

June 23, 2021

To: City of Milwaukee Common Council
Re: CC File [210350](#) – Appointment of Edward Fallon to the Board of Fire and Police Commissioners by the Mayor
From: Paul Mozina

In this time of transition in the leadership of the Fire and Police Commission, please consider the question: Who is Leading the FPC Department?

On May 3, 2019, former City Attorney Grant Langley responded to questions posed by former FPC Executive Director LaKeisha Butler:

1. Can the Board of Fire and Police Commissioners ("FPC" or "Commission"), or an individual commissioner, direct the Executive Director of the FPC to advocate for a particular budget item if said item was rejected by the Mayor's office?
2. Does the Commission have the power to lobby members of the Common Council in their capacity as commissioners?
3. Does the Commission have authority over the day-to-day operations and employees that work in the FPC?

Mr. Langley replied in sum:

The Executive Director serves at the pleasure of the Mayor, and there is no direct line of authority from the FPC to the Executive Director.

In summary, there is nothing that gives the FPC any direct control over the operations of its department.

There is no line of authority that reaches from the FPC to its department employees.

Do you agree with the former City Attorney?

Who is Leading the FPC Department?

Who is Leading the FPC Department?

Our Fire and Police Commission, the first of its kind in the nation and ostensibly the most powerful, was created to serve the public interest and to remove politics from the management and oversight of the Police and Fire Departments. Its duties have increased steadily, and for the first 103 years after its creation in 1885 the lines of authority were unequivocal. Per [state statute](#) the Board of Commissioners directed and prescribed the activities of its Chief Examiner/Executive Secretary and staff (which until 1960 consisted of one clerk but subsequently grew to 12 by 1985). No one ever questioned that the legislative intent behind the creation of the Commission was to give them complete and unfettered authority over *their* department and staff. The Board was the acknowledged “head” and “leader” of its department (a perusal of the FPC’s [125th Anniversary Report: A Model for Citizen Oversight](#) will make this abundantly clear).

This firm foundation was threatened when former Mayor John Norquist persuaded the State Legislature back in 1988 to transfer authority to appoint the Chief Examiner/Executive Secretary a.k.a. Executive Director of the FPC from the Board of the Commissioners to the Mayor. Serious concerns were raised: “No one can serve two masters!” The chair of the Public Safety Committee at the time, Alderman John Kalwitz, [demanded a statement](#)¹ from the Mayor and FPC answering the question: “Who has the authority to prescribe the duties and direct the activities of the Executive Director of the Milwaukee Fire and Police Commission? (Whose directives will the Executive Director be responsive to?)”

1988 Documents

It is worth taking a closer look at the discussions that took place at that time.

Memo dated December 15, 1988 from Executive Director James F. Blumenberg to the Fire and Police Commissioners.¹ (my emphasis)

On Tuesday, December 13, 1988, your Executive Director appeared before a committee of the Common Council concerning anticipated confirmation of his appointment by Mayor Norquist. As a result of a question raised by Council members (see below), such confirmation hearing was adjourned to a later date and a statement from the Commission was requested on the following issue:

QUESTION: Who has the authority to prescribe the duties and direct the activities of the Executive Director of the Milwaukee Fire and Police Commission? (Whose directives will the Executive Director be responsive to?)

Prior to enactment of Wisconsin Statutes 66.146, shortly after the election of Mayor Norquist, authority to-both appoint and prescribe the duties of the **Executive Director (aka Chief Examiner)** was solely within the discretion of the Fire and Police Commission. This was pursuant to Wisconsin Statutes 62.50(25), which reads as follows:

"CHIEF EXAMINER. The board may appoint a chief examiner. The board shall prescribe the chief examiner's duties and compensation, which shall be paid by the city on the certificate of the board. Such examiner is subject to removal at any time by a majority of the board, and the board may change such duties and compensation at any time as it deems proper. The board may fix and alter compensation for any other examiners appointed by the board, and such compensation shall be paid by the city on certificate of the board."

Wisconsin Statutes 66.146(2) indicates that the mayor of any 1st class city "shall appoint, subject to confirmation of the common council, a person to serve in the unclassified service in each public office. A public official serves at the pleasure of the mayor..."

Wisconsin Statutes 66.146(1)(a) defines the Executive Director of the Board of Fire and Police Commissioners as a public official.

Wisconsin Statutes 62.50(25) has not been repealed by the legislature. Based on statutory construction, only those portions of 62.50(25) which are specifically addressed in subsequent legislation (including 66.146) are superceded. **The balance of Wisconsin Statutes 62.50(25) remains intact and is the law.** Based on this analysis, Wisconsin Statutes 62.50(25), after deleting those portions superceded by Wisconsin Statutes 66.146, now reads as follows:

"CHIEF EXAMINER. The board shall prescribe the chief examiner's duties, and the board may change such duties at any time as it deems proper."

A review of the remaining language reveals that the power to prescribe and change the duties of the Executive Director remains with the Board.

According to the City Legislative Reference Bureau, there is nothing that can be located within either the City Charter or the Code of Ordinances that in any way would clarify or contradict Wisconsin Statutes 66.146 or the remaining portions of Wisconsin Statutes 62.50. The following inconsistencies seem to emerge:

1. The Mayor has absolute authority to hire and fire the Board's Executive Director at any time, with or without cause, but what authority exists to prescribe his duties and activities?
2. The Board apparently has absolute authority to prescribe the duties of the Executive Director, and to change those duties at any time, but has absolutely no authority to fire him if he fails to carry out any such duties.
3. As a Cabinet member, the Mayor would establish, for performance review purposes, the key responsibility areas, goals and objectives for the position.

The Common Council has requested a written statement from the Board, the Mayor, or a joint statement regarding who has the authority to direct the duties of the Executive Director of the Fire and Police Commission. **The authority to prescribe duties carries with it the implicit authority to see that policy directives established by the Board are carried out through the Director and staff. The Board is therefore fully capable of continuing operations under the current situation.**

Memo dated December 22, 1988 from James F. Blumenberg to Office of the Mayor:²

The **Executive Director shall be responsible for all staff services** required by the Fire and Police Commission, and accountable for coordination between the Office of the Mayor, the Fire and Police Commission, and other public bodies. The Executive Director shall be accorded the degree of independence necessary to assure that the Fire and Police Commission fulfills its statutory responsibilities as an independent public body. **To assure this independence, the Fire and Police Commission shall prescribe the duties of the Executive Director and may change such duties at any time it deems proper.**

Letter to Alderman John Kalwitz, Chairman Public Safety Committee December 29, 1988 signed by all of the Fire and Police Commissioners:³

The Fire and Police Commission retains, under law, its authority and responsibility to act as a policy making body. The Executive Director has the responsibility to staff our needs as a public body, perform comprehensive services to assist the Board, carry out our policies, and manage the day-to-day operation of *our department*. The Director's responsibility is to inform the Board, present all pertinent information for decision-making, and **once the Board has exercised its decision making function, the Director carries out the Board's policies.**

When matters pertain to the authority of the Fire and Police Commission under law, the Board will ultimately make the final decisions and the Director will implement. Differences that arise between two policy bodies must and will be resolved by those entities.

Letter to Alderman John Kalwitz, Chairman Public Safety Committee January 17, 1989 from Mayor, John Norquist:⁴

In each of these cases, the staff person is a member of the Mayor's Cabinet, but also works directly for the commission or board. **In each case the staff person carries out the directives of the board or commission, but has no vote in shaping policy. The policymakers, in all cases, remain only the board or commission members.**

But with the passing of time, fading institutional knowledge, and the arrival of Tom Barrett as Mayor in 2004, the legal justification for this "gentleman's agreement" was forgotten. In the last 3-4 years a tumultuous succession of FPC Executive Directors has exposed the fact that there is a *real* issue here. Mayor Barrett consistently refers to the Executive Director as the "leader" of the

FPC Department. This is evident in the 2019 City of Milwaukee Organization Chart⁵, which shows the Board of Fire & Police Commissioners under the Executive Director and was reiterated by Mayor Barrett when he introduced Griselda Aldrete as his appointee to the Executive Director position. Please see the FPC Organization Chart⁸ I created that reflects the reorganization of the department approved by the Common Council on May 20, 2020.

City Attorney's Opinions May 3, 2019

Fast forward to May 3, 2019 and [the opinions](#)⁶ rendered by the City Attorney at the request of former FPC Executive Director La Keisha Butler, which if taken seriously, totally negate the intent of the Wisconsin Legislature and the mutual understanding that was reached between the Mayor, Fire & Police Commission and Common Council back in 1988.

The Questions:

1. Can the Board of Fire and Police Commissioners ("FPC" or "Commission"), or an individual commissioner, direct the Executive Director of the FPC to advocate for a particular budget item if said item was rejected by the Mayor's office?
2. Does the Commission have the power to lobby members of the Common Council in their capacity as commissioners?
3. Does the Commission have authority over the day-to-day operations and employees that work in the FPC?

Disturbing Conclusions:

The Executive Director serves at the pleasure of the Mayor, and there is no direct line of authority from the FPC to the Executive Director.

In summary, there is nothing that gives the FPC any direct control over the operations of its department.

There is no line of authority that reaches from the FPC to its department employees.

The City Attorney is Wrong

What is the basis for the City Attorney's assertion that the Board has no authority over its Executive Director and Staff? First, he fails to define what he means when he says FPC. It appears that he is dividing the FPC into two "departments": one consisting of the Board of Commissioners and the other consisting of the Executive Director and the "administrative staff". How else can we interpret the statement below "...[b]ut there is nothing in either of those laws that suggests that the FPC or its individual commissioners has any control over the budget or the day-to-day operations and staff of the FPC"? Per the [City Attorney's opinion](#)⁶ (my emphasis):

A "department" is defined as "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." [Wis. Stat. § 62.52\(1\)](#).

The FPC qualifies as a "department" under this definition **because it is a commission** and its budget is under the control of the Common Council. The definition also indicates that the Executive Director, in her capacity as the head of the FPC,² is responsible for acting on behalf of the FPC's department in budgetary matters.

² Our conclusion that the FPC Executive Director is the "head of the department" is based on the fact that the FPC's jurisdiction is exhaustively described ins. 62.50, Wis. Stats., and Chapter 314 of the MCO, **but there is nothing in either of those laws that suggests that the FPC or its individual commissioners has any control over the budget or the day-to-day operations and staff of the FPC.** In addition, the Executive Director has traditionally been responsible for all budgetary and personnel matters within the FPC, as evidenced by the Executive Director job announcement which states that the position "is responsible for all policy, financial, operational, and strategic matters of the Fire and Police Commission." The jurisdiction of the FPC and responsibilities of the Executive Director are discussed more thoroughly below.

There is nothing in sec. 62.50 that gives the FPC direct authority over the "department" of the FPC.⁴

⁴ The Executive Director and the staff who work under the Executive Director qualify as a "department" as described in state statute Chapter 65, as well as Chapters 18 and 314 of the MCO.

125th Anniversary Report: A Model for Citizen Oversight

Let's break this down and a good place to start is the FPC's [125th Anniversary Report: A Model for Citizen Oversight](#). The Board, acting as the "head of the department" was obligated by statute to perform many duties and exercised that responsibility by employing an Executive Secretary/Chief Examiner, staff, hearing examiners and outside consultants, which determined their budget. In his congratulatory remarks introducing the Report, Mayor Barrett does not even mention the Executive Director. Here are some of examples from the Report of the Board exercising authority over their staff and budget (please note that the terms *Board* and *Commission* are used interchangeably in the Report):

- The first examination governed by the Commission was held on August 1, 1885.
- In 1905 a new merit examination system was instituted.
- Dr. George D. Ladd was selected to serve as the Commission's Medical Examiner and was paid \$1 for each applicant he examined.
- Resources needed to perform the exams were donated, presumably at the request of the Board, by: The Milwaukee Gymnastic Association, Marquette College and the Spencerian Business College.
- The Commission exercised oversight responsibility by requesting yearly full-dress inspections of the Fire and Police Departments.

- In 1911 the Board was empowered to hear appeals from disciplinary actions and citizen complaints.
- In 1919, the Board was charged with the responsibility of approving licenses for local detective agencies and their employees.
- As of 1935 the Board had no full-time employees.
- By 1960 the Board employed a two-person staff consisting of the Executive Secretary/Chief Examiner and one Clerk Typist.
- In 1969 the Milwaukee Fire and Police Commission became the local criminal justice planning body for the City of Milwaukee. “**Under the direction of the Commission**, federal grants were used to enhance the training academy, to create a resource laboratory and library for the Youth Aid Bureau, to modernize the Police Department's communications system, to cover the cost of two-way radios, to experiment with beat patrol, and to purchase a police community relations bus, among other projects. Federal funds were also used to develop the Milwaukee Arson Program, a unique program of intragovernmental cooperation in crime control, which combined the Milwaukee Police Department, Milwaukee Fire Department, and the District Attorney's Office in a task force approach to the problem of arson.”
- In 1977 the Commission was authorized to hear complaints from any aggrieved person. It was also granted the responsibility of conducting an annual policy review of the Fire and Police Departments and the authority to suspend the rules of either department.
- In 1980, the Commission was given a limited form of Fire and Police Department rulemaking authority.
- “In 1984 the Board acquired the authority to prescribe general policies and standards for the Fire and Police Departments, the ability to inspect any property of the departments, including books and records, and the authority to review the efficiency and general good conduct of the departments. The Board also acquired original rule-making authority for both departments. During this time period, the Fire and Police Commission’s authority as an oversight body of the public safety departments was expanded. These legislative mandates created a need for specialized staff to enable the Commission to meet its increased responsibilities. A Research Services Specialist position, which incorporated the function of hearing examiner, and a Research Analyst position were added to the authorized staff total.”
- “By 1985, and in concert with the Board’s increased responsibilities, **the Commission employed a staff** of 12 including eight professional and three clerical employees under the direction of the Board’s first Executive Director, J.R. Brigham.”
- “In January 2007, when the Milwaukee Code of Ordinances Chapter 314 was enacted by the Common Council, duties of the Board of Fire and Police Commissioners were clarified to require increased emphasis on the oversight of the policies and procedures of the Fire and Police Departments. In addition to the duties of hiring, promoting, disciplining, and setting the policies and standards of the departments under Wisconsin Statute Section 62.50, local law expanded the Commission’s duties and Chapter 314 gave specific authority to the Commission and its executive director to 1) conduct policy reviews of Fire and Police Department operations; 2) ensure credible internal Fire and Police Department investigations through audits; 3) oversee the citizen complaint process; and 4) identify systemic problems and opportunities for improvement within both the Fire and Police Departments.”

As the foregoing history of the Fire and Police Commission shows, it is the Board that is consistently referred to as the entity responsible for fulfilling the legislative mandates imposed on the Commission. The Board determined its staffing needs employing the personnel it needed and thus determining its corresponding budget requirements, which were approved by the Common Council. Under the direction of the Board, the Executive Secretary/Chief Examiner a.k.a. Executive Director helped the Board fulfill its mission by managing the operations of the staff. There is NO mention in this 125-year history of the Executive Director doing anything independently of the Board's direction.

Milwaukee Code of Ordinances Chapter 314

The City Attorney asserts that there is nothing in [Milwaukee Code of Ordinances Chapter 314](#) that suggests that the FPC or its individual commissioners has any control over the budget or day-to-day operations of the staff of the FPC. But it is clear from the historical record that the Board has in fact exerted this control, implementing it via the directions given to their chief assistant and principal administrative staff person i.e., their Executive Secretary/Chief Examiner/Executive Director. This is explicitly and unequivocally reinforced in the MCO, which stipulates that the *executive secretary* serves “Under the direction of the board...”

Turn around is fair play and an examination of Chapter 314 shows that the Executive Director serves under the direction of the Board and is **not explicitly granted any budgetary decision making authority**. (my emphasis)

314-5. Executive Director. Pursuant to the authority granted to 1st class cities under s. 62.51, Wis. Stats., there is created a position of an executive director to comprise the role of *executive secretary* of the board. **Under the direction of the board, the executive director shall act as the principal staff of the board in exercising the board's functions and powers provided in s. 62.50, Wis. Stats., and described under s. 314-3.** In addition, the executive director shall:

1. Review a complaint investigation when a citizen is dissatisfied with the outcome of an investigation that has been completed by the police or fire department.
2. Evaluate police and fire department policies, practices and patterns, including but not limited to deployment of staff, crime and fire prevention training, use of force, search, seizure, citizen interaction and communication.
3. Issue periodic public reports relating to the status and resolution of complaints, timeliness of complaint resolution, trends and patterns of concern pertaining to complaint investigations, nature and frequency of complaints and other performance indicators.

A plain and simple reading of the MCO is that the Board is the “head of the department” and the executive director serves under their leadership as their principal staff.

Wisconsin Statute Wis. Stat. § 62.50

Turning to [Wis. Stat. § 62.50](#) and the City Attorney’s assertion that the Executive Director, rather than the Board, is the “head of the department” and that there is nothing in this law that suggests that the FPC (Board) or its individual commissioners has any control over the budget or the day-to-day operations of the FPC (Executive Director and Staff), let us consider the scope and complexity of what the Commission/Board has been legislatively mandated to do (any reference in the statutes to a secretary or chief examiner is a reference to the executive director).

[Wis. Stat. § 62.50\(1h\)](#) Organization states:

The staff and members of the board shall receive the salary or other compensation for their services fixed by the common council.

It may be reasonably concluded from this that the Board and its staff were members of *the* FPC Department. An ordinary interpretation of the references to the secretary of the Board in the statutes indicate that this person is part of the staff of the Board.

[Wis. Stat. § 62.50\(1h\)](#) the members of the Board transact the business of the Commission:

Except as otherwise provided in this subsection, a majority of the members-elect, as that term is used in s. [59.001 \(2m\)](#), of the board shall constitute a quorum necessary for the transaction of business.

A normal interpretation of this is that the Board is the “head of the department” since they are the ones authorized to transact its business. There is nothing in the statute limiting what “business” of its department the Board, as its head, may involve itself with.

[Wis. Stat. § 62.50\(1m\)](#) Policy review states:

The board shall conduct at least once each year a policy review of all aspects of the operations of the police and fire departments of the city. The board may prescribe general policies and standards for the departments. The board may inspect any property of the departments, including but not limited to books and records, required for a review under this section.

It is normal and reasonable to assume that the Board would employ the services of its secretary and staff to help it inspect the property of, or acquire the records sought, from the Police and Fire departments. It would be a novel and unreasonable interpretation to conclude that the Commissioners themselves would personally collect the desired records from the departments and establish their own storage and record keeping infrastructure separate from that utilized by their staff and their department.

[Wis. Stat. § 62.50\(2\)](#) Control of Appointments states:

No person may be appointed to any position either on the police force or in the fire department of the city, except with the approval of the board.

[Wis. Stat. § 62.50\(3\)\(a\)](#) Rules states:

The board may prescribe rules for the government of the members of each department and may delegate its rule-making authority to the chief of each department.

Wis. Stat. § 62.50(3)(b) Rules states:

The board shall adopt rules to govern the selection and appointment of persons employed in the police and fire departments of the city.

Given these sweeping authorities, a reasonable interpretation is that the Board is the “head of the department.” There is no positive language in the statutes declaring that the secretary is the “head of the department”. Rather, we see example after example in the statutes justifying a normal and reasonable interpretation that the Board is the “head of the department” and its secretary serves as its principal staff and administrative assistant.

Wis. Stat. § 62.50(4) Printing and Distribution of Regulations states:

The board shall cause the rules and regulations prepared and adopted under this section, and all changes therein, to be printed and distributed as the board deems necessary, and the expense thereof shall be certified by the board to the city comptroller and shall be paid by the city.

A normal and reasonable interpretation of this authority is that the Board would “cause” the printing and distribution of rules and regulations to occur by directing its secretary and staff to perform these actions. It would be unreasonable to conclude that the Board, using means not positively identified in the statute, would “cause” this printing and distribution to occur other than by directing its secretary and staff to perform these actions. An ordinary interpretation of this statute would be that the Board does indeed control the budget of its department. It is authorizing/causing the expenditure of funds to print and distribute materials.

Wis. Stat. § 62.50(5) Examinations states:

The board shall control all examinations and may designate suitable persons, either in the official service of the city or not, to conduct such examinations and may change such examiners at any time, as seems best.

Is it reasonable to conclude that the Board could accomplish this task without the authority to direct its secretary and staff to perform it? By what other means could the Board accomplish this? There is no positive language in the statute stating that the Board shall ask the “head of the department”, the secretary, or anyone else for permission to control all examinations. An “ordinary” interpretation of the statute is that the Board, in its role as “head of the department” has the authority to direct its department staff, including the secretary to perform these tasks, which include hiring someone not employed in the “official service of the city”.

Wis. Stat. § 62.50(6) Appointments of Chiefs states:

If a vacancy exists in the office of chief of police or in the office of chief engineer of the fire department, the board by a majority vote shall appoint proper persons to fill such offices respectively.

It is reasonable to conclude that the supremely important authority to appoint the chiefs of the police and fire departments is a being granted to the Board as the “head of the department”.

[Wis. Stat. § 62.50\(25\)](#) Chief Examiner states: (highlight indicates language remaining in force by statutory construction after the passing of [Wis. Stat. § 66.146](#) since renumbered [62.51](#)):

The board may appoint a chief examiner. The board shall prescribe the chief examiner's duties and compensation, which shall be paid by the city on the certificate of the board. Such examiner is subject to removal at any time by a majority of the board, and the board may change such duties and compensation at any time as it deems proper. The board may fix and alter compensation for any other examiners appointed by the board, and such compensation shall be paid by the city on certificate of the board.

The roles of Chief Examiner and Executive Secretary were fulfilled by one person and these titles were replaced by “Executive Director” in 1985. It is reasonable to infer that the chief examiner is a member of the staff in the FPC’s department. The Board retains the authority to prescribe the chief examiner’s duties and thus ultimate authority over its staff and budget (see Memo dated December 15, 1988 from Executive Director James F. Blumenberg to the Fire and Police Commissioners¹ noted above)

Again, turn around is fair play and there is no positive language in the statute delegating any authority to the person referred to as the “secretary” to control the day-to-day operations of the FPC department or its budget.

Consider too the many references to duties to be performed by the secretary of the Board in 62.50:

[62.50\(13\)](#)

The chief shall also *immediately report the notice of the discharge or suspension to the secretary of the board of fire and police commissioners* together with a complaint setting forth the reasons for the discharge or suspension and the name of the complainant if other than the chief.

[62.50\(17\)\(b\)3](#)

The decision and findings of the board, or panel, shall be in writing and shall be filed, together with a transcript of the evidence, *with the secretary of the board*.

[62.50\(19\)](#)

If the charges are not sustained, the accused shall be immediately reinstated without prejudice. *The secretary of the board shall make the decision public*.

[62.50\(20\)](#)

Such action shall begin by *the serving of a notice on the secretary of the board* making such order and on the city attorney of such city, which notice may be in the following or similar form

Is it not plainly obvious that the secretary is merely a staff assistant to the Board rather than the “head of the department”? What specific language in the statute supports the notion that the secretary or chief examiner, rather than the Board, is the head of the department?

Failing to find any evidence in the Wisconsin Statutes or Milwaukee Code of Ordinances (MCO) to support the notion that the Executive Director is the “head of the department”, and ignoring all of the positive affirmations in the same that the Board is the “head of the department”, the City Attorney resorts in footnote 2, cited above in full, to a line from the Executive Director’s job announcement⁷ posted by the Department of Employee relations:

In addition, the Executive Director has traditionally been responsible for all budgetary and personnel matters within the FPC, as evidenced by the Executive Director job announcement which states that the position "is responsible for all policy, financial, operational, and strategic matters of the Fire and Police Commission."

“Responsible” to whom? Per an ordinary and reasonable interpretation of the Statutes and MCO – to the Board of the Fire and Police Commission – the “head of the department”. The raison d’être of the Executive Director and FPC staff is to serve the Commission, which the City Attorney established is a department. The FPC as a stand-alone “department” under the management of an executive director has no legitimate existence sans the Commission.

DER’s Executive Director job announcement

The City Attorney’s reference to an extrinsic source, the DER job announcement, as more authoritative than the State Statutes and MCO exposes how weak his argument really is.

The full quote from the job announcement is as follows:

The Fire and Police Commission (FPC) Executive Director provides leadership, guidance, and coordination in public safety matters as a member of the Mayor’s cabinet and **as chief administrator of the functions performed by the citizen Board of Fire and Police Commissioners**. The FPC Executive Director is responsible for all policy, financial, operational, and strategic matters of the Fire and Police Commission.

ESSENTIAL FUNCTIONS

- **Serve as chief administrator for the seven-person citizen board of fire and police commissioners.** Guide board members and develop the board agenda in carrying out its statutory functions of overseeing and exercising final authority on all aspects of civilian oversight of the policies, discipline, organization, hiring and promotion, and daily operations of the police and fire departments.

The language in the Wisconsin Statutes, MCO and DER job announcement is plain and simple: The Executive Director is an administrator carrying out the functions of the Board and responsible for implementing all of the policy, financial, operational, and strategic matters of the Fire and Police Commission – **not deciding what those policies etc. are**. The Executive Director serves “Under the direction of the Board...” per the MCO and is not a policy maker. For the City Attorney to assert that the Executive Director is the “head of the department” is akin to the tail wagging the dog.

Principles of Statutory Construction

The City Attorney is ignoring one of the fundamental [principles of statutory construction](#): words should be given their “ordinary” and “reasonable” meanings. Throughout his opinion Mr. Langley leads us to believe that the Wisconsin Legislature created a Board of Fire and Police Commissioners, gave it a long list of duties: overseeing the operations, policies and procedures of the Fire and Police departments; hiring the chiefs of the departments and *all* of their members; administering examinations of potential members; investigating citizen complaints; performing disciplinary reviews including trials, etc..., and in their infinite wisdom, *intended* that the Board of Commissioners should accomplish all of this without the authority to direct or prescribe the actions of its Chief Examiner/Executive Secretary/Executive Director/Secretary/Principal Staff/Chief Administrator (a rose by any other name...) O R Staff. This is a palpable absurdity!

Mr. Langley concedes the point in footnote 3 of his opinions⁶ (my emphasis):

³It is possible that the FPC believes that a particular budget item is necessary for the Commission to exercise its powers and functions under 62.50, Wis. Stats., in which case they **may be authorized** under the MCO to direct the Executive Director to advocate for the item. Even in this case, however, there is still **no direct legal recourse** under state statute or the MCO if the Executive Director refuses to comply with the directive.

He concedes the ordinary and reasonable interpretation of the statutes and then says in effect: ‘Yeah? Well...? What are you going to do about it?’

Legal Recourse

The Board of Fire and Police Commissioners *does* have a legal recourse established explicitly for just such cases. The Board could file a [writ of mandamus](#) compelling the Executive Director to perform her “ministerial duties”. The 4 elements required for the writ can all be met:

1. *a clear legal right*: The statutory construction used back in 1988 to determine the impact of the changes to [Wis. Stat. § 62.51\(a\)](#) on [Wis. Stat. § 62.50\(25\)](#) is still valid: “The board **shall prescribe** the chief examiner’s duties...”.
2. *a plain and positive duty*: The Board must be able to control the activities of its staff per directions/prescriptions given to their Chief Examiner a.k.a. Executive Director, otherwise it cannot fulfill its broad legislatively mandated duties. The Executive Director serves “Under the Direction of the Board” and is subject to the Board’s prescriptions.
3. *substantial damages or injury should the relief not be granted*: Just one example is that the FPC is currently subject to Court Orders resulting from the [ACLU Settlement Agreement](#). If the Executive Director were to refuse a direction/prescription from the Board that she present a plan for how the FPC will meet its obligations under the Court Orders, the City, Board, MPD and the People would all be harmed by the perpetuation of the conditions that brought about the lawsuit in the first place. And, like the notorious "[Christensen Decree](#)" that Milwaukee County is still struggling to get out from under, the

City, FPC and MPD could remain under the Court’s jurisdiction for many additional years.

4. *no other adequate remedy at law*: The City Attorney asserts that the writ of mandamus is not even an option for “direct legal recourse”.

City Service Commission

Finally, in response to the question: “**Does the Commission have authority over the day-to-day operations and employees that work in the FPC?**”, the City Attorney states⁶:

There is nothing in sec. 62.50 that gives the FPC direct authority over the "department" of the FPC.⁴

⁴The Executive Director and the staff who work under the Executive Director qualify as a "department" as described in state statute Chapter 65, as well as Chapters 18 and 314 of the MCO.

The City Attorney wraps the word “department” in *scare* quotes when describing *this* FPC department. The ambiguity is *not* cleared up in footnote 4, which cites the same statutes used previously to establish that the FPC, because it is a Commission, is a department. Is the City Attorney redefining the FPC “department” to be that comprised of the Executive Director and staff, or, is the reference in footnote 4 to a second – completely different – FPC department? The absence of a definition for “FPC” or “FPC Department” in the opinion is a legal sleight of hand that obfuscates the fallacious reasoning used in the opinions.

The City Attorney asserts that⁶:

The administrative staff of the FPC answers directly to the Executive Director in her capacity as "the principal staff of the board in exercising the board's functions and powers provided in s. 62.50, Wis. Stats." MCO 314-5.

The question at issue regards “employees” that work at the FPC, whereas the City Attorney is only addressing employees that are “administrative staff”. There is *only one* explicit reference to the FPC staff in Wis. Stat. § 62.50: “The *staff* and members of the board shall receive the salary or other compensation for their services fixed by the common council.”, and it is reasonable to assume that the secretary is a member of the staff. The FPC’s [125th Anniversary Report: A Model for Citizen Oversight](#) documents the growth of the FPC’s staff.

Acknowledging that there is no definition for “FPC Department” in the opinion it appears that, via the introduction of the Milwaukee Board of City Service Commissioners (CSC), the City Attorney is predicating his conclusions on the existence of a *second* FPC department consisting of employees who are under the jurisdiction of the CSC. The City Attorney states:

“Chapter 63 also provides a list of exceptions, employees who are not subject to the authority of the CSC” and quotes the statute as follows:

Officers who are elected by the people, or who by the statutes are required to be elected by the city council, inspectors and clerks of election, *one deputy in each department whose office was created and exists by reason of statute*, the members of the board of school directors, persons enumerated in s. 63.53 (2), heads of principal departments of the city, all members of the law, fire and police departments, permanent or temporary technical advisers and experts employed by the board of assessment under s. 32.52 (4), one private secretary of the mayor, the appointees of the mayor under s. 62.51.

Continuing, the City Attorney states⁶:

Employees of the fire and police departments are excepted from CSC authority, but there is no exception for employees of the FPC's department. FPC employees are therefore subject to CSC rules and regulations and not those of the FPC.

Finally, the CSC's rules and regulations apply to FPC employees as they are not listed in the exception to CSC jurisdiction in sec. 63.27, stats.

The above statement regarding FPC employees is false. The list of exceptions cited above does not acknowledge the fact that almost every city department has employees who are exempt from CSC jurisdiction and that exemptions are often made via statute.

[City of Milwaukee Civil Service Rules](#)

Rule I

Definition of Terms

b. The term "exempt" or "exempt service" shall include all offices and positions specifically mentioned in Section 63.27 of the Statutes **or in any other statute** as exempt from the provisions of the Civil Service Law and those positions exempted by the Board of City Service Commissioners.

The CSC has identified the following FPC positions as exempt: Commissioners, Executive Director, Operations Manager a.k.a Chief of Staff, Staffing Services Manager, Investigator/Auditor, Fire & Police Commission Risk Manager, Emergency Mgmt. & Communications Dir. Apparently the City Attorney believes that FPC employees who are subject to the authority of the CSC are *not* answerable to the Board. If we grant that for the sake of the argument, does that mean that FPC employees who are not subject to the authority of the CSC *are* answerable to the Board?

The introduction of the CSC is a red herring. The definition of "department" provided by the City Attorney does not include any reference to whether or not the employees comprising the department were either exempt or non-exempt from CSC jurisdiction. The City Attorney has provided no dispositive evidence to justify the introduction of CSC jurisdiction over certain city employees as demarcating what constitutes a department.

An ordinary and reasonable interpretation of the intent of Wis. Stat. § 62.50 is that FPC will have staff under their control and direction employed by the city and there is no positive language qualifying the FPC Board's control over their staff based on exempt or non-exempt Civil Service Status. As shown above, the City Attorney has not proven that the Executive Director is the "head of the department" and the reference to this position as "the principal staff of the board in exercising the board's functions and powers provide in s. 62.50, Wis. Stats." cited from MCO 314-5 by the City Attorney is not dispositive of that assertion.

The City Attorney concludes⁶:

In summary, there is nothing that gives the FPC any direct control over the operations of its department.

This sentence asserts that the Commission (FPC), which the City Attorney has already explained is a department, has no "...[d]irect control over the operations of *its* department". Again, this legal sleight of hand obfuscates the fact that the City Attorney has neglected to clearly define what is meant by "FPC department". It is predicated on the unstated premise that there exist two discrete FPC departments, which the City Attorney has failed to substantiate with dispositive evidence from the Wisconsin Statutes or Milwaukee City Ordinance. The ambiguous use of the word "department" above presents a palpable absurdity: It would be like saying that John Smith has no control over Himself. And prima facie this statement is ludicrous and cannot seriously be considered as the legislative intent behind the creation of the FPC.

The City Attorney⁶:

To the contrary, state statute and the MCO indicate that day-to-day operations of the FPC are the responsibility of the Executive Director, and the Executive Director answers to and serves at the pleasure of the mayor. There is no line of authority that reaches from the FPC to its department employees.

This assertion implies that the presence of an intermediary manager, principal staff person, or chief administrator, breaks the chain of command/authority between the Commission, which does have direct authority over its secretary, a.k.a. Chief Examiner (as was thoroughly documented above) and its staff, who's day-to-day activities are managed by the secretary. The Board directs the secretary, who then directs the staff, but if the staff is acting contrary to the direction of the Board, then the Board has every right and authority to overrule their secretary and redirect the activities of the staff. The *raison d'être* of the FPC's executive secretary and staff is to serve the Commission, which the City Attorney established is a department. The FPC as a stand-alone "department" under the management of an executive director has no legitimate existence sans the Board/Commission. There is no justification for bifurcating the FPC into 2 departments. It would be a novel and unreasonable interpretation of the intention behind Wis. Stat. § 62.50 to conclude that a Board of Commissioners should be created with no authority to direct the activities of its secretary or staff.

The City Attorney's opinion also assumes that, by virtue of serving at the pleasure of Mayor, the Executive Director is therefore unaccountable to the Board. This conclusion is in direct

contradiction to the MCO, which states that the Executive Director serves: “Under the direction of the Board”. If the Mayor doesn’t like how the Executive Director is serving under the direction of the Board, the Mayor can fire the Executive Director. Serving at the pleasure of the Mayor does not abrogate the ordinary and reasonable interpretation of the MCO which clearly states that the Executive Director serves under the direction of the Board. Experience has shown that if the Executive Director asserts independence from the Mayor and is responsive to and acts according to the direction of the Board – and the Mayor disagrees with what the Board is directing the Executive Director to do – then yes, the Mayor can fire the Executive Director.

The positive language that remains in force under 62.50(25) after the passage of 62.51 unequivocally states that the Board “shall prescribe the Chief Examiner’s (a.k.a. Executive Director’s) duties”. There is no positive language in Wis. Stat. § 62.51(1)(a) stating that the executive secretary will serve under the direction of the Mayor, it merely states that the Mayor will appoint this person and allow them to serve at their pleasure. That was the understanding of the change effected by [Wis. Stat. § 66.146](#) back in 1988, after which the Common Council approved Mayor Norquist’s appointment of James F. Blumenberg to be the Executive Director.

Summation

- The Board has the authority to prescribe and direct the activities of the Chief Examiner/Executive Director and Staff. The legislative intent of the Wisconsin Statutes and Milwaukee Code of Ordinances is clear and unequivocal on this matter.
- The Executive Director is not the “head of the department” or leader of the FPC department – the Board of Commissioners is.
- There is nothing in the Wisconsin Statutes or Milwaukee Code of Ordinances that positively declares that the Executive Director is the “head of the department”.
- The FPC’s 125-year Anniversary Report makes **NO REFERENCE** to the Executive Director as acting in the capacity of “head of the department”. Rather, it accurately attributes the accomplishments of the FPC to the leadership and direction provided by the Board of Commissioners.
- Ignoring the positive and explicit language in the Wisconsin Statutes and Milwaukee Code of Ordinances, the City Attorney resorts to an extrinsic source – the DER’s Executive Director job announcement – as if it were an authoritative replacement for the legislative intent positively manifested in the aforementioned statutes and codes.
- The evidence of the intent of the Wisconsin Legislature in creating the Fire and Police Commission, and steadily increasing the authority of the Board of Commissioners over the years, is overwhelming.
- The Board of Commissioners has legal recourse via a writ of mandamus to compel the Executive Director to execute his/her ministerial duties in accordance with their prescriptions and directions.
- In what can most charitably be described as a “red herring”, the City Attorney attempts to use the jurisdiction of the City Service Commission as dispositive evidence that the Board has no authority over the staff in its department, while

conveniently ignoring the exempt or non-exempt status of members of the FPC's staff.

If we are to restore the Fire and Police Commission its birthright and empower it to serve the public interest as was intended at its creation, we must dispense with the nonsensical opinions of the City Attorney. The Board should not have to resort to a writ of mandamus. Mayor Tom Barrett could clear up this whole mess by simply making it unequivocally clear that the Board of Commissioners is the "leader" of *the* FPC Department and, given that the FPC Executive Director serves at his pleasure, *it would please him* if Ms. Aldrete would act under the direction and prescriptions of the Board of Fire and Police Commissioners, marshalling the staff with a unity of purpose to accomplish the supremely important, complex and demanding obligations that the FPC has to the public interest it serves.

Appendices:

¹Memo dated December 15, 1988 from Executive Director James F. Blumenberg to the Fire and Police Commissioners

²Memo dated December 22, 1988 from James F. Blumenberg to Office of the Mayor

³Letter to Alderman John Kalwitz, Chairman Public Safety Committee December 29, 1988 signed by all of the Fire and Police Commissioners

⁴Letter to Alderman John Kalwitz, Chairman Public Safety Committee January 17, 1989 from Mayor, John Norquist

⁵2019 City of Milwaukee Organization Chart

⁶City Attorney's Opinion May 3, 2019

⁷Executive Director's job announcement (August 6, 2020 version is at <https://city.milwaukee.gov/DER/jobs>)

⁸Fire and Police Commission Organization Chart



Fire and Police Commission

December 15, 1988

Leonard W. Ziolkowski
Chairman

Patrice M. Hargarten
Vice Chairman

Ronald S. San Felippo
Larry N. Scruggs, Jr.
M. Nicol Padway
Commissioners

James F. Blumenberg
Executive Director

Leonce C. Rhodes
Public Relations Officer

Cassandra K. Scherer
Examinations Supervisor

TO: Fire and Police Commissioners

FROM: James F. Blumenberg
Executive Director

SUBJECT: Confirmation of Executive Director
Questions Raised Concerning Ability to Direct Activities

On Tuesday, December 13, 1988, your Executive Director appeared before a committee of the Common Council concerning anticipated confirmation of his appointment by Mayor Norquist. As a result of a question raised by Council members (see below), such confirmation hearing was adjourned to a later date and a statement from the Commission was requested on the following issue:

QUESTION: Who has the authority to prescribe the duties and direct the activities of the Executive Director of the Milwaukee Fire and Police Commission? (Whose directives will the Executive Director be responsive to?)

Prior to enactment of Wisconsin Statutes 66.146, shortly after the election of Mayor Norquist, authority to both appoint and prescribe the duties of the Executive Director (aka Chief Examiner) was solely within the discretion of the Fire and Police Commission. This was pursuant to Wisconsin Statutes 62.50(25), which reads as follows:

"CHIEF EXAMINER. The board may appoint a chief examiner. The board shall prescribe the chief examiner's duties and compensation, which shall be paid by the city on the certificate of the board. Such examiner is subject to removal at any time by a majority of the board, and the board may change such duties and compensation at any time as it deems proper. The board may fix and alter compensation for any other examiners appointed by the board, and such compensation shall be paid by the city on certificate of the board."

Wisconsin Statutes 66.146(2) indicates that the mayor of any 1st class city "shall appoint, subject to confirmation of the common council, a person to serve in the unclassified service in each public office. A public official serves at the pleasure of the mayor..."

Fire and Police Commissioners
December 15, 1988
Page 2

Wisconsin Statutes 66.146(1)(a) defines the Executive Director of the Board of Fire and Police Commissioners as a public official.

Wisconsin Statutes 62.50(25) has not been repealed by the legislature. Based on statutory construction, only those portions of 62.50(25) which are specifically addressed in subsequent legislation (including 66.146) are superceded. The balance of Wisconsin Statutes 62.50(25) remains intact and is the law. Based on this analysis, Wisconsin Statutes 62.50(25), after deleting those portions superceded by Wisconsin Statutes 66.146, now reads as follows:

"CHIEF EXAMINER. The board shall prescribe the chief examiner's duties, and the board may change such duties at any time as it deems proper."

A review of the remaining language reveals that the power to prescribe and change the duties of the Executive Director remains with the Board.

According to the City Legislative Reference Bureau, there is nothing that can be located within either the City Charter or the Code of Ordinances that in any way would clarify or contradict Wisconsin Statutes 66.146 or the remaining portions of Wisconsin Statutes 62.50. The following inconsistencies seem to emerge:

1. The Mayor has absolute authority to hire and fire the Board's Executive Director at any time, with or without cause, but what authority exists to prescribe his duties and activities?
2. The Board apparently has absolute authority to prescribe the duties of the Executive Director, and to change those duties at any time, but has absolutely no authority to fire him if he fails to carry out any such duties.
3. As a Cabinet member, the Mayor would establish, for performance review purposes, the key responsibility areas, goals and objectives for the position.

The Common Council has requested a written statement from the Board, the Mayor, or a joint statement regarding who has the authority to direct the duties of the Executive Director of the Fire and Police Commission. The authority to prescribe duties carries with it the implicit authority to see that policy directives established by the Board are carried out through the Director and staff. The Board is therefore fully capable of continuing operations under the current situation.

JFB:SF:rk

December 22, 1988

Ms. Michal Dawson
Liaison Officer
Office of the Mayor
City Hall - Room 201
200 E. Wells St.
Milwaukee, WI 53202

Dear Michal:

Pursuant to our conversation, please find enclosed a draft joint statement concerning the position of Executive Director. It is, of course, submitted for review by the Office of Mayor. I can report to you that the statement has the approval of all of the Fire and Police Commission members, with the exception of Mr. Scruggs who is out of the city and unavailable.

It is my understanding that the Chairman of Public Safety seeks a position statement by January 6, 1989, with the Public Safety Committee meeting on January 12, 1989. Please inform me of any judgments made relative to this.

Wish you the best for the holidays.

Sincerely,

James F. Blumenberg
Executive Director

JFB:rk

Enc.

Office of the Mayor
Fire and Police Commission

Joint Statement of Understanding Concerning the Position of
Executive Director, Fire and Police Commission

Consistent with existing law, the Mayor shall appoint, subject to confirmation of the Common Council, the Executive Director of the Fire and Police Commission. The Executive Director shall be a member of the Mayor's Cabinet in the unclassified service with all benefits and obligations attendant to that public office. The Executive Director shall be responsible for all staff services required by the Fire and Police Commission, and accountable for coordination between the Office of Mayor, the Fire and Police Commission, and other public bodies. The Executive Director shall be accorded the degree of independence necessary to assure that the Fire and Police Commission fulfills its statutory responsibilities as an independent public body. To assure this independence, the Fire and Police Commission shall prescribe the duties of the Executive Director and may change such duties at any time it deems proper.

(12/22/88)

Review
Hold on to this
statement.
B



Fire and Police Commission

December 29, 1988

Alderman John Kalwitz, Chairman
 Public Safety Committee
 City Hall - Room 205
 200 East Wells Street
 Milwaukee, Wisconsin 53202

Leonard W. Ziolkowski
 Chairman

Patrice M. Hargarten
 Vice Chairman

Ronald S. San Felippo
 Larry N. Scruggs, Jr.
 M. Nicol Padway
 Commissioners

James F. Blumenberg
 Executive Director

Leonce C. Rhodes
 Public Relations Officer

Cassandra K. Scherer
 Examinations Supervisor

Dear Chairman Kalwitz and Members:

The Fire and Police Commission responds as follows concerning confirmation of the appointment of James F. Blumenberg to the position of Executive Director, Fire and Police Commission. The Commission statement on this matter follows.

The Fire and Police Commission is a policy review and policy making body with significant statutory authority and responsibility under State Statute 62.50. It is the Board's responsibility to oversee and direct policies of the Chiefs of our respective public safety departments. The appointment of Executive Director was previously the responsibility of the Commission, but with the passage of State Statute 66.146, the Mayor shall now appoint, subject to the confirmation of the Common Council, and the position shall be in the unclassified service represented in the Mayor's Cabinet.

The Fire and Police Commission retains, under law, its authority and responsibility to act as a policy making body. The Executive Director has the responsibility to staff our needs as a public body, perform comprehensive services to assist the Board, carry out our policies, and manage the day-to-day operation of our department. The Director's responsibility is to inform the Board, present all pertinent information for decision-making, and once the Board has exercised its decision-making function, the Director carries out the Board's policies.

To be sure, conflicts do arise in the course of public business. The Director, in his capacity, is expected to fully inform the Board on all aspects of issues. In this instant case, the Director would have the burden of representing the issues, the thinking of two separate policy entities. It is not within his capacity to exercise final policy decision making, but rather to facilitate and coordinate so that issues can be resolved. When matters pertain to the authority of the Fire and Police Commission under law, the Board will ultimately make

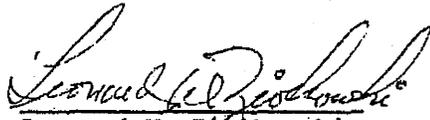
Alderman John Kalwitz, Chairman
December 29, 1988
Page Two

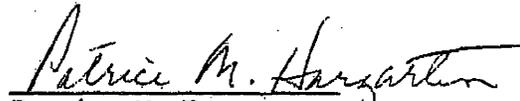
the final decisions and the Director will implement. Differences that arise between two policy bodies must and will be resolved by those entities.

It certainly is our collective judgment, based upon knowledge and experience, that Mr. Blumenberg is qualified to perform this uniquely difficult role effectively.

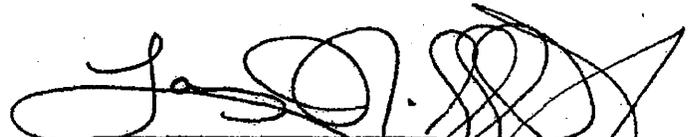
Respectfully,

FIRE AND POLICE COMMISSION


Leonard W. Ziolkowski
Chairman


Patrice M. Hargarten
Vice Chairman


Ronald S. San Felippo
Commissioner


Larry N. Scruggs, Jr.
Commissioner


M. Nicol Padway
Commissioner

LWZ:las

cc: John O. Norquist, Mayor

JOHN O. NORQUIST
MAYOR



OFFICE OF THE MAYOR
MILWAUKEE, WISCONSIN

January 17, 1989

Alderman John R. Kalwitz
Chairman, Public Safety Committee
Room 201 - City Hall
City of Milwaukee

Dear Alderman Kalwitz:

The Fire and Police Commission is one of many city boards and commissions with specific duties, powers and responsibilities, some identified in State Statues, others in City Charter or ordinances. Other such policy-making boards, where staff is also now a member of the Mayor's Cabinet, are:

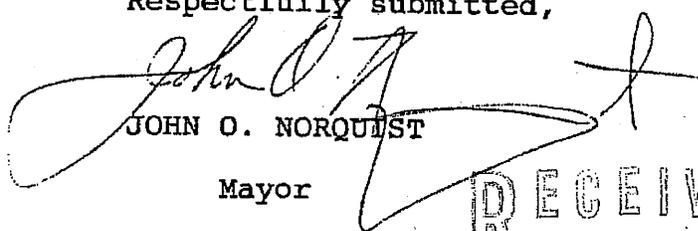
City Service Commission
Library Board
Election Commission

In each of these cases, the staff person is a member of the Mayor's Cabinet, but also works directly for the commission or board. In each case the staff person carries out the directives of the board or commission, but has no vote in shaping policy. The policymakers, in all cases, remain only the board or commission members.

Because of this clear line of duties and responsibilities for the policymakers and their staff, I felt it was appropriate to include the staff to each of these boards and commissions in the mayoral cabinet.

I feel Mr. James Blumenberg is a most capable administrator, who will be a valuable communication link between the Mayor and the Fire and Police Commission, and certainly deserves confirmation by your Honorable Body.

Respectfully submitted,


JOHN O. NORQUIST

Mayor

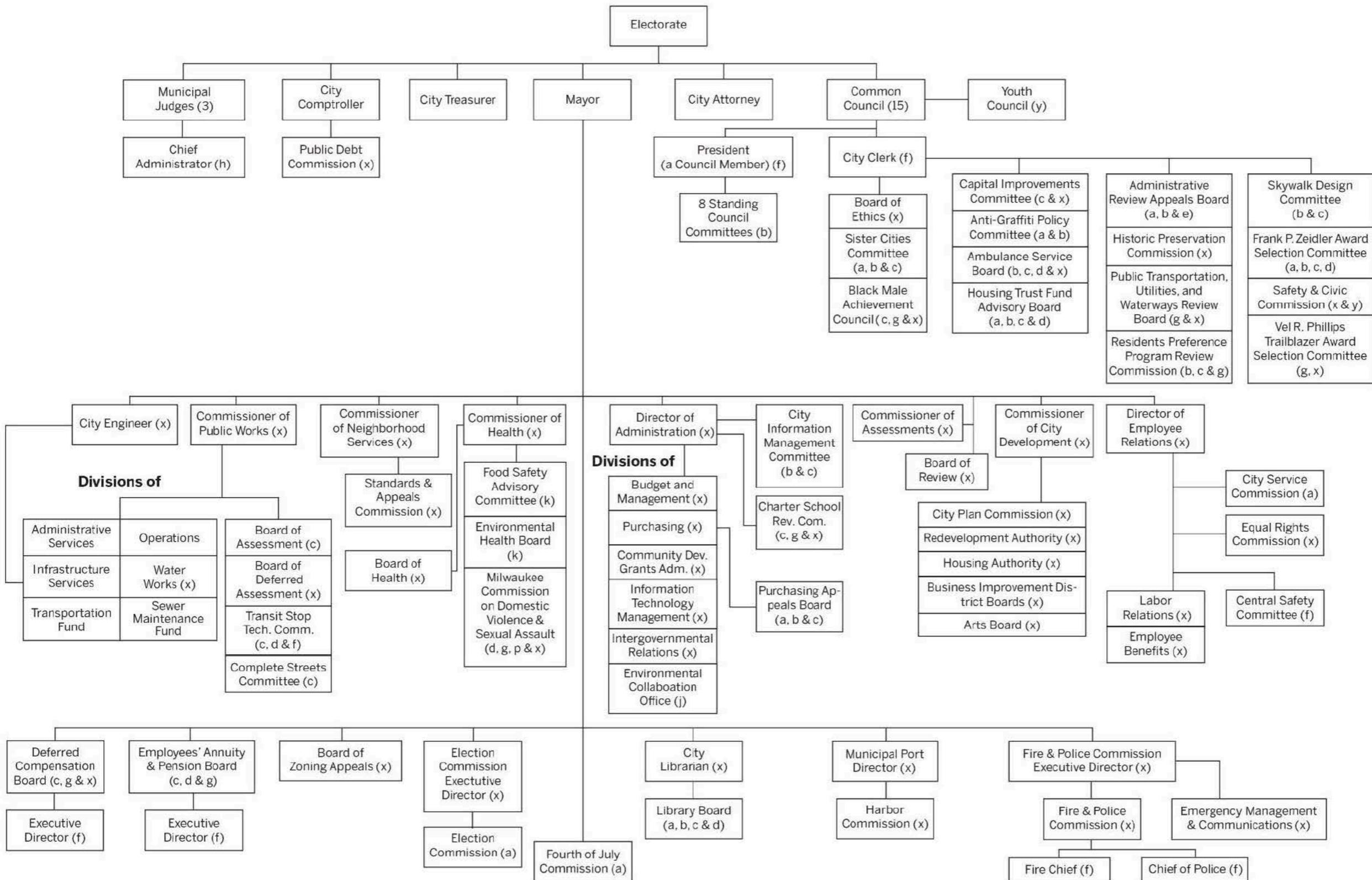
RECEIVED
JAN 18 1989

JON:MAD: pks

FIRE AND POLICE COMMISSION

CITY OF MILWAUKEE ORGANIZATION CHART

Source: City Clerk's Office • August 2019



KEY	(a) Appointment by Mayor, not confirmed by Common Council	(c) Members serve ex-officio; by law	(f) Appointment by connected board or department	(h) Appointment by Chief Municipal Judge, confirmed by Common Council	(p) Appointment by Police Chief
	(b) Members appointed by Common Council President	(d) Members selected by other external bodies	(g) Appointment by Common Council President, confirmed by Common Council	(j) Appointment by Director of Administration	(x) Appointment by Mayor, confirmed by Common Council
	(e) Appointment by City Attorney			(k) Appointment by Health Commissioner	(y) Appointment by connected council, confirmed by Common Council

GRANT F. LANGLEY
City Attorney

MIRIAM R. HORWITZ
ADAM B. STEPHENS
MARY L. SCHANNING
JAN A. SMOKOWICZ
Deputy City Attorneys



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ROBIN A. PEDERSON
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PETER J. BLOCK
JENNY YUAN
ALLISON N. FLANAGAN
HEATHER H. HOUGH
ANDREA J. FOWLER
PATRICK J. MCCLAIN
NAOMI E. GEHLING
CALVIN V. FERMIN
BENJAMIN J. ROOVERS
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MEIGHAN M. ANGER
Assistant City Attorneys

May 3, 2019

La Keisha Butler
Board of Fire and Police Commissioners, Executive Director
200 East Wells Street, 7th Floor
Milwaukee, WI 53202

Re: Commissioner Authority over FPC Administration

Dear Ms. Butler:

On April 24, 2019, you requested an opinion from our office on the following issues: Can the Board of Fire and Police Commissioners (“FPC” or “Commission”), or an individual commissioner, direct the Executive Director of the FPC to advocate for a particular budget item if said item was rejected by the Mayor’s office? Does the Commission have the power to lobby members of the Common Council in their capacity as commissioners? Does the Commission have authority over the day-to-day operations and employees that work in the FPC? Each of these issues is addressed separately below.

1. *Can the FPC or an individual commissioner direct the Executive Director of the FPC to advocate for a budget item if the item has been rejected by the Mayor’s office?*

The budget process for the City of Milwaukee (“City”) is governed primarily by Chapter 65 of Wisconsin Statutes and Chapter 18 of the City Charter. To begin the process, it is the duty of each department to file with the Mayor’s office, not later than August 1, “an estimate in detail of the department’s needs for the ensuing fiscal year.” Wis. Stat. § 65.03(1).¹ A “department” is defined as “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.” Wis. Stat. § 65.02(1).

¹ The statute instructs departments to submit the estimate to the “board of estimates,” but the City has exercised its authority under Wis. Stat. § 65.20(1) to transfer the duties and responsibilities of the board of estimates to the Mayor. Also, the City Charter moves the due date for department estimates to the 2nd Tuesday in May. City Charter 18-03-1.



The FPC qualifies as a “department” under this definition because it is a commission and its budget is under the control of the Common Council. The definition also indicates that the Executive Director, in her capacity as the head of the FPC,² is responsible for acting on behalf of the FPC’s department in budgetary matters.

The Mayor has the power and responsibility to appoint “public officials” to “serve in the unclassified service in each public office.” Wis. Stat. §62.51(2). The list of public offices includes the “executive secretary of the board of fire and police commissioners.” Wis. Stat. §62.51(1). The appointment of the executive secretary (known within the City and in the Milwaukee Code of Ordinances (“MCO”) as “Executive Director”) is subject to confirmation by the Common Council, and the incumbent serves at the pleasure of the mayor. Wis. Stat. §62.51(2).

The jurisdiction of the FPC, as described in state statutes, applies only to employees of the Police and Fire Departments. There is nothing in the statutes that gives the FPC any direct authority over the Executive Director. However, the MCO states that the Executive Director’s primary duties are to “[u]nder direction of the board...act as the principal staff of the board in exercising the board’s functions and powers provided in s. 62.50, Wis. Stats.” MCO 314-5. The MCO summarizes the “functions and powers” of the FPC as conducting policy review of the fire and police departments, auditing internal police and fire department investigations, monitoring the citizen complaint process, and identifying systemic problems within the fire and police departments. MCO 314-3-1 through 4.

Based on the foregoing statutes and ordinances, the FPC does not have the power to direct the Executive Director to advocate for a particular budget item, regardless of whether said item has been rejected by the Mayor. The Executive Director, in her capacity as department head, is responsible for submitting the FPC’s budget estimate to the Mayor’s office. The Executive Director serves at the pleasure of the Mayor, and there is no direct line of authority from the FPC to the Executive Director. Although the Executive Director’s primary duties are to act as the principal staff of the FPC “in exercising the board’s functions and powers

² Our conclusion that the FPC Executive Director is the “head of the department” is based on the fact that the FPC’s jurisdiction is exhaustively described in s. 62.50, Wis. Stats., and Chapter 314 of the MCO, but there is nothing in either of those laws that suggests that the FPC or its individual commissioners has any control over the budget or the day-to-day operations and staff of the FPC. In addition, the Executive Director has traditionally been responsible for all budgetary and personnel matters within the FPC, as evidenced by the Executive Director job announcement which states that the position “is responsible for all policy, financial, operational, and strategic matters of the Fire and Police Commission.” The jurisdiction of the FPC and responsibilities of the Executive Director are discussed more thoroughly below.

provided in s. 62.50,” there is nothing in state statute, nor in the MCO or City Charter, that gives the FPC any power over the City’s budget process. Therefore, the FPC could take the position that a certain item should or should not be included in the budget, but it could not direct the Executive Director to advocate for the item. If the FPC issued such a directive, there is no legal recourse for the Commission if the Executive Director refuses or fails to comply with it.³

2. Does the Commission have the power to lobby members of the Common Council in their capacity as commissioners?

The City addresses lobbying in Chapter 305, Subchapter 3 of the MCO. The ordinance defines lobbying as “any attempt to influence legislative or administrative action by oral or written communication with any city official.” MCO 305-43-5. The list of exceptions to the lobbying rules states that Subchapter 3 shall not apply to a “city official, provided he or she is solely engaged in matters of governmental interest concerning his or her respective governmental body and the city.” MCO 305-51-1-a. “City official” is defined as any person holding a position with the city who is required to file a statement of economic interest with the city’s Ethics Board. MCO 305-43-2. The city’s 2019 Positions Ordinance states on page 36 that Fire and Police Commissioners are required to file a statement of economic interests in accordance with MCO Chapter 303.

Based on these provisions of the MCO, commissioners of the FPC qualify as “city officials” under Chapter 305, Subchapter 3 and are therefore excepted from the city’s lobbying rules so long as they are advocating on issues that concern the FPC. As such, we are not aware of anything that would prevent commissioners from communicating their views to the Common Council in an effort to influence the Council’s actions. In the case of budget matters, any such communication would be purely advisory and would have no binding effect on the budget process.

3. Does the Commission have authority over the day-to-day operations and employees that work in the FPC?

As noted above, the FPC derives its authority and jurisdiction from Wis. Stat. §62.50, which gives the Commission power over the City’s police and fire

³ It is possible that the FPC believes that a particular budget item is necessary for the Commission to exercise its powers and functions under 62.50, Wis. Stats., in which case they may be authorized under the MCO to direct the Executive Director to advocate for the item. Even in this case, however, there is still no direct legal recourse under state statute or the MCO if the Executive Director refuses to comply with the directive.

departments regarding appointments, promotions, examinations, and certain disciplinary actions, among other things. Wis. Stat. §§62.50(2), (5), (9), and (13). There is nothing in sec. 62.50 that gives the FPC direct authority over the “department” of the FPC.⁴ The administrative staff of the FPC answers directly to the Executive Director in her capacity as “the principal staff of the board in exercising the board’s functions and powers provided in s. 62.50, Wis. Stats.” MCO 314-5.

The Milwaukee Board of City Service Commissioners (“CSC”), which acts as the counterpart of the FPC for departments other than police and fire, derives its authority from Chapter 63 of the Wisconsin Statutes, which states that the CSC “shall investigate the enforcement of ss. 63.18 to 63.53...and the conduct and action of the appointees in the official service in its city, and may inquire as to the nature, tenure and compensation of all offices and places in the public service thereof.” Chapter 63 also provides a list of exceptions, employees who are not subject to the authority of the CSC:

Officers who are elected by the people, or who by the statutes are required to be elected by the city council, inspectors and clerks of election, one deputy in each department whose office was created and exists by reason of statute, the members of the board of school directors, persons enumerated in s. 63.53 (2), heads of principal departments of the city, *all members of the law, fire and police departments*, permanent or temporary technical advisers and experts employed by the board of assessment under s. 32.52 (4), one private secretary of the mayor, the appointees of the mayor under s. 62.51.

(emphasis added). Employees of the fire and police departments are excepted from CSC authority, but there is no exception for employees of the FPC’s department. FPC employees are therefore subject to CSC rules and regulations and not those of the FPC.

In summary, there is nothing that gives the FPC any direct control over the operations of its department. To the contrary, state statute and the MCO indicate that day-to-day operations of the FPC are the responsibility of the Executive Director, and the Executive Director answers to and serves at the pleasure of the mayor. There is no line of authority that reaches from the FPC to its department employees. Finally, the CSC’s rules and regulations apply to FPC employees as they are not listed in the exception to CSC jurisdiction in sec. 63.27, stats.

⁴ The Executive Director and the staff who work under the Executive Director qualify as a “department” as described in state statute Chapter 65, as well as Chapters 18 and 314 of the MCO.

La Keisha Butler, FPC Executive Director
May 3, 2019
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Very truly yours,



Grant F. Langley
City Attorney



Benjamin J. Roovers
Assistant City Attorney

c: Tom Barrett, Mayor
Jim Owczarski, City Clerk

1095-2019-767:259076

FIRE AND POLICE COMMISSION EXECUTIVE DIRECTOR

Recruitment #1411-5564-001

List Type Exempt

Requesting Department FIRE AND POLICE COMMISSION

Open Date 11/7/2014 11:59:00 PM

Filing Deadline 11/28/2014 11:59:00 PM

HR Analyst Marti Cargile

INTRODUCTION

THIS POSITION IS EXEMPT FROM CIVIL SERVICE AND IS PART OF THE MAYOR'S CABINET.

ABOUT THE MILWAUKEE FIRE AND POLICE COMMISSION

The Fire and Police Commission (FPC) was established in 1885 by state law and is one of the oldest police oversight agencies in the nation. The Commission's authority and responsibility are set forth in Wisconsin Statute Section 62.50, the Milwaukee City Charter Chapter 22.10, and the Milwaukee Code of Ordinances Chapter 314. The seven citizen board members are appointed by the Mayor of Milwaukee and approved by the Common Council.

The Fire and Police Commission (FPC) was established in 1885 by state law and is one of the oldest police oversight agencies in the nation. The Commission's authority and responsibility are set forth in Wisconsin Statute Section 62.50, the Milwaukee City Charter Chapter 22.10, and the Milwaukee Code of Ordinances Chapter 314. The seven citizen board members are appointed by the Mayor of Milwaukee and approved by the Common Council.

The mission of the FPC is to ensure that the Fire and Police Departments are prepared to protect the lives and property of the citizens of the City of Milwaukee by monitoring the quality and effectiveness of Fire and Police Department policies, practices, and outcomes. Specific functions of the Commission include:

- establishing recruitment and testing standards for positions in the Fire and Police Departments and appointing all employees of the two public safety departments;
- hearing appeals by members of either department who have been disciplined by their Chief;
- independently investigating and monitoring citizen complaints; and
- disciplining employees for misconduct.

Over the years, the FPC has utilized numerous strategies to provide effective public safety services to the residents of Milwaukee. These strategies include performing policy review and analysis concerning fire and police services, streamlining and expanding a mediation program to expedite the complaint process and increase citizen confidence, monitoring and auditing complaints and investigations conducted by the Fire and Police Departments, and developing a community relations plan to enhance communications with the public.

The Milwaukee Fire and Police Commission is a member of the National Association for Civilian Oversight of Law Enforcement (NACOLE) and has adopted its Code of Ethics. For more information, visit www.milwaukee.gov/fpc.

ABOUT MILWAUKEE

Located on the western shore of Lake Michigan, Milwaukee — “City of Festivals” — has old world charm and a rich cultural life. Home to 600,000, Milwaukee has a diversified economy built on industrial, financial, high-tech, and service sector jobs. Milwaukee is the major medical, financial, and educational center for the State of Wisconsin and offers an array of arts, entertainment, sports, and recreational opportunities to meet every taste.

PURPOSE

The Fire and Police Commission (FPC) Executive Director provides leadership, guidance, and coordination in public safety matters as a member of the Mayor’s cabinet and as chief administrator of the functions performed by the citizen Board of Fire and Police Commissioners. The FPC Executive Director is responsible for all policy, financial, operational, and strategic matters of the Fire and Police Commission.

ESSENTIAL FUNCTIONS

- Monitor daily operations of the fire and police departments, and provide administrative, policy, and operational leadership, guidance, and expert advice to the citizen board, mayor, police chief, fire chief, public officials, and community members.
- Provide guidance and direction to staff and professional consultants in the administration and execution of all recruitment, testing, and hiring functions and activities of the police and fire departments in accordance with applicable state statutes and FPC rules.
- Manage the citizen complaint program, audit police internal investigations, perform independent investigations of police misconduct, advise and direct internal affairs and commission investigators during investigations of misconduct, oversee the mediation of specified complaints, and determine the final disposition or referral for adjudication.
- Independently monitor and audit police investigations, and provide a 24/7/365 on-call field response for all officer-involved firearms discharges that involve death or bodily injury, in-custody death of a person, and other critical incidents and matters of public concern, and provide an independent investigation and public report of such incidents.
- Establish and maintain effective working relationships and serve as the point of contact and public information liaison for news media, community members, elected officials, and other diverse public and private agencies.
- Serve as chief administrator for the seven-person citizen board of fire and police commissioners. Guide board members and develop the board agenda in carrying out its statutory functions of overseeing and exercising final authority on all aspects of civilian oversight of the policies, discipline, organization, hiring and promotion, and daily operations of the police and fire departments.
- Provide legal review and analysis to identify issues and take proactive measures to minimize litigation in all aspects of personnel management, test development and examinations, hiring and promotions, disciplinary actions, and monitoring of the daily operations, policies, and training of the fire and police departments.

Fire and Police Commission Executive Director

- Oversee the disciplinary appeals process and quasi-judicial administrative hearings for all sworn and civilian employees.
- Manage the daily operations of the department, including budget development and administration, personnel management, and supervision of staff.
- Oversee the operations of the City of Milwaukee Office of Emergency Management and Homeland Security, including disaster preparedness and response. Provide oversight of Urban Areas Security Initiative (UASI) and other multi-million dollar federal grant allocations and expenditures.

MINIMUM REQUIREMENTS

1. Bachelor's Degree in criminal justice, public administration, or a closely related field from an accredited college or university required. A Juris Doctor (J.D.) degree from an American Bar Association (ABA) approved law school highly desirable.
 2. Five years of increasingly responsible managerial experience in a civilian oversight, criminal justice, investigative, or legal setting performing work relating to this position.
 3. Experience working with multicultural/multiethnic communities and demonstrated success in bridging community and institutional concerns about fairness and justice issues.
 4. Valid Driver's License at time of appointment and throughout employment.
- Equivalent combinations of education and experience that provide the applicant with the knowledge, skills, and abilities required to perform the job will be considered.*

This non-civil service position is appointed by the Mayor and requires confirmation by the Milwaukee Common Council.

KNOWLEDGES, SKILLS, ABILITIES & OTHER CHARACTERISTICS

KNOWLEDGE OF:

- Principles and practices of program planning, management, administration, and budgeting.
- Principles of criminal law, constitutional law, and law enforcement liability.
- Principles of law enforcement policy development and evaluation, training and instruction, and work performance assessments.
- Relevant employment laws, including discrimination and labor laws, relevant administrative rules, and effective disciplinary policies and procedures.
- Public records and open meetings laws.
- Methods and techniques of research, policy review, data analysis, and evaluation.
- Principles and practices in the intake and review of complaints and methods of complaint resolution.
- The capabilities of information technology to improve organizational effectiveness.

SKILL TO:

- Take responsibility for program/policy development, implementation, and monitoring activities.
- Establish long range objectives, strategies, and actions to achieve those objectives.
- Identify measures or indicators of system performance and the actions needed to improve or correct performance.

Fire and Police Commission Executive Director

- Oversee and monitor the investigation of sensitive matters in unionized public agencies.
- Express ideas clearly and confidently one-on-one and before groups, committees, and the media.
- Write effectively for a variety of audiences.
- Establish effective working relationships with diverse members of the public, colleagues, elected officials, and representatives of various agencies.
- Oversee the development and execution of community outreach plans.

ABILITY TO:

- Exercise strong executive level leadership and function successfully as a cabinet member in a challenging political, fiscal, and legal environment.
- Work independently, fairly, and objectively among opposing interests.
- Facilitate, mediate, and resolve complex and sensitive issues brought forth by concerned individuals.
- Define issues, analyze problems, evaluate alternatives, and develop sound conclusions and recommendations in accordance with laws, regulations, rules, and policies.
- Plan, organize, set priorities, and exercise judgment within area of responsibility.
- Build a successful team through effective hiring, management, training, and coaching.
- Understand and interpret City rules, regulations, policies, and procedures and local, state, and federal legislation pertaining to areas of assigned responsibility.
- Serve the public with honesty and integrity.

CURRENT SALARY

The minimum appointment rate is \$103,841 annually for City of Milwaukee residents and \$101,294 for non-residents. Appointment above this rate is possible based on employment and salary history.

SELECTION PROCESS

Screening for this position will be based on an evaluation of each applicant's education, experience, and professional accomplishments. The City of Milwaukee reserves the right to consider only the most qualified candidates for this position. Additional information about the selection process will be shared with individuals invited to participate.

ADDITIONAL INFORMATION

BENEFITS

The City of Milwaukee provides a comprehensive benefit program that includes a defined benefit pension plan; 457 deferred compensation plan; health and dental insurance; long-term disability insurance; group life insurance; tuition reimbursement; and paid vacations, holidays, and sick leave.

As of May 20, 2020

Common Council

Mayor

Fire & Police Commission
(Steven DeVougas
Nelson Soler
Anna Wilson
Angela McKenzie
Fred Crouther
Everett Cocroft
Raymond Robakowski
Vacant 2x)

FPC Executive Director
(Griselda Aldrete)

Emergency Management & Communications Director
(Kyle Mirehouse)

Program Assistant II
(Vacant)

Administration

Risk Management

Legal

Research

Staffing Services

Investigations

Community Engagement

Audit

Chief of Staff
(Tammy Majewski)
Program Assistant I
(Elizabeth Moore)
Program Assistant I
(Jasmine Agrait)
Program Assistant III
(Renee Keinert)

Risk Manager
(Kari Gipson)

Research and
Policy Analyst
(Vacant)

Compliance Auditor
(Jack McNally)
Paralegal
(Niko Triggs)

Investigator
(Diana Perez)
Investigator
(Vacant)

Community Outreach
Coordinator
(Ana Diaz)

Audit Manager
(Vacant)
Auditor
(Vacant)
Auditor
(Vacant)

Fire and Police Commission
33 Positions Authorized
9 Commissioners (2 Vacant)
24 Staff (10 Vacant)

Staffing Services Manager
(Arvis Williams)
Human Resources Representative
(April Nwandu)
Human Resources Representative
(Vacant)
Recruiter
(Kisha Buford)
Test Administration Coordinator
(Vacant)
Program Assistant II
(Vacant)
Program Assistant II
(Vacant)