

CITY OF MILWAUKEE

FonCA-43

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November 10, 2003

Ms. Anne M. Bahr
Executive Director
Employees' Retirement System
Room 603 - City Hall

ERS 10/10/03 - 001

Re: Authority of the Employees' Retirement System
to Grant Additional Wages and Benefits

Dear Ms. Bahr:

On February 2, 2002, you requested the opinion of this office as to whether the Employees' Retirement System ("ERS") possesses the authority to grant certain wages and benefits to ERS staff in excess of those generally applicable to City employees. Specifically, you inquired as to whether ERS would possess the requisite authority to: (a) grant cost-of-living adjustments to ERS managers receiving annual salaries in excess of \$50,000 where such allowances had been previously rescinded by the Common Council; (b) provide multiple-step increases for ERS management employees in excess of those authorized by the City's Salary Ordinance; and (c) provide vacation benefits to ERS employees in excess of those specified by the applicable City ordinance, § 350-40-3, Milwaukee Code of Ordinances ("MCO").

On May 7, 2002, this office issued an opinion stating that in light of the status of ERS staff as City employees, ERS did not possess the requisite authority to grant these and other additional items of compensation in excess of those generally provided to City employees. We have researched the issue further and now submit this additional opinion, which does not change our initial opinion, but provides more background information.

The Annuity and Pension Board was established in 1937, when the Milwaukee Common Council adopted Chapter 396, Laws of 1937, and thereby established the city's employee retirement system. One of the early questions addressed concerned whether the employees of the Board were subject to the rules of the City Service Commission. On October 22, 1937, the City Attorney issued an opinion that concluded that the Annuity and Pension Board is a city agency,

and, accordingly, that its employees are city employees. A copy of the opinion is attached. The opinion refers to sections of the 1937 law; however, the 1937 provisions referred are substantially similar to the current Chapter 37 provisions, except as noted below. The provisions referred to in the 1937 law cross-reference to Chapter 36 as follows:

Laws of 1937, Chapter 396	Chapter 36
Section 1	Section 36-01
Section 7	Section 36-15
Section 7(7)	Section 36-15-07
Section 5(8)	Replaced by 36-08-09
Section 1(3)(b)	Section 36-02-08
Section 9(4)	Section 36-15-07

Consistent with the 1937 opinion, ERS staff have always been treated as City employees and accorded the salary, benefits, and other privileges to which City employees are entitled. Evidence of this fact may be found in the following documents:

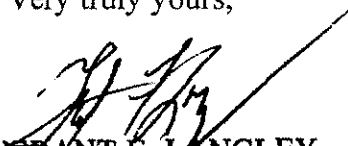
- (a) **The City's Visual Organizational Inventory ("VOI").** "The VOI is a comprehensive list of positions and employees in City departments." The ERS is a listed City department. It is listed on the City's organizational chart, and in the City's "workforce analysis." Its staff is listed in the VOI itself under the entry "Employees' Retirement System."
- (b) **The City's Annual Salary Ordinance.** The City adopts, on an annual basis, a comprehensive Salary Ordinance that setting forth uniform rates of pay for all offices and positions in the City service. The Salary Ordinance is adopted by the Common Council in furtherance of its responsibility (subject to the City's collective bargaining obligations) to fix and provide uniform rates of pay for every City office and position. **See, §§ 62.57, 65.02(5) and (9) and 65.05(9), Wis. Stats., Milwaukee City Charter § 5-05; §§ 350-102 and 350-114, MCO.** ERS and its staff have always been included within the scope of the City's annual Salary Ordinances.

Ms. Anne M. Bahr
November 10, 2003
Page 3

Chapter **350**, MCO, contains numerous provisions pertaining to compensation of City employees. For purposes of your inquiry, these include provisions governing salaries and wages (§ **350-100** through **350-114**, MCO) and vacations (§ **350-40**, MCO). Absent any contrary provision of law, ERS would be obligated to adhere to these provisions. These would include provisions governing accrual of annual vacation benefits (§ **350-40-3**, MCO), the requirement that the compensation for City officials and employees "having substantially similar work requirements, duties, authority, and responsibility, and similar requirements as to training and experience" be uniform (§ **350-102**, MCO), and the general prohibition against the provision of additional compensation to City employees in excess of that fixed by law (§ **350-104**, MCO; see also, § **5-05**, Milwaukee City Charter).

Section **36-09-06**, MCO, grants to the ERS the powers of a corporation as enumerated under Chapters **180** and **182** of the Wisconsin Statutes. This provision by its terms does not change the nature of the ERS from a City agency to an independent corporation. Instead, it grants to the ERS as a City agency the powers of an independent corporation. The authority granted to the ERS under §**36-09-06** includes the authority to enter into contracts and to appoint employees. §**180.0302(7)(11)**. The ERS, therefore, has the authority to hire its own employees, either by contract or directly. Those employees, however, would not be city employees. Accordingly, their pay and benefits would not be subject to the restrictions noted above.

Very truly yours,



GRANT F. LANGLEY
City Attorney



RUDOLPH M. KONRAD
Assistant City Attorney
RMK:lmb
enclosures
1054-2003-2594:74762



City of Milwaukee
Employees' Retirement System

Anne M. Bohr
Executive Director

Jennifer A. Shannon, CFA
Chief Investment Officer

Martin Matson
Deputy Director

February 2, 2002

Mr. Grant Langley, City Attorney
City Hall Room 800
200 E. Wells Street
Milwaukee, WI 53202

Attention: **Mr. Thomas E. Hayes**

RE: Employees' Retirement System Wage and Benefits

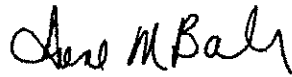
Dear Mr. Hayes

The Annuity and Pension Board has requested certain information regarding their authority to grant wages and benefits to the employees of the Employees' Retirement System.

1. At the end of 2001, the Common Council adopted changes to the salary ordinance that removed anticipated Cost of Living Adjustments of 3% from managers who were receiving salaries in excess of \$50,000. Is the Board required to follow this directive or can it grant the increase to its management employees?
2. Can the Board provide step increases for management employees outside of the Salary Ordinance? Under the salary ordinance, "...management employees, who demonstrate full satisfactory performance, working in management classifications, shall be eligible for salary increments of one step per year above the initial appointment step up to the maximum step based upon recommendation of the appointing authority after appropriate review of job performance." At the time of an annual review can the Board grant multiple step increases to employees if they feel the salary change is warranted?
3. Can the Board provide additional vacation benefits to certain employees? Section 350-40-3 sets forth vacation benefits for City employees. Is the Board required to follow these provisions? If so, Section 350-40-3-a-2 of the Code of Ordinances provides that Public officials appointed pursuant to s.62.51, Wis. Stats., shall earn vacation time in a certain manner. Does this provision include the Chief Investment Officer of the Employees' Retirement System?

Please contact me directly if you have any questions regarding this request.

Very truly yours,

A handwritten signature in black ink, appearing to read "Anne M Bahr". The signature is fluid and cursive, with the first name "Anne" and last name "Bahr" being clearly distinguishable.

Anne M. Bahr
Executive Director

AMB:smf

C: Annuity and Pension Board