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CIVIL SERVICE: Fire and Police Civil Service Commission

MUNICIPAL CORPORATIONS: Legal Service

FIREMEN: Civil Service Commission

POLICE: Civil Service Commission

The act authorizing establishment of a board of civil service commission for fire and police departments does not authorize the commission to retain legal counsel. Absent such a provision, the authority to retain legal counsel is vested in the mayor and the city council.

Opinion No. 4983

June 25, 1976.

Honorable Alfred A. Sheridan
State Representative
29th District
The Capitol
Lansing, Michigan

Citing the Civil Service Commission Act for fire and police departments, 1935 PA 78, MCLA 38.501 *et seq.*; MSA 5.3351 *et seq.*, you have requested my opinion upon the following question:

“ . . . does the Fire and Police Civil Service Commission have the legal right to request that the City furnish them with legal representation of their choice, if needed, in case the Commission is forced to defend themselves and render an opinion against the city.”

1935 PA 78 contains no provision authorizing such civil service commissions to appoint or retain special counsel to advise or represent them. Absent such a provision, the authority to appoint and retain legal counsel is vested in the mayor and the city council; municipal boards and commissions have no independent authority to do so. See Chapter 5, § 3 and Chapter 7, § 20 of the Fourth Class Cities Act, 1895 PA 215, MCLA 85.3; MSA 5.1625, and MCLA 85.20; MSA 5.1677 regarding the appointment and duties of city attorneys. Compare §§ 2(b) and 9(4) of the Fire and Police Department Pension and Retirement Act, 1937 PA 345, respectively MCLA 38.552; MSA 5.3375(2), and MCLA 38.559; MSA 5.3375(9). Municipal charters generally include provisions controlling the circumstances under which legal counsel may be retained, and unless the authority is expressly granted boards and commissions have no such authority. See *City of Flint v Board of Hospital Managers*, 377 Mich 681; 142 NW2d 5 (1966):

“As a general rule, however, the power to employ counsel is not deemed to be incidental to such boards, and does not exist, except as it is expressly conferred, or results by necessary implication from the powers granted.” Annotation, 2 ALR 1212. See 10 McQuillin, *Municipal Corporations* (3d ed), § 29.12, pp 204-209. See, also, *O'Reilly v. Town of Scituate*, 328 Mass 154 (102 NW2d 439).”

The city attorney has the duty and authority to counsel and represent

boards and commissions of the municipality; and § 8 of 1935 PA 78 makes the assistance of the city attorney available to the civil service commission, providing in pertinent part:

"It shall be the duty of the mayor, or principal executive officer, and heads of departments of every city, village or municipality to aid the civil service commission in all proper ways in carrying out the provisions of this act, . . ." (MCLA 38.508; MSA 5.3358)

McQuillin, Municipal Corporations, § 29.12, cited *supra*, states:

". . . It has in numerous cases been decided that where the corporation has regular counsel, charged with the duty of conducting all the law business in which the corporation is interested, contracts for additional or extra legal services are unauthorized. And this rule has frequently been applied to the engagements of attorneys by municipal boards, commissions, departments, or officials, for the performance of services within the proper sphere of activity of the city attorney, or city law department. Thus, it was held under a particular charter that a civil service commission has no power to engage at the expense of the public an attorney to defend it, where it appeared that the city attorney was available for such service. But where the law does not make it the duty of the official to perform the particular legal services required, other attorneys may be employed for this purpose at the expense of the public. However, authority is not wanting to sustain the proposition that additional or extra counsel may be employed in special matters and suits, notwithstanding the corporation has officers charged with the duty of attending to all legal affairs in which the corporation is interested. . . ." [footnotes omitted]

Some municipal charters preclude the appointment of special legal counsel and others authorize such appointment under certain circumstances such as are discussed in McQuillin, *supra*, at § 29.12:

"Contracts for outside legal services are sometimes sustained where there is a vacancy in the office of city attorney; or where the city attorney is ill, disqualified, absent, or unavailable; or where the legal official of the corporation refuses to appear and perform the necessary services; or where he has, or represents, adverse interests; or in case of an emergency. But if an applicable statute, the charter, or an ordinance, forbids the appointment of other counsel, a contract for extra services is void." [footnotes omitted; Emphasis supplied]

Compare: *The City of Flint* case, *supra*; *Smedley v City of Grand Haven*, 125 Mich 424; 84 NW 626 (1900); *Hosner v Village of Leonard*, 163 Mich 92; 127 NW 749 (1910); *Moore v City of Detroit*, 164 Mich 543; 129 NW 715 (1911); and *Fish v City of Dearborn*, 351 Mich 169; 88 NW 413 (1958).

Within the charter provisions of a given community, the mayor and governing body have the sole discretion and authority to appoint and retain special legal counsel apart from the city attorney, law department, or corporation counsel. Therefore, it is my opinion that, while the fire and police civil service commission may request the appointment of special counsel,

it is not entitled to same in the absence of charter authority or the consent of the mayor and governing body.

FRANK J. KELLEY,
Attorney General.

760628.2

CORRECTIONAL INSTITUTIONS: Inmate labor

COUNTIES: Resolution requiring inmates to perform manual labor

SHERIFF: Inmate labor

WORKER'S DISABILITY COMPENSATION ACT: Injuries to county prisoners performing work

A board of commissioners of a county may, by resolution, order prisoners under sentence in a county jail to work upon public projects.

A sheriff may not compel prisoners in his custody to work on public projects in the absence of a resolution by the board of commissioners requiring him to do so.

As custodian of prisoners in his custody, the sheriff may permit prisoners to work on public projects voluntarily.

A county is not liable under the worker's disability compensation act for injuries or illness incurred by county prisoners who suffer injuries or illness in the course of performing labor as a prisoner.

Opinion No. 5061

June 28, 1976.

Hon. Joseph P. Swallow
Circuit Judge
26th Judicial Circuit
Alpena, Michigan

You have requested my opinion on the following questions:

1. Does a sheriff have the authority to promulgate rules requiring county inmates to work on public projects?
2. If not, could inmates volunteer to work on these projects?
3. What liability, if any, could the county incur under the Worker's Disability Compensation Act of 1969, should an inmate be injured working on a county project?

While a sheriff is the custodian of prisoners confined within county jails, RS 1846, c 14, § 75, as amended by 1952 PA 110, § 75; MCLA 51.75; MSA 5.868, the sheriff, as custodian, is not empowered to require county inmates to work on public projects. The power to authorize involuntary inmate work on such projects, by statute, lies solely in the county board of supervisors. The applicable enactment, RS 1846, c 171, § 10, as amended by 1960 PA 71, § 10; MCLA 801.10; MSA 28.1730 reads: