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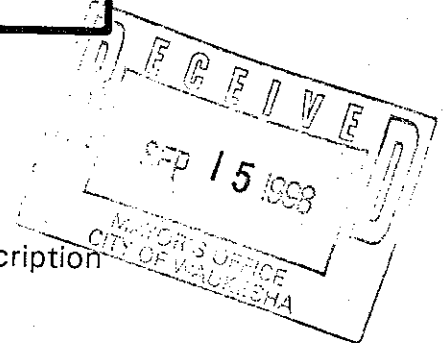
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MEMORANDUM

TO: Mayor Carol Lombardi
FROM: Curt Meitz, City Attorney
RE: Comments on City Administrator Draft Job Description
DATE: September 15, 1998



The Council must first determine what is the objective in creating this position. Is the objective to combine several offices into one and create a finance director? Is an objective to be to provide institutional memory and continuity when there is a change in mayors? Does the Council want a legislative assistant?

Our understanding was that the idea was initiated with the purpose to take the workload off the mayor and designed to assist the mayor in carrying out his/her functions as the chief executive officer. The draft, in our opinion, is not drafted with sufficient clarity to come to those conclusions. There are aspects of the position that have characteristics of a city manager. Also, the position may be interpreted as receiving dual directives from both the mayor and council. (Please refer to the exhibit attached.)

A position may be taken that the job description is not unlike descriptions prepared for other municipalities. That fact should not preclude this office from performing its functions to ensure that a final description does not raise conflicts of law issues and is drafted clearly and concisely and not subject to numerous interpretations.

I have two areas of response relative to the draft. The first is a commentary of the draft as it relates to legal issues and appropriate drafting. The second point of the response presents some suggested language that coincides with the suggestions of the ad hoc committee.

GENERAL SUMMARY OF FUNCTIONS AND DUTIES OF THE ADMINISTRATOR

This section states that "the administrator is responsible only to the mayor and the council for the proper administration of the business affairs of the City...."

Although the person performing such functions would be responsible to the council and mayor, the draft is not clear as to who the administrator would work under the specific direction of. There is a clear inference that the administrator takes directions from both the council and the mayor. This is incompatible with the administration of government under the mayor/council form of government. The mayor is the chief executive officer of the City. The administration of the government is generally separate and distinct from that of the legislative function, the latter of which clearly comes under the purview of the common council.

As this position would be performing administrative functions, it must come under the specific direction of the mayor. To conclude that specific directions are taken from both the mayor and the council would create a bureaucratic nightmare. The clear reality is that the mayor and common council are not always in accord on specific matters. If the position allows for dual directives, what directives does the administrator follow if there is a conflict between the mayor and the council? Undoubtedly, any administrator should provide information and respond to the requests of the common council. However, if the council or any member thereof is troubled by the work of the administrator and expect action, the avenue of recourse must be through the mayor.

GENERAL DUTIES

Paragraph 1 illustrates the problem of the imprecise language of the general summary set forth above. In addition to the problems referenced above, the draft at best blurs the distinction between the executive and legislative branches of government, and at worse would allow the common council to involve itself in the day to day operations through an administrator which clearly, in addition to a separation of powers issues, is not what was envisioned by the Ad Hoc Governance Committee.

Under the mayor/council form of government, the authority granted to this position should not be such that the person is granted greater administrative authority than the mayor. The administrative authority should be limited to that granted the mayor.

Many of the descriptive activities under the General Duties section expand the executive functions and, in addition to other provisions of the draft, grants more authority to the administrator than that vested with the mayor, the chief executive officer. The description also essentially affords the administrator similar powers as

a city manager under the manager form of government set forth in Chapter 64 of the Wisconsin Statutes.

Paragraph 2 indicates that the administrator shall be responsible "for the administration of all day or day operations of the City government including the monitoring of all City ordinances, resolutions, council meetings, minutes and state statutes."

The meaning of the term "monitor" is unclear. Depending on how "monitoring" is defined could have an impact upon the departments. It could result in the infringement of duties vested with other departments either through statutes, ordinances or City policies. The administrator is not directed under this provision to take any action, therefore, this requirement serves little purpose.

Paragraph 3 - Likewise, this paragraph requires the administrator to "prepare a plan of administration including an organizational chart which defines authority and responsibility for all nonstatutory positions of the City...."

What is meant by the term "nonstatutory position of the City?" Specific officers are provided for in sec. 62.09, Wis. Stats. In addition, our form of government provides for the creation of certain boards and commissions through other statutes and ordinances which are not necessarily mandatory in nature but when exercised place authority with various boards or commissions. For example, state law permits a city by ordinance to create a board of park commissioners. The existence of the board is not mandated by state law, therefore is any position created under the authority of the board a "nonstatutory" position?

Paragraph 4 allows the administrator to "establish when necessary administrative procedures to increase the effectiveness and efficiency of city government according to current practices in local government..."

The establishment of administrative procedures is not clearly set forth, is vague and could be construed to usurp department heads, boards, commission, etc. For example, there would be no place for an administrator to establish administrative procedures concerning the internal rules of the Water Utility Commission, the Ethics Board, Board of Zoning Appeals, etc.

Paragraph 5 - This provision allows the administrator to be an "ex-officio nonvoting member of all boards, commissions and committees except as specified by the council or state statutes."

To my knowledge, the mayor has no authority to sit as an ex-officio member of many boards and commissions. (Police and Fire Commission, Board of Zoning Appeals, Ethics Board, Administrative Review Board.) Although particular provisions of state law may not specifically address this ex-officio issue, there is

an implicit requirement and judicial precedence that some of these boards and commissions be totally separate and autonomous from both administrative and legislative branches of city government. The fact that the administrator may not vote would not cure this problem. The administrator could interfere with a board or commission by simply participating in any discussion and could subject a board or commission to subsequent challenges in that the administrator's participation could be construed as influencing the particular board or commission. Being required to attend certain meetings is different than being an ex-officio member of a committee. Further, committees are made up of common council members. Is it appropriate for a person performing administrative functions to sit on a committee of the common council performing legislative functions?

Paragraph 9 - Part of the duties under this paragraph are for the administrator to ensure that "all open meetings rules and regulations are followed." Although the mayor may direct the administrator to undertake such responsibilities, ultimately it is the mayor who shall "take care that City ordinances and state laws are observed and enforced." Sec. 62.09(8)(a), Wis. Stats.

RESPONSIBILITIES TO THE CITY COUNCIL

Paragraph 1 - "The administrator shall attend all meetings of the council, assisting the mayor and the council as required in the performance of their duties."

The question here is the term "as required" - required by whom? Once again the draft raises the issue of whether the administrator takes dual directions from both the mayor and council. Informing and reporting to the council is clearly a viable function. However, any requirements should come through the mayor. If the common council desires a legislative assistant, it should then consider creating such a position. However, it is not our understanding that the purpose of creating this position was to create a legislative assistant.

Paragraph 3 - The position would require the administrator to "assist in the preparation of ordinances and resolutions as requested by the mayor or the council, or as needed."

Without clear explanation of how the administrator would assist in such preparation, this could profoundly interfere with the duties of the Ordinance & License Committee, City Attorney and Clerk's offices.

Paragraph 5 - This paragraph is quite troublesome. This paragraph addresses situations in which the Common Council approval is necessary but the common council cannot meet. The paragraph could be interpreted as meaning that the administrator takes directions from the common council unless the council is

unavailable. Under such circumstances the administrator then would then look to the mayor for direction.

If a particular matter qualifies as an emergency under relevant sections of the Wisconsin statutes, those procedures granting specific authority to the mayor would apply. However, a mayor has no authority to unilaterally perform the functions of the common council as a whole. Therefore, how can an administrator be involved in any manner concerning action that the common council must take? Our office finds this provision not only confusing, but meaningless.

PERSONNEL

The provisions of this section present numerous problems for a variety of reasons. Initially, if this position is to perform functions of a position already provided for by our ordinances, there will have to be various changes to existing ordinances and City policies. However, I am not aware that it was the intention of the City eliminate or take away authority of other department or departments.

Paragraph 1 - Under this paragraph, the administrator would be responsible "for the administrative direction and coordination of all employees of the city according to the established organization procedures, with proper recognition of authority possessed by elected department heads and department heads reporting to statutorily established boards and commission."

This provision is extremely broadly written. As such, it has the potential for creating confusion and multiple interpretations which may give rise to internal administrative conflicts. What role does the department head have if the administrator is responsible for the "coordination of all employees?"

Paragraph 2 permits the administrator to recommend appointments, promotions, suspension or terminations of department heads "under the jurisdiction of the mayor and council."

Under the "jurisdiction of the mayor and council" could be subject to numerous interpretations as virtually any position in the City could be interpreted as coming under the jurisdiction of the mayor and council.

Paragraph 3 - This is the most troubling provision within this draft. In addition, this provision gives more power than that granted a mayor or city manager under Chapter 64, Wis. Stats. This provision effectively strips away the discretion and authority of department heads. In addition, this provision would at least infringe upon the authority, for example, the director of public works to appoint subordinates under sec. 2.02(5) of the Municipal Code; the ability of the Water Utility to engage necessary employment and agents; the ability of the Park/Rec

Board and its appointed director to hire employees under sec. 3.06(18); etc. The provision would also usurp the authority granted to all department heads under sec. B-2 of the City Personnel Policy to appoint subordinates to vacant positions of employment as well as their authority under B-4 to initiate employee separation or termination procedures. It would also usurp department head's authority under sec. B-17 to hire temporary employees under certain situations.

This provisions would create the potential for the proliferation of problems between supervisory employees and staff. Being stripped of his/her authority under this provision, a department head could virtually be stymied from requiring employees to carry out day to day functions if, for example, the employee was in good favor with the administrator despite the position of the department head. Employees could systematically circumvent orders and directives from supervisors and department heads and go directly to the administrator.

To reiterate, the taking away of this fundamental discretion vested with a department head lays the groundwork for the potential of constant internal conflicts, overall inefficient operations of government, and the disintegration of morale.

Paragraph 5 - This provision designates the administrator as the "approving authority for requests by employees to attend conferences." This also circumvents the authority and discretion vested with the department heads granted under D-2 of the Personnel Policy. There are no logical reasons for giving the administrator this power when he or she would undoubtedly lack sufficient knowledge to determine whether a conference on a specific subject would be necessary or helpful in the performance of one's duties.

BUDGETING

Keep in mind that unless a specific charter ordinance is drafted, if the functions of the position would infringe upon the authority of certain department heads, such as the City Comptroller and City Treasurer, the financial functions of the administrator should be separate from that of the statutory duties of the comptroller and clerk/treasurer for at least the next four years.

Suggested Language to Include in a Job Description

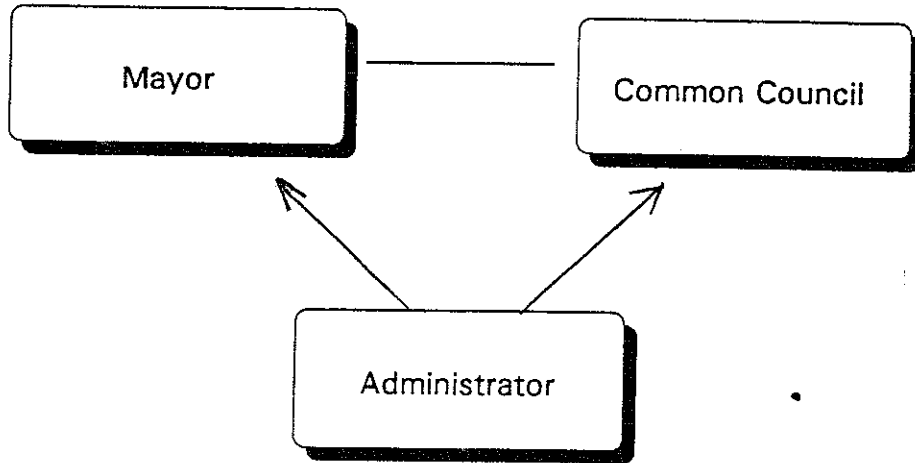
Under our present mayor/council form of government, the administrator or whatever title given to the job description must have its duties flow from that of the chief executive officer. His/her duties must be gleaned or apart of the mayoral duties. What follows below are suggestions from our office relative to the appropriate functions of this position considering our structure of government, existing statutes, ordinances and policies already in existence, and the ad hoc committee report. *

In order to maximize the coordination, cooperation and efficiency of the government of the City of Waukesha, the City Administrator shall assist the Mayor in the performance of the Mayor's duties as chief executive including but not limited to the following:

1. Preparation administrative of the annual budget.
2. Coordinate the functions of all City departments.
3. Coordinate intergovernmental relations.
4. Coordinate constituent relations.
5. Attend meetings of the Common Council, its committees and City boards and commission.
6. Perform such duties as the Mayor may lawfully specify.
7. Perform such other duties as the Common Council may authorize via the adoption of lawful resolutions.
8. Provide information requested by the Mayor and Common Council.

PROPOSED DELINEATION OF AUTHORITY

Dual Directives



PROPER DELINEATION OF AUTHORITY

Directives from Mayor

