

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

November 19, 1998

OPINION 98-012

TO: Gale Dushack, Comptroller

FROM: Eunice Gibson, City Attorney

SUBJECT: **Budget Amendments**

You have asked whether the applicable statutes and ordinances permit a proposed budget amendment to be effective. The amendment calls for the Common Council to review a staff study, not yet completed, and, next year, amend certain City agency 1999 budgets to provide for certain services, by a simple majority vote. In my opinion, such a provision is prohibited.

Sec. 2.19, Madison General Ordinance (MGO), provides:

No appropriation shall be made or voted from any City fund for any purpose except upon an affirmative vote of three-fourths (3/4) of all members of the Common Council.

This is the provision that is customarily relied on to require that all budget amendments be made by a 3/4 vote. Most of the time, when the budget is amended to add a service or a purchase or an expense of some kind, the funds are appropriated from the contingency fund, sometimes called the contingency reserve or contingent reserve. Another ordinance, Sec. 4.03, MGO, specifically requires a 3/4 vote for appropriations from the "contingent" fund. Either way, a 3/4 vote is required for an appropriation.

The amendment does not state specifically whether the contemplated future budget amendment would appropriate funds from the contingent reserve. It might conceivably transfer the funds from an agency budget to the budget of another agency chosen to perform the new service. In my opinion, that is still an appropriation and Sec. 2.19, MGO, still applies.

The Council has the authority to change Sec. 2.19, MGO, if it chooses, but the extent of the change is limited by the statutes. Sec. 65.90(5)(a), Wis. Stats., requires that ". . . the amounts of the various appropriations and the purposes for such appropriations stated in a budget . . . may not be

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changed unless authorized by a vote of two-thirds of the entire membership of the governing body of the municipality . . ."

I believe that as long as Sec. 2.19, MGO, remains in effect, it has to be followed in a situation such as that proposed in the Amendment. Finally, as you know, the budget is a resolution. It might be asked, since both the ordinances and the budget are Council action, why can't the budget take precedence or be interpreted as an exception to the ordinance? There is case law in Wisconsin that makes it very clear that an ordinance can only be changed by an amendment to the ordinance. See Cross v. Soderbeck, 94 Wis. 2d 331, 338, 288 N.W. 2d 779 (1980), citing 6 McQuillin, The Law of Municipal Corporations, (3d ed. 1969), p. 199, sec. 21.04. The Council is without power to override an ordinance by a resolution, even by the budget resolution.

Eunice Gibson
City Attorney

eg:cam

CAPTION: Existing statutes and ordinances do not permit budget provisions which call for future appropriations by a simple majority vote of the Common Council.

cc: Mayor Susan J. M. Bauman
Ray Fisher, City Clerk
Members of the Common Council

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