

**CITY OF MADISON
CITY ATTORNEY'S OFFICE
Room 401, CCB
266-4511**

October 26, 1998

OPINION 98-011

TO: Susan J. M. Bauman, Mayor

FROM: Eunice Gibson, City Attorney

SUBJECT: Authority of Board of Police and Fire Commissioners To Employ a Hearing Examiner to Hear Police and Fire Department Disciplinary Cases Brought Under Sec. 62.13(5)(b), Wis. Stats.

You have asked my opinion as to whether or not the Board of Police and Fire Commissioners may employ a hearing examiner to hear police and fire department disciplinary cases brought under Sec. 62.13(5)(b), Wis. Stats. I believe they may do so, subject always to the budgetary authority of the Common Council.

As you know, the Board of Police and Fire Commissioners is a body created by the statutes. Thus, any proposed change in procedure must not only be constitutional, but it must be authorized by Sec. 62.13, Wis. Stats., which creates the Board and outlines its powers.

In 1962, then-Attorney General John W. Reynolds issued an opinion holding that a state agency could employ a hearing officer without violating the rights of the parties to a fair hearing and to due process of law. 51 OAG 70, 71 (1962). Since that time many state agencies have been authorized to employ hearing examiners.

Sec. 62.13(5), Wis. Stats. creates the procedure under which the police and fire chiefs, board members, or any aggrieved person may file charges against a police officer or firefighter. When such charges are filed, the board must hold a public hearing on the charges, determine whether or not they are sustained, and, if they are sustained, impose a penalty. Persons charged may be represented by counsel at the hearing, and the board may compel the attendance of witnesses by subpoena.

Sec. 62.13 (5)(g), Wis. Stats., provides:

(g) Further rules for the administration of this subsection may be made by the board.

Page 2
October 26, 1998

In my opinion, such rules, if adopted by the board, could include authorizing a hearing examiner, whether the examiner be an employee or one or more members of the board, to hear evidence, review documents and recommend a decision for the approval of the board.

Since the Common Council has authority over any expenditure made by or on behalf of the board, the board could not enter into any contract or hire any employee without following regular City procedure for employment and contracting.

Eunice Gibson
City Attorney

eg:cam

CAPTION: The Board of Police and Fire Commissioners may employ a hearing examiner to hear evidence and recommend a decision in police and fire disciplinary cases.

cc: Gale Dushack, Comptroller
Ray Fisher, City Clerk

Page 3
October 26, 1998

bcc: City of Madison Home Page
Circulation to Staff
Central Opinion Book
Attorney Book
File