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December 17, 2012

Patrick T. Curley  
Chief of Staff to the Mayor  
City Hall, Room 200

Re: Appointment of HACM employee to Fire and Police Commission

Dear Mr. Curley:

By e-mail dated December 10, 2012, you requested an opinion from this office "...whether or not there is a conflict of interest in the appointment of a current city of Milwaukee Housing Authority employee to a term on the Fire and Police Commission." You did not disclose the identity of the proposed candidate, nor what activities or conduct, either personal or professional, that candidate might be engaged in that could arguably and reasonably be deemed a conflict of interest. Therefore, we will answer your question as a general inquiry as to whether there is anything inherently present in the employment of an individual by the Housing Authority of the City of Milwaukee (HACM) that could be deemed a conflict of interest if that person were to serve at the same time as a member of the Board of Fire and Police Commission, bearing in mind that the term "conflict of interest" is generally understood to mean "a real or seeming incompatibility between one's private interest and one's public or fiduciary duties." Black's Law Dictionary 314 (9<sup>th</sup> ed. 2009).

The creation and establishment of Board of Fire and Police Commissions in the City of Milwaukee is governed by Wis. Stat. § 62.50 "**Police and fire departments in 1<sup>st</sup> class cities.**" Section (1h) ORGANIZATION, provides that it is the duty of the mayor to make the appropriate appointment and that every person appointed as a member of the Board of Fire and Police Commissioners shall be subject to confirmation by the common council. Other than a provision providing for generally equal representation on the board of various political parties, there is no other limitation on who may serve as a member of the Board of Fire and Police Commissioners. Therefore, there is nothing to be found in that enabling statute that would prevent an employee of HACM from service as a member of the Board of Fire and Police Commissioners.

Chapter 314 of the Milwaukee Code of Ordinances, "Board of Fire and Police Commissioners" adopted pursuant to Wis. Stat. § 62.50, provides that prior to confirmation by the common council every person appointed a member of the Board of Fire and Police Commissioners shall be subject to the same full and complete background investigation as any candidate for appointment to any position in the Fire and Police Departments, including verification of educational degrees, previous employment, and arrest and conviction records. In addition, there is a requirement that newly-appointed commissioners must register for training related to the missions of the Fire Department and the Police Department within six months of the date of their confirmation by the common council. However, other than those requirements, there is nothing set forth in Chapter 314, that could reasonably be read as a prohibition against an employee of HACM from service as a member on the Board of Fire and Police Commissioners.

In order to answer your inquiry, we have reviewed the rules of the Board of Fire and Police Commissioners of the City of Milwaukee as revised on July 26, 2001 and amended September 20, 2012. There is nothing contained within those rules that would prohibit an employee of HACM from serving as a member of the Board of Fire and Police Commissioners. In short, therefore, we find nothing that would preclude the service on the Board of Fire and Police Commissioners by an employee of HACM based merely upon that employment status.

It should be noted that members of the Board of Fire and Police Commissioners are subject to the jurisdiction and requirements of Chapter 303, Code of Ethics, of the Milwaukee Code of Ordinances. (*See* § 7 Milwaukee Positions Ordinance.)

Section 303-7 "Conflict of interest prohibited" provides, in pertinent part:

1. No official . . . may:
  - a. Take any official action substantially affecting a matter in which the official or employe, a member of his or her immediate family, or an organization with which the official or employe is associated has a substantial financial interest.
  - b. Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official or employe, one or more members of the official's or employe's immediate family either separately or together, or an organization with which the official or employe is associated.

This plain language obviously prohibits activities that could result in private financial gain or private benefit for the proposed candidate or the proposed candidate's immediate family after the candidate has been appointed to the Board. That is the conflict of interest

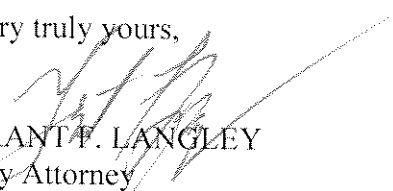
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for which Chapter 303 has been created to protect against. The prohibition concerns activities, not employment status.

Therefore, based upon the information you supplied, as well as our review of the appropriate and pertinent sources of law, it is the opinion of this office that there is no "conflict of interest" created by the appointment of a current City of Milwaukee HACM employee to a term on the Fire and Police Commission.

If you require any additional information or clarification, please do not hesitate to contact the undersigned.

Very truly yours,



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