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May 27, 1994

Alderman Paul A. Henningsen
4th Aldermanic District
Room 205 - City Hall

Dear Alderman Henningsen:

The Police Department's neighborhood foot patrol was inaugurated in 1984 and funded through a special purpose account in 1984-85. In 1986, funding was incorporated into the Department's operating budget. Since 1986, the Common Council has continued to add personnel and fiscal resources to the Police Department for the purpose of expanding foot patrol efforts. The Common Council's objectives have been incorporated into budget footnotes. The footnote expressing direct labor hour goals has been adjusted each year to reflect increased resources.

On March 15, 1994, you wrote the City Attorney requesting guidance as to how the Common Council can insure that appropriations to pay salaries of neighborhood foot patrol assigned officers are not used for other police functions. You specifically asked us to look into the use of a special purpose account for neighborhood foot patrols and the possibility of using such account for all expenditures related to the foot patrol.

Municipal finance is a matter of statewide concern. (91 O.C.A. 692.) The City's budget is governed by Chapter 65, Stats. However, the budget law applicable to the City of Milwaukee is found in Chapter 18 of the City Charter. The adoption of Chapter 18 was necessary in order to enable the City to exercise the statutorily prescribed option for an executive budget.

The law requires the City to annually adopt a budget to serve as a complete financial plan for the calendar year. The law provides that no money may be expended by the City or any department in excess of the amounts specified or for any purpose

other than as designated in the budget. Section 18-06-1, Milwaukee City Charter. It also provides that the budget shall be the authority for the expenditure by a department for the purposes and of the amounts assigned to the department thereby. Section 18-06-12.

Over the years, we have been asked many questions relative to the Common Council's authority with respect to department budgeted funds. Those questions relate to two primary areas. First, we have been asked whether the budget footnotes may be used to control the expenditure of departmental budgeted funds with more detail than the purposes found in the budget. Second, we have been asked whether the Common Council may require a department to expend department budgeted funds.

We have stated that footnotes are not controlling and are informational only. We have opined that the footnote may not be used to specify a work plan for the department. (79 O.C.A. 1174.) We have also opined that the footnote may not be used to control the detailing of personnel to perform specific duties. (85 O.C.A. 1397.) We have stated that, under the budget law, a department is authorized but not required to expend department budgeted funds. (91 O.C.A. 82.) We have stated that the Common Council may not amend Chapter 18 of the Charter to permit the Common Council to direct the expenditure by a department of department budgeted funds. (91 O.C.A. 692.)

Relative to department budgeted funds, we have recommended that the Common Council give consideration to the use of its authority under sec. 62.11(5), Stats., to exercise more control than the budget law would permit. Section 62.11(5), Stats., provides that "except as elsewhere in the statutes specifically provided, the council shall have management and control of the city property, finances . . . and the public service . . ." We have suggested that this provision may permit the Common Council, by resolution, to direct a department to follow a specified work plan or to detail personnel for the purposes of expending department budgeted funds. However, this course of action would not allow the Common Council to direct the Chief to detail police officers to neighborhood foot patrol because sec. 62.50, Stats., an enactment of statewide concern relative to the Police and Fire Departments, establishes a statutory scheme which, for all practical purposes, deprives the Common Council of control over the public service in the Police Department. (85 O.C.A. 1397.)

Section 18-06-6-b of the Charter relates to special purpose accounts. It provides as follows:

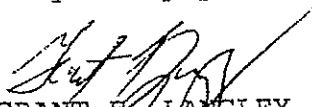
"The common council at any time after the adoption of the budget may, by resolution adopted by a majority vote of the members thereof, direct the proper officers of any department to expend such sum or sums of money as are specially appropriated out of any specific fund under its control for any of the several purposes enumerated therein. The adoption of such resolution shall be the authority for such department to proceed and expend such specified sum for the purpose as directed therein."

Special purpose accounts differ from departmental budgeted funds in several important respects. While departmental funds are essentially under the control of the departments themselves, special purpose accounts are under the control of the Common Council. Additionally, although the budget authorizes but does not direct the expenditure of departmental funds, resolutions making appropriations to a department from Common Council special purpose accounts may direct a department to expend money appropriated from the special purpose account for any of the enumerated purposes of the special purpose account. Finally, special purpose account funds appropriated to a department cannot be used for any purposes other than the enumerated purposes.


Because of the additional budgetary control of the Common Council over special purpose accounts, the Common Council may require departments to submit a detailed work plan and to submit a detailed expenditure plan and to adhere to such work plan and expenditure plan in the expenditure of special purpose accounts. Thus, with respect to the neighborhood foot patrol, the Common Council may require the Chief of Police to submit a detailed work plan detailing the assignment of police officers to neighborhood foot patrols and a detailed expenditure plan setting for the amount to be expended for wages, overtime, court time and roll call and to follow such plan in the expenditure of funds appropriated from a special purpose account established for this purpose. The Chief

would not have the option to spend appropriated special purpose account funds for any other purpose.

Very truly yours,



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