

CITY OF MILWAUKEE

Form CA-43

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May 10, 1996

Alderman Michael J. Murphy
16th Aldermanic District
Room 205 - City Hall

Dear Alderman Murphy:

Re: RACM Budget

In your May 1, 1996 communication, you asked several questions concerning the budget adoption process for the Redevelopment Authority of the City of Milwaukee ("RACM"). You also referenced sec. 66.431(15), Stats., which provides: "The local legislative body shall approve the budget for each fiscal year of the authority, and shall have the power to alter or modify any item of said budget relating to salaries, office operation or facilities."

Your first question was as follows: "Who has the authority to approve the budget for the Redevelopment Authority of the City of Milwaukee?"

Under the provisions of sec. 66.431(15), Stats., quoted above, the Common Council, as the "local legislative body," "shall approve the [RACM] budget" and may, as a part of that approval process, make certain changes in items in that budget "relating to salaries, office operation or facilities." In addition to these approval powers, the Common Council also has approval powers over a number of other RACM actions including, for example: approval of renewal boundaries pursuant to sec. 66.431(6)(b)1., Stats.; approval of renewal plans pursuant to sec. 66.431(6)(e), Stats.; and approval of the sale and long term, i.e., five years or more, lease of RACM property pursuant to sec. 66.431(9)(a)2., Stats.

Your second question was: "If the Common Council possesses this authority, may it delegate authority for budget approval to another entity? If so, has it delegated such authority, and may the Common Council decide to revoke such delegation?"

The legislature, by its enactment of sec. 66.431(15), Stats., has conferred certain governmental functions and powers on the Common Council to approve RACM's fiscal year budget. In State ex rel. Hammermill Paper v. La Plante, 58 Wis. 2d 32 at 80 (1973), the Wisconsin Supreme Court stated: "A municipality may, by contract, curtail its right to exercise functions of a business or proprietary nature, but, in the absence of express legislative authority, it cannot surrender or contract away its governmental functions and powers, and any attempt to surrender them is invalid." Also see Adamczyk v. Caledonia, 52 Wis. 2d 270 at 275 (1971).

Therefore, since sec. 66.431(15), Stats., makes no provision for the Common Council's delegation of its powers to approve RACM's budget, any attempted delegation of that statutory authority would, in our opinion, be invalid.

Your third question was: "If the Common Council possesses the authority to approve RACM's Budget, do provisions included in Chapter 18 of the City Charter pertaining to departmental estimates, budget development, budget adoption, and expenditures apply to RACM? If these provisions do not apply, how should the process for approving RACM's budget be determined?"

The provisions of the City budget law found in both Chapter 18 of the Milwaukee City Charter and Chapter 65 of the Wisconsin Statutes apply to budgets of City "departments" as that term is defined in both sec. 65.02(1), Stats., and sec. 18-02-1, Milwaukee City Charter. "Department" is defined in those provisions as: "In this chapter 'department' or 'departments' means any department, board, commission or other body under the control of the common council which expends city funds or incurs obligations for the city, and unless otherwise expressed refers to the head of such department."

Unlike a City "department" which expends City funds and incurs obligations for the City, RACM is a "sui juris" entity which has authority to contract in its own name pursuant to sec. 66.431(5)(a)2., Stats.; purchase property in its own name pursuant to sec. 66.431(5)(a)3., Stats.; incur indebtedness in its own name pursuant to sec. 66.431(5)(a)4., Stats.; and issue its own bonds which are specifically deemed not to be the indebtedness of the City pursuant to sec. 66.431(5)(a)4.b., Stats. Therefore, it is our opinion that RACM is not a "department" of the City subject to the budgetary provisions of Chapter 65, Stats., or Chapter 18, Milwaukee City Charter.

Ald. Michael J. Murphy

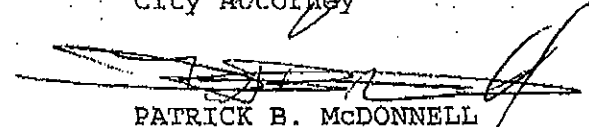
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The process that the Common Council is to use to review, modify and approve RACM's fiscal year budget is not specified in sec. 66.431(15), Stats. However, in our opinion, the Common Council may prescribe the method for review and approval of RACM's budget in accordance with its normal and customary manner for reviewing and acting upon legislative matters which come before it. We point out for your information that a similar process is used by the Common Council when considering and approving annual operating plan budgets for the various business improvement districts in accordance with the provisions of sec. 66.608(3)(b), Stats.

Very truly yours,


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