



RISK MANAGEMENT INFORMATION

ROLE WITH IT – INDIVIDUAL VS COUNCIL AUTHORITY

One of the most important distinctions that all councilmembers, whether newly elected members or incumbents, should understand is the role of the individual councilmember versus the role of the entire city council. This article focuses on the many ways councilmembers can overstep their proper roles.

Scenario

The council has ongoing concerns with the municipal liquor store manager. Citizens complain the store is closed when it should be open. There are even reports the staff drinks on the premises. One councilmember decides to address the situation herself. She continuously stops by the store and even drives by the manager’s house to make sure he is not home when he should be working. During one visit to the store, the councilmember finds the staff, including the manager, drinking in the back of the store. Knowing the council will agree, she terminates the manager on the spot. To make this situation easier, she also negotiates a severance package with him. The councilmember then relates the incident to several friends, making some exaggerated descriptions of what happened.

Obviously, the liquor store manager’s actions raise many liability concerns for the city. However, the councilmember’s actions are also problematic because she acted beyond the scope of her authority.

Did the councilmember have the authority to investigate/terminate the store manager?

No. In Minnesota, a council’s powers are derived from state statutes or city charters. In statutory Standard Plan and Plan A cities, the statutes give the entire council control over city matters, including the power to control city finances, to make contracts, to enact ordinances, and to oversee city personnel. For example, Minn. Stat. § 412.221 lists the specific powers of the “council,” and Minn. Stat. § 412.201 states that all contracts must have council approval. The statutes do not allow an individual councilmember to investigate employees or terminate employment. (Plan B cities are discussed below.)

In charter cities, the charter dictates a councilmember’s role. Minn. Stat. § 410.16 allows charter cities to adopt any form of government as long as it is not inconsistent with state statutes or the state constitution. In almost all cities, charters give authority to the council rather than to individual councilmembers. However, councilmembers from charter cities should consult their charters to determine their proper roles.

This material is provided as general information and is not a substitute for legal advice.
Consult your attorney for advice concerning specific situations.

Could the council delegate the authority to investigate/terminate the liquor store manager?

Yes and no. Individual councilmembers can perform any duty the council legally assigns to them. However, a statutory city council cannot delegate any discretionary powers, defined by the courts as powers involving the exercise of judgment [*Johnson v. State*, 553 N.W.2d 40 (Minn. 1996)]. In this scenario, a statutory city council could authorize the councilmember to investigate the liquor store manager, but not to terminate him. Charter cities cannot delegate any discretionary authority unless the charter specifically allows delegation.

Councilmembers should be careful even when performing duties legally assigned to them. In the above case, the councilmember's actions may have crossed the line into harassment. The councilmember could safely view the employee's time cards, respond to citizen complaints, and probably even stop by the store occasionally. She should not drive by the employee's house.

Learn More

Read more about council authority in:

Handbook For Minnesota Cities

It's available at www.lmc.org.

On a related matter, the League's Research Department often receives calls about whether an individual councilmember can review an employee's private personnel documents. Under Minn. Rule 1205.0400, individuals whose job duties reasonably require access to private data may view the data. Since individual councilmembers do not have authority over city personnel, they cannot access this private information. The council could authorize an individual councilmember to view the data.

Could the mayor investigate/terminate the liquor store manager?

In most cities, no. A frequent misconception is that mayors have more power than other councilmembers. In truth, mayors of statutory cities have very limited additional powers. Outside of a few exceptions, the mayor cannot act without council approval. For example, the mayor is the official head of the city, and he or she speaks for the city government and presides over council meetings. The mayor also breaks a tie vote when filling council vacancies, and can make some other appointments such as park board members subject to council approval. The mayor has no individual authority over city staff.

A majority of charter cities have a weak-mayor form of government, in which the mayor's powers are generally no greater than those of other councilmembers. A few charter cities give the mayor limited additional powers such as control over the police department. Four charter cities—St. Paul, Duluth, St. Cloud, and Northfield—follow a strong-mayor format where the mayor has administrative authority over city matters, including city personnel. Mayors of these cities would probably be able to investigate and remove employees without council approval. Mayors in charter cities should review their charters to determine the extent of their authority over employees.

Can the councilmember negotiate a severance package with the liquor store manager?

No. Minn. Stat. § 412.201 states that the "council" must authorize contracts. This power cannot be delegated [*Jewell v. Bertha*, 97 N.W. 424 (Minn. 1903)]. Councilmembers from charter cities

would want to consult their charters, but most charters probably would not authorize an individual councilmember to execute contracts. Fortunately for cities, Minnesota case law holds that a city is not bound by a contract made by an individual councilmember. *Id.* The full council could later ratify the contract. If the council does not ratify the contract, the individual councilmember could potentially be liable for claims such as detrimental reliance or promissory estoppel. Accordingly, all councilmembers should be clear when speaking with individuals interested in contracting with the city that only the full council can enter into a contract.

What about Plan B Cities?

Plan B cities have a council-manager form of government. A number of charter cities also use this structure. Like Standard Plan and Plan A cities, the council exercises policy-making and legislative authority. But in Plan B cities, the council delegates administrative control to the city manager, who then implements the council's directives. For example, the council appoints the manager who, in turn, appoints and supervises the city staff. A city manager is the city's purchasing agent for contracts under \$15,000. Therefore, in a Plan B city, the city manager, rather than the council or an individual councilmember, would be the proper person to investigate the liquor store manager and terminate his employment.

City managers should not be confused with city administrators. The city administrator position is a position created by council ordinance or resolution, not by statute. The duties of the administrator will vary from city to city, with some administrators also serving as city clerk. A statutory city council cannot delegate any discretionary authority to a city administrator. A charter city council may do so only if the charter allows delegation.

Is there any potential personal liability for the council member?

The doctrine of official immunity protects public officials from suits based upon discretionary actions taken in the course of their official duties. For example, a councilmember could not even be sued over the question of calling for special assessments. Additionally, Minn. Stat. § 466.07 requires cities to defend and indemnify councilmembers for any suit arising from their official duties. Neither official immunity nor the statute applies when a councilmember acts with malice or in bad faith. These doctrines may not protect the councilmember in the above scenario because she was acting outside the scope of her duties.

Learn More

Read more about liability coverage for elected officials in:

- *LMCIT Bond Coverage*
- *LMCIT Liability Coverage Options: Liability Limits, Coverage Limits, and Waivers*
- *Workers' Compensation Coverage For City Officers*

They are available at www.lmc.org.

Of particular concern for the councilmember in this situation is a defamation claim. A defamatory statement is one that is false, made to a third party, and harms the reputation of the subject. A councilmember is protected if the statement is made in good faith during a proper occasion and is based on probable cause. The proper place to make even true statements would be at a council meeting.