

CITY OF MILWAUKEE

Form CA-43

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February 7, 2000

Mr. Lawrence W. Mueller, Chairman
Milwaukee Safety Commission
4272 South Taylor Avenue
Milwaukee, WI 53207

**RE: Legal Status of the Milwaukee Safety Commission
Vis a Vis the Milwaukee Police Department**

Dear Mr. Mueller:

This letter will respond to your request for the opinion of this office, dated January 11, 2000, concerning the relationship between the Milwaukee Safety Commission and the Chief of Police. In this respect, you have asked four specific questions, which will be answered in turn.

Prior to addressing your four specific questions, we wish to set forth the basic "enabling authority" of the Milwaukee Safety Commission. That authority is contained in sec. 320-27 of the Milwaukee Code of Ordinances, which states as follows:

320-27. Safety Commission. 1. There is created a safety commission for the city consisting of 18 members appointed by the mayor from the citizens of the city and confirmed by the common council. Six members shall be appointed or reappointed each year, for a term of 3 years to commence on June 1st. It shall be the duty of this commission to investigate, advise and report to the mayor, common council, police department and commissioner of public works and other city officials concerning the best methods of providing for the safety and convenience of the public in matters of safety and to give the greatest possible publicity as to safety precautions.

2. The safety commission shall select from among its members a chairman, vice-chairman and secretary. It shall be the duty of the secretary to call meetings of the commission, to keep minutes of its meetings and accounts and be ready at all times to advise with city officials as to the work and recommendations of the commission.

There appears to be no statute or provision of the Milwaukee City Charter that specifically envisions a Safety Commission or either directs or authorizes its creation. (While Chapter 16 of the Milwaukee City Charter does specifically create certain City boards and commissions, the Milwaukee Safety Commission is not among them). However, the requisite Common Council authority for the enactment of sec. 320-27, Milwaukee Code of Ordinances, (quoted above), the "enabling statute" for the Milwaukee Safety Commission, may be found in sec. 62.11(5), Wis. Stats., which sets forth the general overall powers of the Common Council and which reads as follows:

(5) POWERS. Except as elsewhere in the statutes specifically provided, the council shall have the management and control of the City property, finances, highways, navigable waters, and the public service, and shall have power to act for the government and good order of the City, for its commercial benefit, and for the health, safety, and welfare of the public, and may carry out its powers by license, regulation, suppression, borrowing of money, tax levy, appropriation, fine, imprisonment, confiscation, and other necessary or convenient means. The powers hereby conferred shall be in addition to all other grants and shall be limited only by express language.

(Emphasis added).

Given this background information, we may now turn to consideration of your four specific questions.

1. **Is the eighteen-member citizen Milwaukee Safety Commission presently under the command of the Chief of Police?**

Answer: The 18-ember citizen Milwaukee Safety Commission is not under the command of the Chief of Police. Section 320-27, Milwaukee Code of Ordinances, provides that the Milwaukee Safety Commission shall consist of 18 citizen-members appointed by the Mayor and confirm in their appointments by the Common Council, for fixed terms. The Chief of Police has no role in this process. Furthermore, in the exercise of its functions, the Milwaukee Safety Commission is directed to "investigate, advise, and report to the Mayor, Common Council, Police Department, and Commissioner of Public Works and

other City officials" – not solely to the Police Department. Thus, its duties, powers, and responsibilities must be exercised with respect to, and for the benefit of, all interested City officials, including (but not necessarily limited to) those specifically named in the ordinance. These functions include "the best methods of providing for the safety and convenience of the public in matters of safety and to give the greatest possible publicity as to safety precautions."

However, a different conclusion applies with respect to the Safety Director and associated support staff. While the Safety Director is a mayoral appointee, and a member of the Mayoral Cabinet (sec. 66.146(1), Stats.), both that position and the remaining support staff (a category which includes clerical staff, professional staff (i.e., Safety Specialists) and regular and auxiliary school crossing guards) were transferred to the jurisdiction of the Milwaukee Police Department in 1989, and continue to remain as members of the Milwaukee Police Department to this day. Attached as Exhibits 1 and 2 to this letter is a copy of Common Council File Nos. 891615 and 891238, pertaining to the transfer of City functions relating to child and community safety to the jurisdiction of the Milwaukee Police Department. (These enactments are currently codified as secs. 312-23 and 312-25 of the Milwaukee Code of Ordinances). Attached as Exhibit 3 to this letter is a copy of the final version ("Substitute 4") of Common Council File No. 891136, effective December 24, 1989, which among other things created sec. 312-23 of the Milwaukee Code of Ordinances, the provision that places community safety and school crossing guard functions under the auspices of the Milwaukee Police Department. (Exhibit 3, Part 21 at pp. 3-4).

Commencing with the 1990 positions ordinance, the City has denoted the Safety Director and associated support staff as the Milwaukee Police Department's "Child and Community Safety Section." Attached for your information are the following documents confirming this designation: (a) page 166 of the 1999 City budget, in the "Police Department" section (Exhibit 4); (b) City of Milwaukee "Visual Organizational Inventory," April, 1999, pp. 44-45, pertaining to the Police Department, and listing on page 45 the "Child and Community Safety Section." (Exhibit 5); and (c) City of Milwaukee 2000 "Positions Ordinance," Common Council File No. 990704, page 85, listing the "Child and Community Safety Section" within the positions allotted to the Milwaukee Police Department. (Exhibit 6).

As members of the Milwaukee Police Department, the Safety Director and associated support staff are subject to the jurisdiction of the Fire and Police Commission, and the command authority of the Chief of Police, to the same extent as is applicable to other non-sworn civilian members of the Milwaukee Police Department. See sec. 62.50(23), Stats., Milwaukee City Charter, secs. 22-03-3 and 22-03-4; Milwaukee Code of Ordinances secs. 312-03, 312-23, and 312-25.

The current state of the law thus is uncertain concerning the status and substantive authority of the Milwaukee Safety Commission. The Commission itself is not under the command of the Chief of Police; indeed, it is explicitly constituted as an independent body responsible to numerous City officials. However, the Safety Director and associated support staff through which any recommendations made by the Milwaukee Safety Commission need be implemented are under the command of the Chief of Police. This state of affairs may, in the case of conflict between the Milwaukee Safety Commission and the Chief of Police, result in a situation where the Commission becomes unable to act effectively or to implement any of its recommendations without the concurrence of the Chief.

2. **Does the Chief have the right to withhold resources that were established to support the Safety Commission's efforts?**

Answer: We are uncertain as to what "resources" are addressed by this question. We find no support either in the ordinance or in any other applicable law for this proposition as it applies to resources specifically earmarked for the Safety Commission. However, the Chief is under no obligation to devote resources of the Milwaukee Police Department to the support of the Milwaukee Safety Commission.

3. **Based on the ten years following the reorganization and support given to the Commission since the reorganization, is the Chief complying to the intent of the ordinance in this matter?**

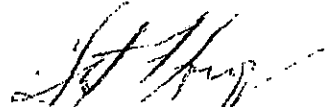
Answer. We would advise that the terms of the ordinance speak for themselves, and do not countenance interference by the Chief of Police with the Commission's ability to fully, properly, and effectively discharge those functions and responsibilities that the Common Council has seen fit to assign to the Commission. However, the converse is also true. Given that the 1989-1990 reorganization and associated ordinances adopted both at that time and subsequently have placed the positions of the Safety Director and associated support staff within the jurisdiction of the Milwaukee Police Department and thus under the command of the Chief of Police, the Chief's attempt to exercise that authority, notwithstanding any opposition from members of the Milwaukee Safety Commission, are consistent with those ordinances.

4. Is action needed legislatively to rectify the current situation?

Based on our previous answers, it would appear that some (but not all) of the issues raised by your letter may be resolved by simple application and implementation of current sec. 320-27, Milwaukee Code of Ordinances. However, the ambiguity surrounding the status of the Milwaukee Safety Commission itself, which has been addressed in our responses to your Question Nos. 1 and 3, is a matter of continuing concern, and one that can only be properly resolved by new legislation. We are not in a position to advise as to the nature or contents of any potential new legislation, as this constitutes a policy matter beyond the purview of this office.

If you have any further questions concerning these issues, please do not hesitate to contact this office for whatever guidance we may be able to provide.

Very truly yours,


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