permanent water mains was before the council for the first time at the time of its passage, and therefore the passage was in violation of sec. 4-21 of the City Charter.”

In order to avoid noncompliance with sec. 4-21, Charter, when a file appropriating money or creating a charge against any City fund is initially submitted to the Common Council, the file must identify, either in its title, if it is a title only file, or in the body of the resolution as submitted, that the intent of the file is to appropriate money or create a charge against City funds. Failure to do so could, as it did in the *Gilman* case, result in a court concluding that if the file is later amended in committee to appropriate funds and then return to the Common Council for action, that the matter is being presented to the Common Council for the first time in contravention of sec. 4-21, Charter.

¹ The *Gilman* case was referenced in Mr. Owczarski's December 21st inquiry and in a February 6, 1987 opinion of this office also referenced in Mr. Owczarski's inquiry.

Mr. Ronald D. Leonhardt
February 24, 2006
Page 3

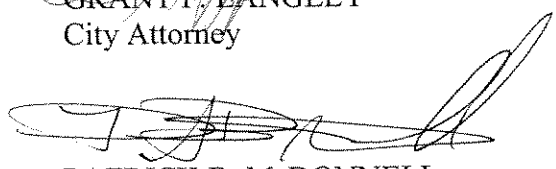
Based upon the facts presented by Mr. Owczarski, it appears that when the file in question was initially introduced to the Council as a title only file, there was nothing in the title to suggest that funds may be appropriated under the file. Therefore, based upon the *Gilman* case and our 1987 opinion, if the file in question is filled in committee with a substitute appropriating funds, both Substitutes 1 and 2 would so qualify, and that substitute resolution moves forward to the Common Council for consideration, the Council could not immediately consider the matter because of the limitations in sec. 4-21, Charter.

The obvious way to remedy the deficiency noted above is to introduce Substitute 2 as a new file which in its body clearly informs the Council that funds will be appropriated. We are also of the opinion that if a file is introduced by title only and the intent of the file is to appropriate City funds, then that appropriation should be duly noted in the title to the file in order to avoid a transgression of the strictures of sec. 4-21, Charter.

Very truly yours,



GRANT F. WANGLEY
City Attorney



PATRICK B. McDONNELL
Deputy City Attorney

PBM:dms

c: Ald. Anthony Zielinski
Ald. Michael Murphy
Barry Zalben
Marianne Walsh
Terry MacDonald

1033-2005-3578:102455