

A  
LEAGUE  
MANUAL

# HANDBOOK FOR WISCONSIN POLICE AND FIRE COMMISSIONERS



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*League of Wisconsin Municipalities  
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## PREFACE

Police and fire commissions date back to a time, a century ago, when the Wisconsin Legislature enacted a measure establishing such commissions as municipal bodies. Recognizing the critical role of police officers and firefighters in assuring the public's safety, the Legislature believed that by creating an independent body, one that no political party could come to dominate, the selection and removal of police officers and firefighters would be insulated from the vagaries of partisan politics.

Although the number of commissions serving Wisconsin communities (approximately 150 cities, villages and towns have commissions) and the complexity of problems commissions deal with have changed, the purpose, role and responsibilities of police and fire commissions are essentially unchanged from the 1890s.

This handbook is a revised edition of one published by the League of Wisconsin Municipalities in March 1993. It reflects important changes affecting disciplinary actions and the role of the courts in reviewing commission decisions in such matters; these changes became effective after the enactment of Act 53 by the 1993 Wisconsin Legislature.

The text also now cites the state statutes governing topics as they are presented in the handbook and the appendix contains two new additions. One offers all the pertinent passages in Chapters 60, 61 and 62, *Wisconsin Statutes*, related to police and fire commissions and joint commissions. The other addition is a sample form, along with instructions for its use, that commissions might consider using in filing complaints against a police officer or firefighter.

Views expressed in this handbook are not necessarily those of, or endorsed by, the Wisconsin League of Municipalities. The author accepts responsibility for errors or omissions the handbook may contain.

The encouragement and contributions of Curtis Witynski, legal counsel to the League, are deeply appreciated; Curt reviewed the text, offered valuable suggestions for additions and changes, and provided useful resource materials. Mary Martin again patiently edited the text in various stages of its development.

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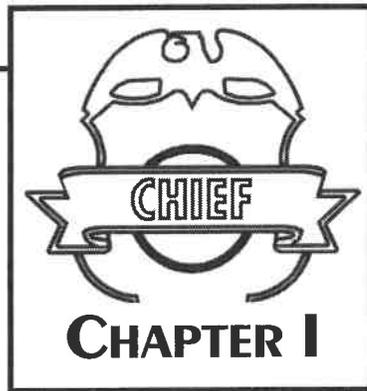
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# Contents

<b>About Commissions In General</b> .....	<b>1</b>
When Commissions Must Be Created .....	1
Number of Commissioners .....	2
Appointment of Commissioners .....	2
Removal of Commissioners .....	2
Commission Officers .....	3
Compensation for Commissioners .....	3
Frequency of Commission Meetings .....	3
Commission Policies and Rules .....	3
Commission Records .....	4
<b>Overview Of a Commission's Duties</b> .....	<b>5</b>
Scope of a Commission's Authority .....	5
Exercise of Optional Powers .....	6
<b>How a Commission Fits into The Organizational Structure of a Municipality</b> ..	<b>7</b>
Organizational Structure of Cities .....	7
Cities Served By a Firefighters' Association .....	9
The Optional Powers Commission in a Wisconsin City .....	10
Organizational Structure of Villages and Towns .....	12
The Optional Powers Commission in a Village .....	13
Villages and Towns Served By a Firefighters' Association .....	14
<b>Joint Commissions</b> .....	<b>17</b>
Purpose and Responsibilities .....	17
<b>Selecting and Appointing Personnel: The Recruitment and Screening Phase</b> .19	
Overview .....	19
Pre-Recruitment Phase .....	21
Recruitment And Screening Phase .....	22
<b>Selecting and Appointing Personnel: Testing, Selection and Appointment</b> ..	<b>29</b>
Overview .....	29
Testing Phase .....	30
Oral Interviews .....	31
Background Investigations .....	33
Polygraph Testing .....	33
Medical Examinations .....	34
Announcing Appointments .....	36
Probationary Appointments .....	36
<b>Hiring a Chief</b> .....	<b>39</b>
Importance of the Task .....	39
The Element of Time .....	39
Determining the Qualities of a Chief Officer .....	39
Selection Techniques .....	41
The Utility of Probationary Appointments .....	45
The Role of the Departing Chief .....	45
Appointing a Public Safety Director .....	45

<b>Promotions</b> .....	<b>47</b>
Overview .....	47
Rules Governing Eligibility .....	48
Rules Governing Testing Requirements .....	48
Rules Governing Probationary Appointments .....	48
<b>Discipline And Complaints</b> .....	<b>51</b>
Overview .....	51
Impact Of 1993 Act 53 .....	51
Disciplinary Actions Initiated by a Police or Fire Chief .....	53
Disciplinary Actions Initiated by the Commission or an Individual .....	55
Procedural Due Process .....	55
Commission Hearings .....	56
Post-Hearing Actions .....	58
Recording Commission Hearings .....	59
Judicial Review .....	60
Legal Counsel and Representation .....	61
<b>Open Meetings And Public Records</b> .....	<b>63</b>
Key Provisions in Wisconsin's Open Meetings Law .....	63
Key Provisions in Wisconsin's Public Records Law .....	66
<b>Municipal And Public Official Liability</b> .....	<b>71</b>
Overview .....	71
<b>List of Figures</b>	
Figure 1. Lines of Authority in Wisconsin Cities .....	8
Figure 2. Lines of Authority in Cities Served by Volunteer Firefighters' Associations .....	10
Figure 3. Lines of Authority in Wisconsin Cities .....	11
Figure 4. Lines of Authority in Wisconsin Villages and Towns .....	13
Figure 5. Lines of Authority in Villages and Towns Served by Volunteer Firefighters' Association. (Association formed under Chapter 213, Wisconsin Statutes.) .....	15
Figure 6. Lines of Authority in Municipalities Creating a Joint Commission. ....	18
Figure 7. Appointment Of Police Officers And Firefighters: Sequence Of Events .....	19
<b>Appendix</b> .....	<b>74</b>
Selected Statutory Provisions .....	74
Chapter 60, Towns .....	74
Chapter 61, Villages .....	75
Chapter 62, Cities .....	76
Position Description .....	82
Application for Employment .....	86
Letter of Instructions to Applicants .....	91
Complaint Form .....	93
Notice of Public Meeting .....	97
Request for Access to or Copy of Public Records .....	98



## **ABOUT COMMISSIONS IN GENERAL**

### **WHEN COMMISSIONS MUST BE CREATED**

Under Wisconsin law, cities with a population of 4,000 or more must create police and fire commissions. Cities with a population of under 4,000 may, by ordinance, create a police and fire commission, but are not required to do so. (Wis. Stat. sec. 62.13(2).) Villages are treated differently under state law and in a manner that is sometimes confusing.

Villages with a population of 5,000 or more, but less than 5,500, must provide police protection by selecting from one of several options provided under state law. (Wis. Stat. sec. 61.65(1)(a).) If a village chooses to create its own police department, it may either appoint a police commission or designate a committee to govern the department. However, once the same village reaches a population of 5,500, a board of police commissioners must be created. (Wis. Stat. sec. 61.65(1)(b)2.)

When a village reaches a population of 5,500 it must also provide fire protection services, again selecting from one of several options provided for under state law. (Wis. Stat. sec. 61.65(2)(a).) If a village forms its own fire department, it must create a board of fire commissioners to govern the department. (Wis. Stat. sec. 61.65(2)(b).)

A village that has both a board of police commissioners and a board of fire commissioners may consolidate the two into a single board of police and fire commissioners. (Wis. Stat. sec. 61.65(3g)(a).)

Wisconsin towns, regardless of population, are not required to create police and fire commissions, but may choose to do so; the decision to create a commission is made by the town board of supervisors. (Wis. Stat. sec. 60.57(1).)

If two or more municipalities decide to form a joint police department or a joint fire department, then a joint commission must be created. (Wis. Stat. secs. 61.65(1)(b)l.b., 61.65(2)(b)2. and 62.13(am)(b).)

## NUMBER of COMMISSIONERS

Except for commissions created when a joint police or joint fire department is formed, all commissions must have five members. (Wis. Stat. sec. 62.13(1).) When forming a joint police or fire department, the municipalities involved in the venture decide how many members will be appointed to the joint commission. (Wis. Stat. secs. 62.13(2m)(b) and 61.65(3g)(d).)

## APPOINTMENT of COMMISSIONERS

A mayor, village president or town chairperson appoints the members of a police and fire commission. In a city or village operating under the manager form of government, the manager appoints commission members. Appointments are announced between the last Monday in April and the first Monday in May. (Wis. Stat. sec. 62.13(1).)

A commissioner's term of office is five years. (Wis. Stat. sec. 62.13(1).) Appointees filling vacancies created by the resignation, removal or death of a commissioner serve out the term of their predecessor. Although some ambiguity exists for cities, other than first class cities, mayoral appointments to a police and fire commission are subject to council confirmation. Appointments made by a village president or town chairman are not subject to board confirmation unless required by local ordinance.

Unless residency is required by ordinance, commissioners need not be residents of the municipality they serve. Nor are members of a common council, village or town board barred from serving on a police and fire commission, providing no added compensation is received for services as a commission member. (Wis. Stat. sec. 66.0501(2).)

Copies of appointments to a police and fire commission must be filed with the commission secretary. (Wis. Stat. sec. 62.13(1).) Each commissioner must take the official oath of office and file a copy with the municipal clerk.

Appointments to a joint police or a joint fire commission are made the same way, except that the municipalities forming a joint commission determine the number of commissioners and the term of office each will serve. (Wis. Stat. sec. 61.65(3g)(d) and 62.13(am)(b).)

Although state law does not set a date on which a commissioner's term of office begins, the first Monday in May seems a reasonable date, unless council or board confirmation is required and time is needed to let the confirmation process run its course. (The term of office for members of the Milwaukee Fire and Police Commission begins the second Monday in July, a date set by state law.)

An archaic provision in state law bars more than three members of a police and fire commission from belonging to the same political party. (Wis. Stat. sec. 62.13(1).) This prohibition is a carry-over from an era when partisan politics was more evident in efforts to control municipal affairs and the state legislature was concerned a single political party might come to control appointments to police and fire departments. Determining if an individual is a bona fide member of one political party or another has become more difficult in Wisconsin and this long-standing statutory prohibition is rarely regarded as an important matter today.

## REMOVAL of COMMISSIONERS

While a police and fire commission is an independent body, its members are not immune from removal. Sections 17.12 and 17.16, Wisconsin Statutes, establish procedures for the removal of certain elected and appointed officials. In cities, and in villages requiring that the Board of trustees confirm appointments, a commission member can be removed for "cause," but only after a hearing is conducted by the governing body and a sufficient number of its members agree the facts presented warrant removal. In cities, that number is three-fourths

of the council; in villages, a majority of the board must vote for removal. “Cause” is defined as “inefficiency, neglect of duty, official misconduct or malfeasance in office.” (Wis. Stat. sec. 17.01.) In towns and villages not requiring confirmation of appointments, a commission member can be removed by the governing body without a hearing.

### COMMISSION OFFICERS

Police and fire commissions commonly elect a president, a vice president and a secretary. The election of officers may be an annual event and involve the use of secret ballots. (Wis. Stat. sec. 19.88(1).) Each officer’s duties and responsibilities should be explained as part of the rules adopted by the commission. The adoption of such rules helps eliminate uncertainty about who has authority to call a meeting, who is responsible for giving notice of commission meetings, who sets the agenda for meetings, and who presides when the president is absent.

### COMPENSATION FOR COMMISSIONERS

Although not required by state law, a municipality’s governing body may appropriate funds to support a commission in the discharge of its duties. The appropriation may provide compensation for commission members; this may take the form of a fixed annual salary, per diem payments for each day or part of a day the commission meets, or a combination of the two. The governing body also may provide for the reimbursement of expenses incurred by commission members in the performance of official duties.

### FREQUENCY OF COMMISSION MEETINGS

State law does not specify how often a commission must meet; the frequency of meetings is usually determined by a commission’s need to discharge its duties. A commission might adopt rules calling for monthly meetings, plus additional meetings at the call of the president. An organizational meeting, at which officers are elected, is usually held after the appointment of new commissioners each year. Commission meetings are subject to the Wisconsin Open Meetings Law.

### COMMISSION POLICIES AND RULES

Two key areas of concern need to be considered by a commission in establishing policies and rules. One is the adoption of rules related to the commission’s statutory duties and responsibilities in appointing personnel to a police or fire department; these should include rules governing the:

- ◆ Examination of the physical and educational qualifications of individuals seeking appointment.
- ◆ Use of competitive examinations for appointment to the police or fire department.
- ◆ Approval by the commission, of personnel appointed to the police or fire department.

A second area of concern involves the adoption of rules governing how a commission conducts its business, including:

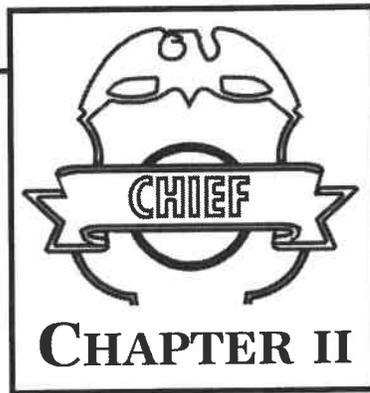
- ◆ Basic organizational rules. These may be thought of as bylaws governing a commission's organization and how it conducts its business. Rules adopted by a commission must not conflict with state law.
- ◆ Rules governing disciplinary actions that may be initiated or reviewed by a commission. Care must be taken that rules and procedures adopted conform with accepted practices in treating disciplinary matters and will withstand scrutiny in the event a court is asked to review a commission's actions.

A police and fire commission might adopt rules and procedures for special situations. For example, commissions exercising optional powers may adopt rules and procedures governing how a police or fire department will be organized and managed. Commissions might also use their rulemaking power to adopt rules that delegate some functions in a disciplinary proceeding to a hearing examiner. *Conway v. Board of Police and Fire Commissioner*, 2003 WI 53, 262 Wis.2d 1, 662 N.W.2d 335.

The Milwaukee Fire and Police Commission has statutory authority to adopt or approve rules governing actual operations of the fire and police departments; in other municipalities operational rules are normally established by the chief of a department.

## COMMISSION RECORDS

A police and fire commission must keep a record of its proceedings. (Wis. Stat. sec. 62.13(1).) Other records also may be created or come into the commission's possession; for example, applications for appointment to the police and fire departments. Commission records are subject to the Wisconsin Public Records Law. The president of a commission is the legal custodian of these records unless another individual, such as the commission's secretary or a municipal employee, is designated to serve as custodian.



## **OVERVIEW OF A COMMISSION'S DUTIES**

### **SCOPE OF A COMMISSION'S AUTHORITY**

The statutory powers, duties and responsibilities of a police and fire commission are significant. A commission has authority to:

- ◆ Appoint, suspend or remove the chief of the police department and the chief of the fire department. (Wis. Stat. sec. 62.13(3).)
- ◆ Approve all appointments made by the police chief and fire chief, including the promotion of subordinates. (Wis. Stat. sec. 62.13(4)(a).)
- ◆ Approve competitive examinations used to judge suitability for appointment of subordinates. (Wis. Stat. sec. 62.13(4)(d).)
- ◆ Approve each list of individuals determined to be eligible for appointment. (Wis. Stat. sec. 62.13(4)(a).)
- ◆ Suspend the chief of a department or subordinates pending the filing and hearing of charges against them. (Wis. Stat. sec. 62.13(3) and (5)(a).)
- ◆ Initiate charges against the chief of a department or any subordinate. (Wis. Stat. sec. 62.13(5)(b).)
- ◆ Hear charges filed against the chief of a department or a subordinate, make findings and determinations, and impose penalties. (Wis. Stat. sec. 62.13(5)(d) and (5)(e).)
- ◆ Hear appeals of disciplinary actions initiated by the chief of a department against any subordinate. (Wis. Stat. sec. 62.13(5)(d).)

## EXERCISE OF OPTIONAL POWERS

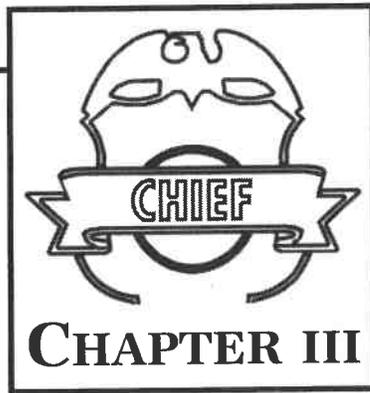
Municipalities may take advantage of provisions found in Wis. Stat. section 62.13(6), authorizing a police and fire commission to exercise added authority, usually referred to as “optional powers.” These include authority to:

- ◆ Organize and exercise supervision over a police or fire department.
- ◆ Adopt rules governing the internal control and management of a department.
- ◆ Purchase equipment and supplies.
- ◆ Audit bills, claims and expenses.

An “optional powers” police and fire commission assumes the responsibilities normally exercised by a mayor, city or village manager, or a village board of trustees in supervising the day-to-day management of a police or fire department. The police and fire chiefs report directly to the commission on all matters related to the management of their departments.

Authority to exercise optional powers can be granted only as the result of a referendum approved by voters in a city or village. A proposal to grant optional powers is placed on a ballot as the result of circulating a petition and obtaining the number of signatures called for in state law. Section 62.13(6), Wisconsin Statutes, details the procedures and conditions that must be satisfied before a commission may exercise optional powers. This provision applies only to cities and villages.

Legal counsel to the League of Wisconsin Municipalities has concluded that a city or village, having granted authority to a police and fire commission to exercise optional powers under the provisions of Section 62.13(6), Wisconsin Statutes, can later withdraw that authority. It has been held that the same procedure used to grant optional powers must be used to revoke these powers; a petition would need to be circulated, the question placed on a ballot and approved by a majority of voters.



## HOW A COMMISSION FITS INTO THE ORGANIZATIONAL STRUCTURE OF A MUNICIPALITY

### ORGANIZATIONAL STRUCTURE OF CITIES

Several statutory provisions, found in Chapter 62, *Wisconsin Statutes*, set cities apart from villages and towns. One is the requirement that each city appoint a police chief and a chief of the fire department; there are no comparable provisions in state law for villages and towns. (Wis. Stat. sec. 62.09(1).) Although a city must appoint a police chief and a fire chief, it does not mean each city must have its own police or fire departments. Cities having a police and fire commission do usually have a police department and many also are likely to have a fire department.

State law designates the mayor as a city's chief executive officer and head of the police and fire departments. (Wis. Stat. sec. 62.09(8)(a) and (8)(d).) In cities operating under the council-manager form of government, the city manager is the chief executive officer and head of the police and fire departments. (Some cities appoint a person to the post of city administrator. The position of city administrator should not be confused with the position of chief executive officer.)

A city's chief executive officer sets policies, makes executive decisions, appoints, removes and directs the work of agency heads. State law specifically provides that the "chief of police shall have command of the police force of the city under the direction of the mayor" and that "the chief shall obey all lawful written orders of the mayor or common council." (Wis. Stat. sec. 62.09(13)(a).)

A mayor's authority does not extend into areas of responsibility assigned by law to a police and fire commission. For example, while a mayor appoints the head of most city agencies and may control appointments and promotions within these agencies, approval of appointments and promotions in the police and fire departments are the exclusive domain of the police and fire commission.

A commission's autonomy in adopting policies, rules, and procedures extends into other areas as well. A city may, for example, adopt rules and procedures governing the recruit-

ment, testing and selection of city employees. But if a commission believes the interests of the police and fire departments would be better served by adopting different rules and procedures for the recruitment, testing and selection of police and fire subordinates, it is free to do so. (Wis. Stat. sec. 62.13(4)(c).)

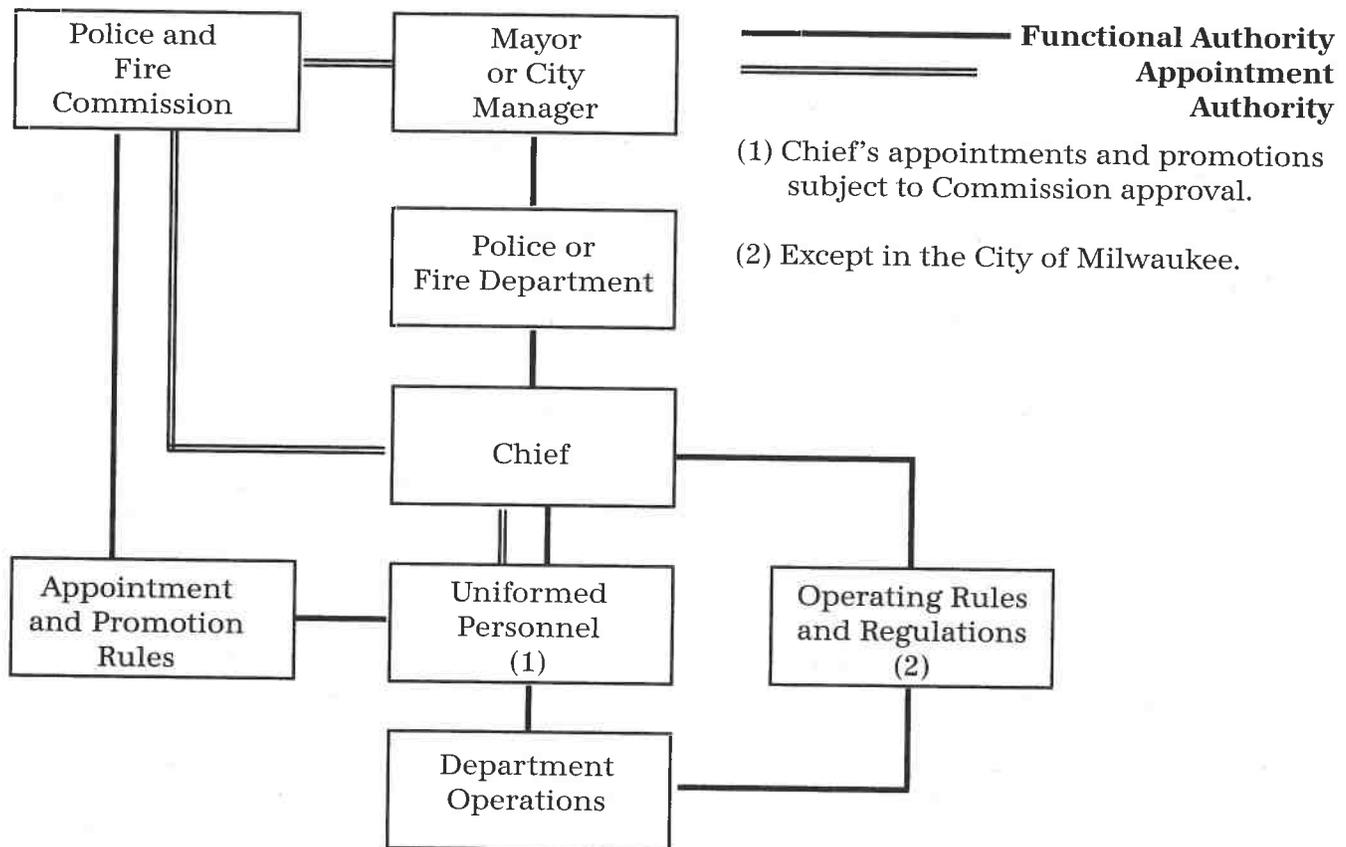
Mayors can, however, influence matters related to the appointment and promotion of police and fire personnel in other ways. As chief executive officer, a mayor is in charge of a city's finances; if a mayor, in an effort to reduce city spending, directs the chief of a police or fire department not to fill a vacant position, the police and fire commission may be powerless to act in the matter.

Because a mayor serves as chief executive officer and statutory head of the police and fire departments, police and fire chiefs occasionally find themselves in a difficult position. Subordinate to the mayor in most matters related to the management of their departments, chiefs are subject to direction from a commission on many important personnel matters.

Figure 1 does not show the important role played by a city's common council; its influence in matters related to the management of both the police and fire departments can be significant. Through its control of a city's fiscal purse strings and involvement in policy making, a common council can affect the structure, management and operations of city agencies. While a common council may not interfere with a police and fire commission in the exercise of the commission's statutory powers, decisions made by a common council sometimes can effectively limit the options open to a commission in meeting its responsibilities.

### FIGURE 1. LINES OF AUTHORITY IN WISCONSIN CITIES

(Police and Fire Commission **does not** exercise optional powers.)



## CITIES SERVED BY A FIREFIGHTERS' ASSOCIATION

Some cities are served by private firefighters' associations, often called volunteer fire departments, and a number of these cities have a police and fire commission. A firefighters' association is organized under the provisions of Chapter 213, Wisconsin Statutes, and also may operate as a non-stock corporation under Chapter 181, Wisconsin Statutes. While the commission's authority over a police department is quite clear, it is not always clear what authority a commission has over association members engaged in fire fighting activities. To complicate matters further, some private associations may provide services to both a city and one or more neighboring municipalities.

It should be noted that nonprofit corporations providing public health or safety services to a municipality and receiving more than half their funds from the municipality are subject to the Wisconsin Public Records Law; this means records of a private firefighters' association are open to public inspection. (Wis. Stat. sec. 19.32(1).)

Members of a firefighters' association elect officers and trustees annually; members also elect a fire chief to be in charge of the association's fire fighting activities. (Wis. Stat. secs. 213.02 and 21.3.08.) The election of a chief usually is not subject to municipal approval. Nor is there any requirement that an elected chief have training or other qualifications for the position.

Usually a city served by a firefighters' association owns the apparatus, such as engines, tankers, aerial or ladder trucks, used in fire fighting operations, and also may own and maintain the physical facility in which fire fighting equipment is stored. The city depends on members of the private association to operate publicly owned fire fighting equipment, eliminating the need to hire and train city employees for fire fighting duties. This arrangement may be formalized by a written agreement between the city and the association.

Dependence on a private association to provide a force of firefighters does not prevent a city from hiring a fire chief or other employees for duties related to fire fighting, fire prevention, inspection and code enforcement, hazardous materials control or emergency services fire departments normally provide. If a chief and other employees are hired, the commission appoints the chief and approves the chief's appointment or promotion of subordinates.

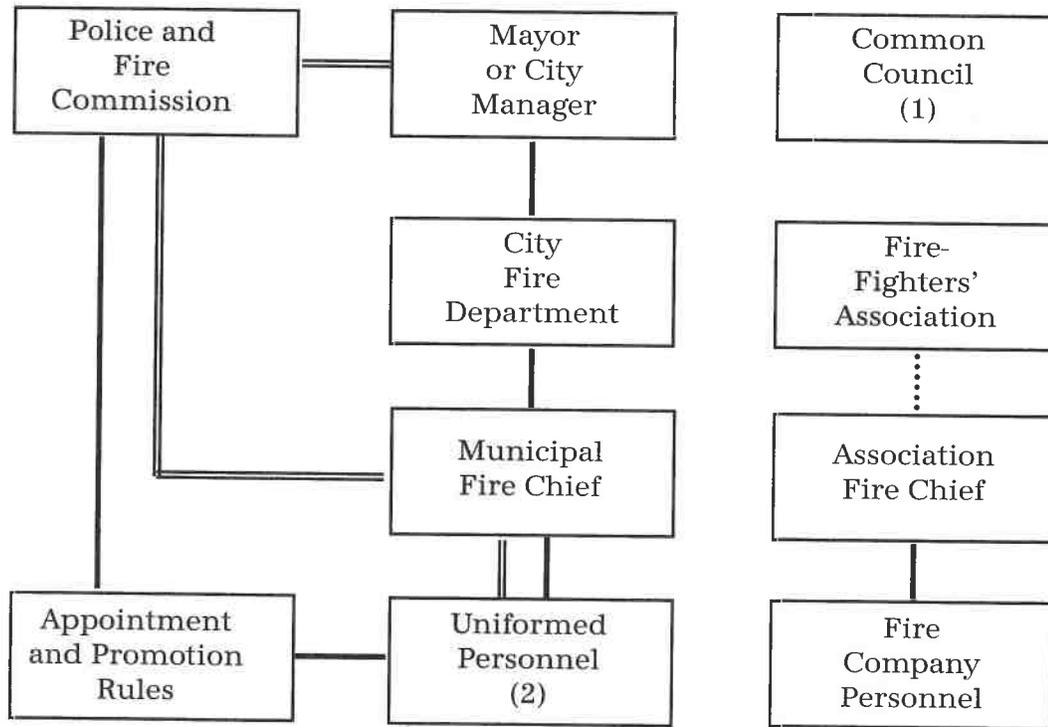
As Figure 2 (page 10) suggests, a city's decision to hire employees to staff its fire department, while contracting with a firefighters' association to provide the bulk of manpower needed for fire fighting operations, may raise questions concerning the control and authority exercised by the city. These points are worth noting:

- ◆ The relationship between a city, as a corporate entity, and a firefighters' association is usually contractual and can be modified or ended.
- ◆ Even if a firefighters' association is organized as a non-stock corporation under Chapter 181, a common council may, at any time and for any reason, adopt a resolution disbanding the association. (Wis. Stat. sec. 213.04.)
- ◆ In any city served by a police and fire commission, the appointment of a municipal fire chief, the approval of appointments made by the chief, and adoption of rules governing appointments, including promotions, remain the commission's responsibility.

A city's need to maintain control over vital municipal services, while relying on private organizations to provide some of these services, has resulted in innovative approaches to minimizing potential problems. One involves establishing, by ordinance, a municipal fire

department and hiring one or more employees to carry out key tasks related to department administration, planning, inspections and code enforcement, equipment maintenance and coordination of services. The city then contracts with a firefighters' association to recruit, train and provide sufficient numbers of personnel to staff and operate city-owned fire fighting apparatus.

**FIGURE 2. LINES OF AUTHORITY IN CITIES SERVED BY VOLUNTEER FIREFIGHTERS' ASSOCIATIONS**  
(Association formed under Chapter 213, *Wisconsin Statutes*.)



————— **Functional Authority**  
 = = = = = **Appointment Authority**  
 ..... **Elective Process**

- (1) Common council approves contract for purchase of services from firefighters' association.
- (2) City Fire Chief's appointments and promotions subject to Commission approval.

### THE OPTIONAL POWERS COMMISSION IN A WISCONSIN CITY

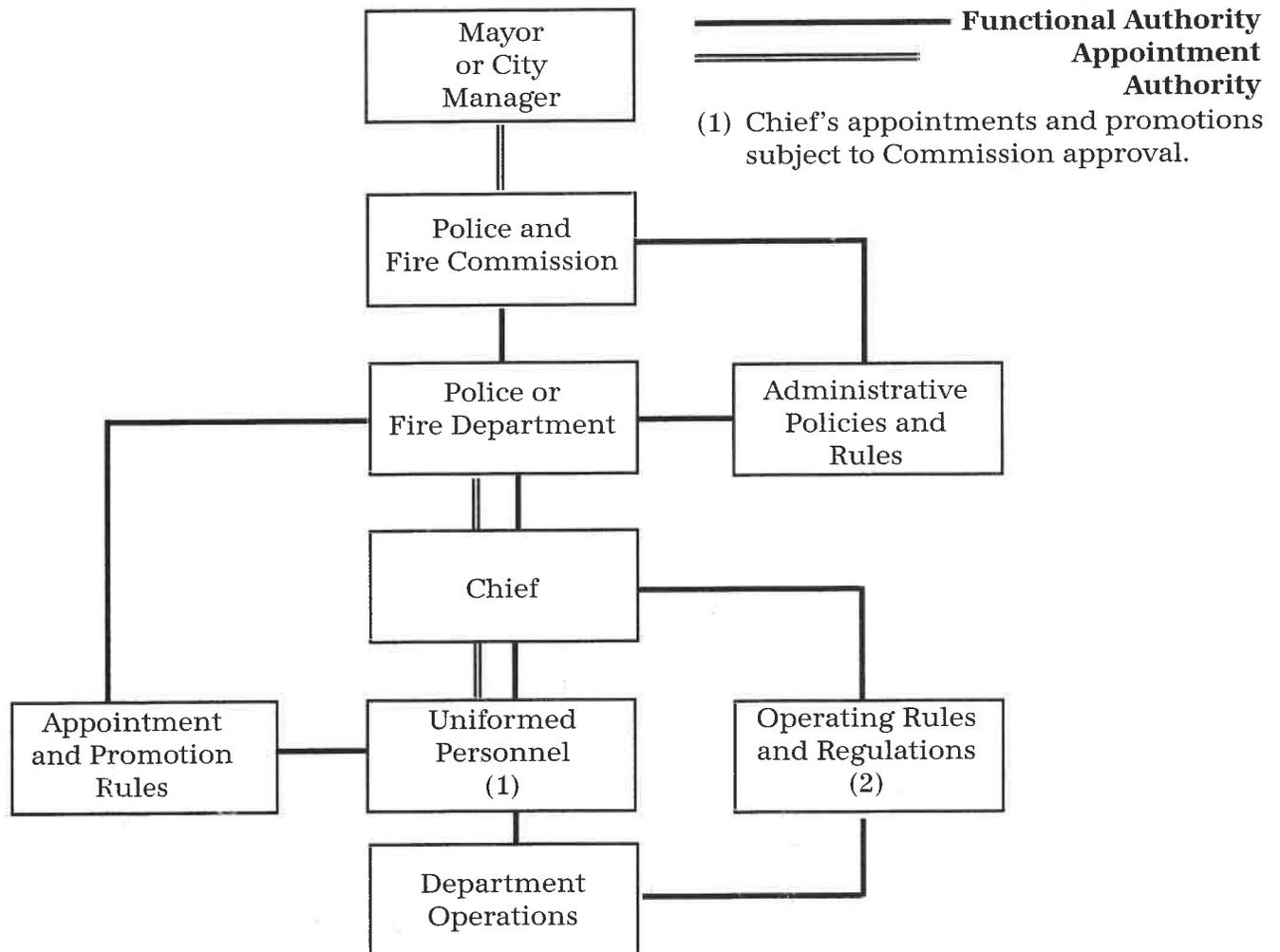
Granting optional powers to a police and fire commission changes the customary flow of authority and exercise of responsibilities in managing police and fire departments. An optional powers commission takes on the executive responsibilities normally exercised by a mayor as chief executive officer and statutory head of the police and fire departments. The mayor no longer plays a direct role in managing either agency; both chiefs report to the commission on matters related to their departments.

Under the provisions of Wis. Stat. sec. 62.13(6), an optional powers commission has authority to:

- ◆ Organize the police and fire departments as deemed necessary to achieve efficiency and effectiveness.
- ◆ Exercise supervision over the chief officers.
- ◆ Adopt policies, rules and regulations governing the management of both departments.
- ◆ Purchase equipment and supplies.
- ◆ Audit and approve payments of bills, claims and expenses.

The only statutory limitation placed on a commission's exercise of powers involves the construction of buildings; while it may be involved in planning police and fire stations, a

**FIGURE 3. LINES OF AUTHORITY IN WISCONSIN CITIES**  
(Police and Fire Commission exercise optional powers.)



commission cannot act on the city's behalf in approving their construction. (Wis. Stat. sec. 62.13(6)(a)2.)

The authority of an optional powers commission to manage a police or fire department is broad and includes adopting administrative policies, rules and regulations governing personnel, financial and general management matters. The chief of each department retains responsibility for establishing rules regulating how personnel in a department perform the technical aspects of their work. A police chief, for example, would be expected to establish operational policies, rules and regulations governing the investigation of crimes, the use of deadly force, and high speed pursuit by police officers. A fire chief would establish operational policies, rules and regulations related to fire suppression activities, inspections and fire code enforcement.

The added tasks taken on by an optional powers commission include directing the preparation of each department's annual budget request. After its approval by the commission, the proposed budget is submitted to the mayor for review and inclusion in the executive budget submitted to the common council. Following the council's adoption of a budget for each city agency, the commission closely monitors administration of the police and fire department budgets.

Development of a long-range capital improvements plan also calls for commission participation in the planning and approval process, including its review and adoption by the mayor and common council.

The relationship between a common council and the city's police and fire departments does not change when a commission is authorized to exercise optional powers; the council continues to control the fiscal purse strings, establish public policy and monitor agency operations through the exercise of legislative oversight. What does change is the increasing frequency with which the commission is likely to come into contact with the common council and its committees on matters related to the management and operations of both the police and fire department.

## ORGANIZATIONAL STRUCTURE OF VILLAGES AND TOWNS

In describing the role and responsibilities of police and fire commissions, villages and towns will be treated together.

Unlike cities, Wisconsin villages and towns do not have chief executive officers; exceptions to this rule are the fewer than ten Wisconsin villages, out of nearly 400 in the state, that operate under the manager form of government. (Some villages appoint a person to the post of village administrator. The position of administrator should not be confused with the position of chief executive officer.)

Unlike mayors, village presidents and town chairpersons are voting members of their respective governing bodies (village board of trustees or town board of supervisors) rather than chief executive officers. And quite unlike a common council, village and town boards exercise both legislative and executive powers. Serving in this unique dual role, a village or town board is in charge of all municipal affairs; this includes overseeing the management of municipal agencies. This means that except in matters which by state law fall within the jurisdiction of a police and fire commission, police and fire chiefs in villages and towns normally report to and take direction from the governing body.

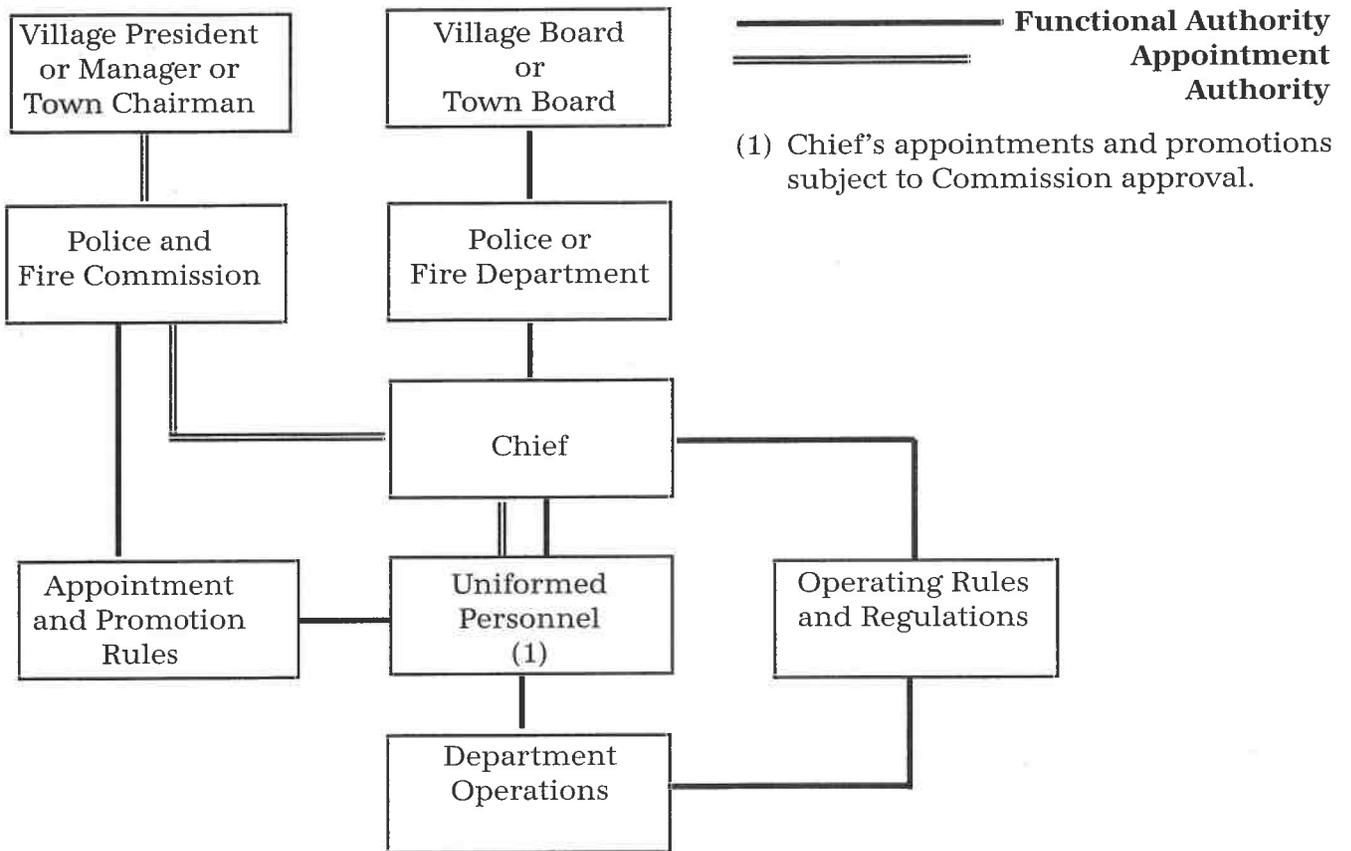
State law requires villages with a population of 5,000 or more to provide police protection. (Wis. Stat. sec. 61.65(1)(a).) Villages with a population of 5,500 or more also must provide fire

protection. (Wis. Stat. sec. 61.65(2)(a).) Towns, on the other hand, need not provide police protection, but every town is required to provide fire protection. (Wis. Stat. sec. 60.55(1)(a).) This does not mean each village or town must create its own police or fire department. Creating a municipal police or fire department is one of several options available under state law.

If a village or a town creates its own police or fire department, and also is required or opts to have a police or fire commission, the department is subject to the commission's jurisdiction in all matters assigned to commissions under sec. 62.13. When two municipalities create a joint police or fire department, the department is under the jurisdiction of the joint commission. (Wis. Stat. sec. 61.65(1)(b) and (2)(b).)

#### FIGURE 4. LINES OF AUTHORITY IN WISCONSIN VILLAGES AND TOWNS

(Police and Fire Commission **does not** exercise optional powers.)



#### THE OPTIONAL POWERS COMMISSION IN A VILLAGE

Villages and towns do differ in at least one important respect: The police and fire commission created by a village can be granted authority to exercise optional powers; a police and fire commission created by a town is not permitted to exercise optional powers. (Wis. Stat. sec. 60.57(3).)

The authority to exercise optional powers is granted as the result of a referendum approved by the voters in a village. A proposal to grant optional powers is placed on a ballot as the result of circulating a petition and obtaining the number of signatures called for in

state law. Wisconsin Statutes section 62.13(6) details the procedures and conditions that must be satisfied before a commission may exercise optional powers.

An optional powers commission exercises most of the executive powers and responsibilities usually discharged by a village board of trustees in the management of police and fire protection services. The police and fire chiefs report to the commission on nearly all matters related to the management of their respective departments. (See Figure 3 for commissions exercising optional powers in a city. The position of village president can be substituted for the post of mayor in showing lines of authority and responsibility for rule-making when a village police and fire commission exercises optional powers.)

Some important features of the traditional relationship between a village board of trustees and the police and fire departments do not change when a commission is authorized to exercise optional powers. The board continues to control the fiscal purse strings, establish public policy and monitor agency operations through the exercise of legislative oversight. These traditional legislative powers are exercised by the governing body of every village; they are not affected by granting a commission the authority to exercise optional powers.

### **VILLAGES AND TOWNS SERVED BY A FIREFIGHTERS' ASSOCIATION**

Many Wisconsin villages and towns are served by private firefighters' associations, often called volunteer fire departments, and some of these municipalities have a police and fire commission. While the commission's authority over a police department is clear, it is not always clear what authority a commission has over association members engaged in fire fighting activities. To complicate matters, a firefighters' association might provide services to one or more neighboring municipalities.

A firefighters' association is organized and conducts its affairs under the provisions of Wisconsin Statutes Chapter 213. It may choose to form a non-stock corporation under Chapter 181. Nonprofit corporations providing public health or safety services to a municipality, and receiving more than half their funds from the municipality, are subject to the Wisconsin Public Records Law; this means that the organization's records are open to public inspection. (Wis. Stat. sec. 19.32(1).)

Members of a firefighters' association elect officers and trustees annually; members also elect a fire chief to be in charge of the association's fire fighting activities. (Wis. Stat. secs. 213.02 and 213.08.) The election of a chief usually is not subject to municipal approval, nor is there any requirement that an elected chief have training or other qualifications for the position.

Usually a municipality served by a firefighters' association owns the apparatus, such as engines, tankers, aerial or ladder trucks, used in fire fighting operations, and may also own and maintain the physical facility in which fire fighting equipment is stored. The village or town depends on members of the association to operate publicly owned fire fighting equipment, eliminating the need to hire and train municipal employees for fire fighting duties. This arrangement may be formalized by a written agreement between the municipality and the association.

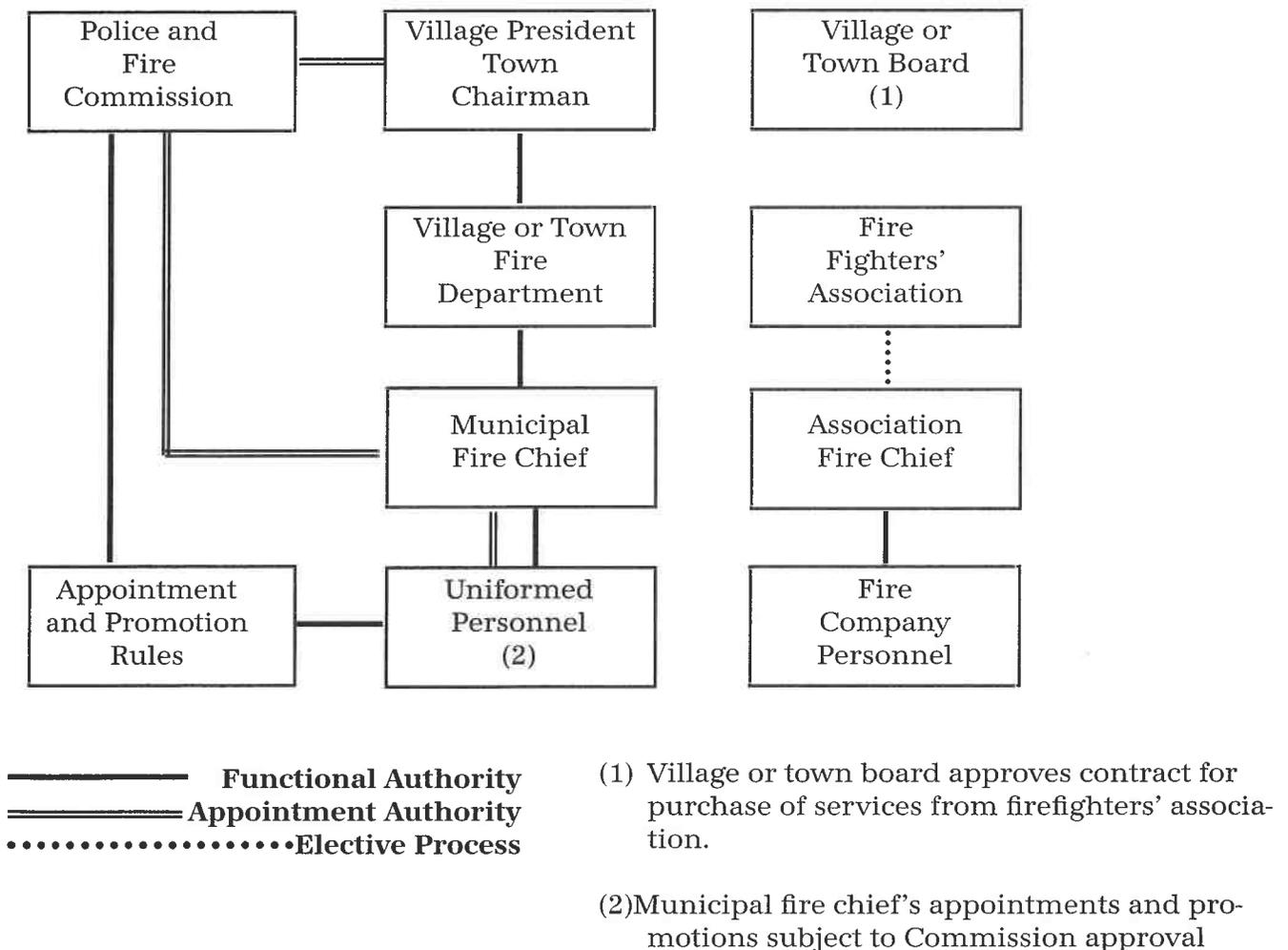
Contracting with a private firefighters' association does not prevent a village or town from hiring a fire chief or other employees for duties related to fire fighting, fire prevention, inspection and code enforcement, hazardous materials control or emergency services fire departments normally provide. If a chief and other employees are hired, the commission appoints the chief and approves the chief's appointment or promotion of subordinates.

A village or town's decision to hire employees to staff its fire department, while contracting with a firefighters' association to provide the bulk of manpower needed for fire fighting

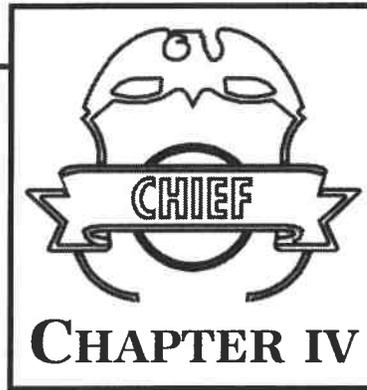
operations, may raise questions concerning the control and authority exercised by the city. These points are worth noting:

- ◆ The relationship between a village or town and a firefighters' association is usually contractual and can be modified or ended.
- ◆ Even if a firefighters' association is organized as a non-stock corporation under Chapter 181, a village board may, at any time and for any reason, adopt a resolution disbanding the association. (Wis. Stat. sec. 213.04.)
- ◆ In any village or town served by a police and fire commission, the appointment of a municipal fire chief, the approval of appointments made by the chief, and adoption of rules governing appointments, including promotions, remain the commission's responsibility.

**FIGURE 5. LINES OF AUTHORITY IN VILLAGES AND TOWNS SERVED BY VOLUNTEER FIREFIGHTERS' ASSOCIATIONS (Association formed under Chapter 213.)**



A village or town's need to maintain control over vital municipal services, while relying on private associations to provide some of these services, has resulted in innovative approaches to minimizing potential problems. One involves establishing, by ordinance, a municipal fire department and hiring one or more employees to carry out key tasks related to department administration, planning, inspections and code enforcement, equipment maintenance and coordination of services. The village or town then contracts with a firefighters' association to recruit, train and provide sufficient numbers of personnel to staff and operate municipally owned fire fighting apparatus.



## JOINT COMMISSIONS

### PURPOSE AND RESPONSIBILITIES

Joint police and joint fire commissions are rare in Wisconsin, yet interest shown in these commissions warrants a review of key statutory provisions that affect them. A key phrase used in state law, pertaining to the creation of joint commissions, is “joint protective services” and it requires some explanation.

Under current law, there is no provision allowing municipalities to combine police and fire departments into single departments called public safety departments. A limited number of municipalities have special legislative authorization to maintain the public safety department they created prior to January 1, 1987.

Current law does, however, permit two municipalities to form either a joint police department or a joint fire department. The “joint protective services” department formed may provide either police or fire services, but not both.

When two or more municipalities form a joint police or a joint fire department, state law requires that a joint police or a joint fire commission be appointed to govern the joint department. How many members will be appointed to serve on the commission, the length of each member’s term, and the apportionment of members between or among the municipalities are matters left to the municipalities. (Wis. Stat. secs. 62.13(2m)(b) and 61.65(3g)(d).)

A joint commission normally is responsible only for the department under the commission’s jurisdiction. A joint board may be given jurisdiction over a separate police or fire department that serves one of the municipalities represented by the joint board. If, for example, two municipalities decide to form a joint fire department, a joint fire commission must be created. If either municipality has a police department and its own police commission, the joint fire commission may be asked by the municipality to also assume responsibility for its police department; if the joint commission accedes to the request, the municipality will not have to maintain a separate police commission. (Wis. Stat. sec. 61.65(3g)(c).)

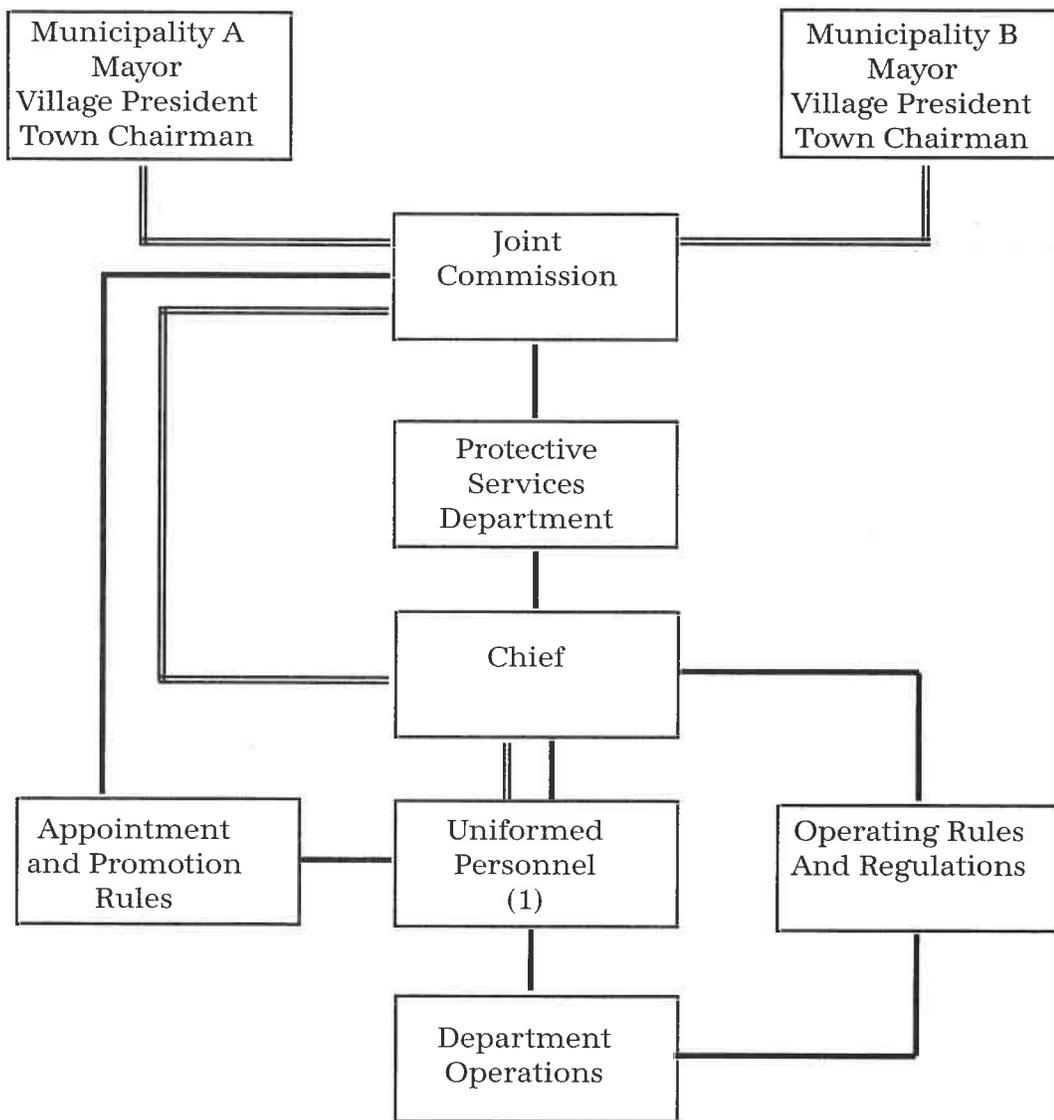
The authority to exercise optional powers can be granted to a joint police or fire commission, but only as the result of a referendum approved by the voters in each municipality served by the joint commission. (Wis. Stat. sec. 61.65(3g)(d)2.) The proposition to grant

optional powers appears on a ballot as the result of circulating a petition and obtaining the number of signatures called for in state law. Section 62.13 (6), Wisconsin Statutes, governs the procedures that need to be followed in granting optional powers.

In all other respects the powers, duties and responsibilities of joint commissions do not differ from those of other police and fire commissions.

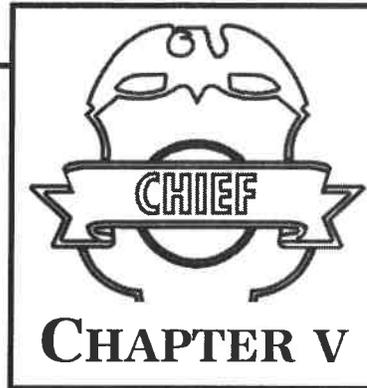
**FIGURE 6. LINES OF AUTHORITY IN MUNICIPALITIES CREATING A JOINT COMMISSION.**

(Commission **does not** exercise optional powers.)



————— Functional Authority  
 ============ Appointment Authority

(1) Chief's appointments and promotions subject to Commission approval.



## **SELECTING AND APPOINTING PERSONNEL: THE RECRUITMENT AND SCREENING PHASE**

### **OVERVIEW**

Figure 7 offers a sequence of events leading to the appointment of police officers and fire-fighters. While the activities described are not expressly required by law, some are related to statutory responsibilities assigned to a police and fire commission, such as approving examinations used in the appointment of subordinates. This chapter discusses each event in the sequence.

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### **FIGURE 7. APPOINTMENT OF POLICE OFFICERS AND FIREFIGHTERS: SEQUENCE OF EVENTS**

#### **Pre-Recruitment Phase:**

1. Rules and policies governing recruitment, screening, testing and selection of applicants are adopted and documented by the police and fire commission. (Wis. Stat. sec. 62.13(4)(c).)
2. Policies governing affirmative action in recruitment and hiring adopted and documented by the commission.

#### **Recruitment And Screening Phase:**

3. Approval given by governing authority (chief executive, governing body or commission exercising optional powers) to fill vacancy.

4. Position description reviewed and updated by department with emphasis on job-related factors that will influence the testing and selection process.
5. Determinations made concerning:
  - a. Tests to be used and minimum qualifying scores or percentiles needed to attain eligibility.
  - b. Special job-related qualifications or requirements applicants will be expected to satisfy.
  - c. Geographic area in which recruitment will be conducted.
  - d. Responsibility for receiving and safeguarding applicant files.
  - e. Responsibility for screening applications.
6. Timetable governing recruitment, testing and selection developed and adopted by commission.
7. Job announcement developed and approved by commission.
8. Position vacancy announced and advertised.
9. Application packet sent to individuals responding to announcement.
10. Completed applications returned, screened and an initial determination made of each applicant's eligibility for further consideration; ineligible applicants notified.
11. Applications submitted by eligible candidates acknowledged; notice given of any deficiencies found in information provided by applicant.
12. List of eligible applicants prepared for commission.

**Testing, Selection and Appointment Phase:**

13. Physical aptitude examination scheduled and eligible candidates notified; examination administered and results reviewed by the commission. Candidates failing to meet minimum standards (score or percentile ranking) notified of their disqualification.
14. Written examination scheduled and eligible candidates notified; examination administered and results reviewed by the commission. Candidates failing to meet minimum standards (score or percentile ranking) notified of their disqualification.
15. Oral interviews scheduled and eligible candidates notified; interviews conducted and results reviewed by the commission. Candidates failing to meet minimum standards notified by commission of their elimination.
16. Background investigation conducted.
17. List of candidates, found to be fully qualified and eligible for appointment, prepared and provided to chief of department for consideration.

18. Chief selects one or more names from list of eligible candidates and submits nominee to commission for approval.
  19. Commission approves or disapproves chief's selection; a formal offer of appointment tendered, contingent on completion of a medical examination (if required).
  20. Medical examinations scheduled, administered and results reported to the commission.
  21. Appointment announced.
  22. Candidates considered but not selected for appointment notified of status; names retained on list of eligible candidates to be used in filling future vacancies.
- 

### **PRE-RECRUITMENT PHASE**

Two critical events occur before recruitment to fill any vacancy can get underway.

**POLICIES AND RULES GOVERNING RECRUITMENT, SCREENING, TESTING AND SELECTION OF CANDIDATES ARE ADOPTED AND DOCUMENTED BY THE POLICE AND FIRE COMMISSION. (WIS. STAT. SEC. 62.13(4)(C).)**

**POLICIES GOVERNING AFFIRMATIVE ACTION IN RECRUITMENT AND HIRING ARE ADOPTED AND DOCUMENTED BY THE COMMISSION.**

Policies and rules adopted by a commission should include, but need not be necessarily limited to:

- ◆ Length of time a list of candidates, determined to be eligible and fully qualified for appointment, will be maintained before a new list is created.
- ◆ Length of the probationary period personnel will be expected to serve, and procedures for terminating or extending probationary periods.
- ◆ Types of tests, designed to measure job-related knowledge and skills, that will be used.
- ◆ Use of psychological tests in screening applicants for appointment.
- ◆ Testing applicants for evidence of drug or alcohol abuse.
- ◆ Types of previous offenses a candidate may have committed that will disqualify the candidate because of bona fide job-related concerns.
- ◆ Choice of a law enforcement agency to conduct background investigations of candidates for appointment.

- ◆ Amount of discretion a police or fire chief may exercise in choosing personnel for appointment from candidates appearing on an eligibility list.
- ◆ Circumstances in which a candidate for appointment may be reimbursed for expenses incurred as part of the screening and selection process.

Care should always be taken to ensure policies or rules adopted by a commission are consistent with state or federal laws. For example, Wisconsin law specifically bans testing for the presence of the HIV virus as part of the hiring process; this bars a commission from requiring HIV testing as a condition of employment. In adopting or modifying its own policies and rules, a commission would do well to ask the municipality's legal counsel to review and comment on rules under consideration. Policies and rules adopted by a commission should be committed to writing.

Policies governing affirmative action in recruitment also need to be reviewed by a commission. As a condition for receiving some federal or state grants, municipalities may be required to adopt an affirmative action plan designed to bring a municipality's work force into balance with the general population; a police and fire commission should adopt policies consistent with such a plan. If, for example, twenty-six percent of all municipal workers are female while fifty-one percent of the population served by the municipality is female, an affirmative action plan would be expected to include provisions correcting this imbalance. A commission should be aware of affirmative action commitments made by the municipality.

## RECRUITMENT AND SCREENING PHASE

### **APPROVAL IS GIVEN BY THE GOVERNING AUTHORITY (CHIEF EXECUTIVE, GOVERNING BODY OR COMMISSION EXERCISING OPTIONAL POWERS) TO FILL A VACANCY.**

Often a public agency must seek approval to fill vacant positions; the chief executive officer or the governing body usually acts on the request. This is because filling a vacant position is a fiscal matter, as well as a personnel matter, and a commission (except for a commission exercising optional powers) does not have control over the budget of a police or fire department. If approval to fill a position is denied, a commission still may choose to proceed with recruitment, screening and testing, especially if there is no list of eligible candidates for a position or the number of candidates on an existing eligibility list is less than the number of vacancies that will need to be filled.

### **POSITION DESCRIPTION REVIEWED AND UPDATED BY DEPARTMENT WITH EMPHASIS ON JOB-RELATED FACTORS THAT WILL INFLUENCE THE TESTING AND SELECTION PROCESS.**

Developing a comprehensive, up-to-date position description can be a time-consuming task, which is one reason the task receives low priority in municipal management. However, a position description is an important management tool because it serves as a basis for:

- ◆ Establishing minimum qualifications to be met by applicants seeking appointment to a police or fire department.
- ◆ Deciding what type of tests might be appropriate in screening applicants.
- ◆ Developing job announcements used as part of the recruitment process.

- ◆ Reviewing and screening applications submitted by applicants for appointment ensure only qualified applicants will receive consideration.
- ◆ Evaluating the performance of the individual appointed to a position; in effect, a position description is the yardstick for measuring individual performance.

Although there is no prescribed format for position descriptions, each needs to contain certain elements to satisfy rules growing of the enactment of the Americans with Disabilities Act (ADA) of 1990. These elements include:

- ◆ Job title.
- ◆ Identification of the individual an employee reports to.
- ◆ A brief description of the position, including the level and type of supervision required,
- ◆ Minimum qualifications the employee must have.
- ◆ Knowledge, skills and abilities required to perform duties assigned to the position.
- ◆ Essential functions or basic duties an individual in the position is expected to perform.
- ◆ Other functions or duties that, while not essential, are performed by an individual in the position.
- ◆ The physical environment in which a person in the position usually works, as well as environmental or physical conditions that may be encountered.

The Appendix contains a sample position description. It offers, in Section A, a general description of the position followed by a detailed listing of essential knowledge, skills and job-related experience a person in the position is expected to have.

Section B lists special qualifications considered either essential or desirable. Special qualifications established for a position must be job-related and not adopted to exclude otherwise qualified applicants from consideration. For example, requiring proficiency in a particular foreign language to be employed as a police officer would be unfair and, if challenged, probably found discriminatory unless it could be shown that proficiency in the language was an essential part of being a police officer in the community.

Sections C and D represent an effort to distinguish routine tasks from those performed on an infrequent basis. The distinction is intended to put the different tasks performed in perspective. For example, although directing preparation of an agency's annual budget request is a vital task, it is done once each year and should be distinguished from tasks more directly related to the day-to-day management of a police or fire department.

Section E lists specific physical requirements associated with the position. Their inclusion helps identify attributes a physical aptitude examination should be expected to measure; for example, a capacity to lift objects weighing up to 100 pounds.

Conditions under which tasks may have to be performed are described in Section F. While the kinds of conditions that pose a threat to the health and safety of police officers and fire-fighters may not occur very often, it is vital such conditions be identified for the benefit of the employer and the employee.

Section G lists equipment or machinery used in performing tasks. This information can help a commission identify other physical aptitudes and skills that might legitimately be measured as part of the testing process.

**DETERMINATIONS ARE MADE CONCERNING:**

- ◆ Tests to be used and minimum qualifying scores or percentiles that must be attained.
- ◆ Special job-related qualifications or requirements applicants will be expected to satisfy.
- ◆ The geographic area in which recruitment will be conducted.
- ◆ Deadline for acceptance of applications.
- ◆ Responsibility for receiving and safeguarding applicant files.
- ◆ Responsibility for screening applications.

More will be found in Chapter VI about testing, but it is important to note that when a commission chooses a test to be given to candidates for appointment, it also should set the minimum qualifying score or percentile that must be attained for a candidate to be considered eligible. Settling on a minimum score or percentile after a test is administered and scored may be a useful way to control the number of candidates considered for appointment, but it is likely to be viewed by some candidates as unfair and by others as an attempt to block members of a specific group from consideration.

Special job-related qualifications or requirements also need to be determined before recruiting gets under way. As noted earlier, a commission may be expected to show how special qualifications relate to job performance or represent legitimate requirements under either state or federal law.

The geographic area in which recruitment will be conducted should concern a commission for several reasons. On a practical level it is a concern because a decision to recruit on a statewide or nationwide basis means the costs of advertising in newspapers and professional journals will be significantly higher and more time will be needed to conduct the recruitment process. On the other hand, recruiting on a statewide or nationwide basis may produce a much larger pool of candidates.

It is important that a commission designate one individual who will be responsible for receiving and safeguarding applicant files, and an individual who will be responsible for screening applications; the two responsibilities may be assigned to the same individual.

Safeguarding applicant files involves making certain that access to information in a file is limited to those who have a legitimate reason to have the information. Gaining access to information about applicants for positions in government is a topic that continues to stir debate. Police and fire commissions should turn to their legal counsel for guidance if representatives of the media or other individuals not directly involved in the screening and selection process seek information about applicants.

Some applications received by a commission may contain documents or information, submitted voluntarily, that should not be available to members of the commission or other officials involved in the screening and selection process. For example, an unsolicited photograph, submitted by an applicant, might prompt judgements to be made about the applicant's age, race, gender or physical attributes and later prompt allegations of discrimination should the applicant not be selected. It is vital that a commission name a responsible individual to act on its behalf in accepting job applications and safeguarding the contents of applicant files.

An initial screening of applications is needed to ensure each applicant is eligible for consideration and that each application is complete. The position description and the job announcement given to applicants provide a basis for determining an applicant's eligibility; the completed job application form, together with other documents a commission may require, provides information needed to learn if an applicant meets other standards established by the commission.

**TIMETABLE GOVERNING RECRUITMENT, TESTING AND SELECTION DEVELOPED AND ADOPTED BY COMMISSION.**

Failure to develop and adopt a responsible timetable for completing tasks leading to the appointment of personnel invariably creates problems, especially for the commission bent on filling a key position quickly. A commission may later discover, much to its embarrassment, that the person selected for a position does not have the work experience claimed, or that past incidents involving personal or professional misconduct, if known by the commission, would have eliminated the person from consideration.

The timetable adopted by a commission should set realistic dates for accomplishing each of the following tasks:

- ◆ Distributing a job announcement to other units of government, employment agencies, and secondary schools offering public safety training programs.
- ◆ Placing advertisements in newspapers, magazines and journals.
- ◆ Obtaining, completing and returning applications.
- ◆ Screening applications
- ◆ Scheduling written examinations (if required) and notifying eligible applicants.
- ◆ Administering and scoring written examination.
- ◆ Scheduling physical aptitude examinations (if required) and notifying eligible applicants.
- ◆ Administering and scoring physical aptitude examination.
- ◆ Scheduling oral interviews and notifying eligible applicants.
- ◆ Conducting oral interviews.

- ◆ Conducting and completing background investigations.
- ◆ Preparing a final list of fully qualified applicants.
- ◆ Tendering an offer of appointment.
- ◆ Scheduling, completing and reviewing the results of a qualifying medical examination.
- ◆ Making a final determination concerning the offer of appointment.
- ◆ Job announcement developed and approved by commission.

The last major task before recruitment begins is developing a job announcement that can be posted and given to individuals interested in a position. It should include: title and a brief description of the position; salary range; list of major fringe benefits; minimum eligibility requirements and any special qualifications applicants must satisfy; date on which employment will begin; agency, office or individual to contact to receive an application packet; deadline for submitting applications; agency, office or individual to contact for additional information concerning the position.

**POSITION VACANCY ANNOUNCED AND ADVERTISED.**

Most commissions announce an intent to fill entry-level vacancies by posting job announcements in accessible locations within a community and mailing copies to neighboring units of government, employment agencies, and secondary schools offering public safety training programs.

A commission also may want to place classified or display ads in newspapers, selected magazines and professional journals. If a commission decides to recruit statewide, the placement of an ad in the Sunday edition of one or more large metropolitan dailies can be a cost-effective way of reaching potential candidates.

Two state agencies help local governments recruit by including information about job opportunities in bulletins each agency distributes on a statewide basis. The bulletins are:

*Law Enforcement Bulletin*  
Crime Information Bureau  
Division of Law Enforcement Services  
Wisconsin Department of Justice  
P.O. Box 2718  
Madison, Wisconsin 53701-2718

*Current Employment Opportunities Bulletin*  
Division of Merit Recruitment and Selection Wisconsin  
Department of Employment Relations  
P.O. Box 7855  
Madison, Wisconsin 53707-7855

To obtain information on how to place an announcement, contact the Wisconsin City and County Testing Service, P.O. Box 7855, Madison, Wisconsin 53707-7855, or call (608) 266-1088.

One free advertisement can be placed by member municipalities in the want ads section of *the Municipality*, published monthly by the League of Wisconsin Municipalities. Contact:

*The Municipality*  
League of Wisconsin Municipalities  
202 State Street - Suite 300  
Madison, Wisconsin 53703-2215  
Telephone 1-800-991-5502

**APPLICATION PACKET SENT TO INDIVIDUALS RESPONDING TO ANNOUNCEMENT.**

Candidates for positions in police and fire departments should be treated impartially and judged on the basis of standards applied uniformly to all applicants. Job applicants should be given application forms, and instructions for their use, that allow the same information to be gathered and used in judging each person's qualifications. These, along with other forms and instructions, may be part of an application packet given to each applicant. Each packet should include:

- ◆ Job announcement.
- ◆ Position description.
- ◆ Application for employment form.
- ◆ Timetable adopted by the commission.
- ◆ Summary of testing requirements.
- ◆ Summary of any special qualifications or requirements applicants will be expected to meet (if not reflected in the job announcement or position description).

Job application forms should give those involved in hiring new employees enough information to form a judgement about each applicant. A sample form can be found in the Appendix. Note the form excludes information, such as age, gender, race, marital status and number of dependents, which many employers asked for in the past but can no longer be required or used in the hiring process.

An applicant may furnish information or submit other documents, such as a resume or college transcript, as part of the application returned to a commission. The person screening applications must make sure certain information, although provided voluntarily, is either deleted or withheld from individuals able to influence or make hiring decisions; information that should be withheld includes any that could conceivably be used to discriminate against a candidate for employment.

A job application packet should include a summary of all testing requirements. A commission has a statutory responsibility to adopt rules for examining physical and other job-related qualifications candidates will be required to satisfy and to make this information available. (Wis. Stat. sec. 62.13(4)(c).) A brief description of any written test applicants will be required to take and what it is intended to measure might be included in the packet. A

detailed description of the test that will be used to assess physical aptitudes also should be included.

**COMPLETED APPLICATIONS RETURNED, SCREENED AND AN INITIAL DETERMINATION MADE OF EACH APPLICANT'S ELIGIBILITY FOR FURTHER CONSIDERATION; INELIGIBLE APPLICANTS NOTIFIED.**

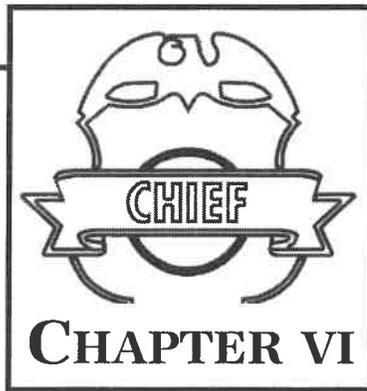
The time and effort invested in developing a comprehensive position description and a detailed job announcement will yield benefits at this stage of the recruitment process. The two documents serve as a uniform basis for reviewing each application and determining if an applicant meets the requirements established for a position. Applicants who do not meet all the requirements are notified in writing and their application returned.

**APPLICATIONS SUBMITTED BY ELIGIBLE CANDIDATES ACKNOWLEDGED; NOTICE GIVEN OF ANY DEFICIENCIES FOUND IN INFORMATION PROVIDED BY APPLICANT.**

After an initial screening of applications, applicants who appear to be eligible for further consideration are notified. If any information called for as part of an application is missing, the applicant should be asked to provide the information. The notice sent to each eligible candidate also should note any revisions to the timetable set by a commission for testing, interviewing and selecting individuals for appointment.

**LIST ELIGIBLE APPLICANTS PREPARED FOR COMMISSION.**

Following the deadline for receiving applications, a list of eligible applicants is prepared for the commission; the list need not contain more than an applicant's name and current address. A commission will use the list to determine testing needs (number of applicants to be tested, size of the facility needed to administer tests) and to estimate the number of candidates likely to make it to the oral interview stage.



## **SELECTING AND APPOINTING PERSONNEL: TESTING, SELECTION AND APPOINTMENT**

### **OVERVIEW**

Tests and the scores they produce help employers judge one job applicant in relation to other applicants. Some tests measure a person's present knowledge or skills; others try to measure a person's potential to gain new knowledge and skills required in performing job-related tasks. In either case, tests used as part of the selection process need to satisfy several criteria.

First, a test must be valid; that is to say, a test must measure what it is claimed to measure.

Second, a test must be reliable. Reliability is the extent to which results achieved by different individuals can be trusted to measure knowledge, skills or potential. Imagine, for example, that 100 candidates take a written aptitude test designed to estimate the chances a person can master the knowledge and skills needed to be a competent police officer. Ten candidates are hired; they include the five receiving the highest scores attained on the test and the five attaining the lowest scores. Within a year the five officers achieving the highest scores fail probation because of consistent poor performance, while the five officers attaining the lowest scores show evidence of becoming competent police officers. It may be reasonable to question the reliability of the test used.

Third, a test must be free from the kinds of bias that make it difficult from some job applicants to achieve competitive scores; the applicants may be disadvantaged because of social, economic, educational or cultural circumstances over which they may have little control. For example, if high school graduation is a minimum educational requirement for firefighters but the written examination given to job applicants contains questions requiring a knowledge of calculus, then applicants who graduated from high schools offering courses in advanced math, including calculus, would have an unfair advantage over other applicants.

Finally, a test must be job-related. Using the previous example, it is unlikely a knowledge of calculus would be essential in performing tasks routinely performed by entry-level fire-

fighters. Test items must be related to the knowledge and skills a person ought to have, or can be legitimately expected to acquire, in order to perform tasks associated with the position an applicant seeks.

A current, comprehensive position description helps a police and fire commission decide what tests might appropriately be used to measure job-related knowledge and skills.

## TESTING PHASE

### **PHYSICAL APTITUDE EXAMINATION SCHEDULED AND ELIGIBLE CANDIDATES NOTIFIED; EXAMINATION ADMINISTERED AND RESULTS REVIEWED BY THE COMMISSION. CANDIDATES FAILING TO MEET MINIMUM STANDARDS (SCORE OR PERCENTILE RANKING) NOTIFIED OF THEIR DISQUALIFICATION.**

No matter how qualified applicants for appointment to a police or fire department appear to be by virtue of their education and their performance on written examinations, each must have, or be able to develop, physical aptitudes needed to perform tasks associated with police work or fire fighting. For this reason it makes sense to conduct a physical aptitude examination (PAE) before any other examinations are administered.

A PAE should be viewed as a diagnostic tool; it is intended to gauge an applicant's upper body and lower body strength, speed, stamina and agility. The applicant's performance in each component of a PAE should meet the physical demands of a job. For example, if a position description for firefighters calls for a capacity to lift loads of 50 to 100 pounds without assistance, the PAE should test the job applicant's capacity to lift progressively heavier objects beginning with one weighing 50 pounds.

Because of differences in the physical demands of their jobs, the physical aptitude examinations adopted for police officers and firefighters are likely to be different. For example, it is important that police officers have above average speed, stamina and agility. Firefighters, on the other hand, need to have above average upper body and lower body strength, as well as stamina.

The principle of fairness in testing is especially important in developing or adopting a physical aptitude examination and care needs to be exercised in approving a PAE for entry-level job applicants. Asking applicants for employment as firefighters to show they are physically able to raise and position a heavy ladder may seem reasonable; it is, after all, a vital, job-related task. However, some applicants (especially female applicants) may never have had occasion to raise and position heavy ladders comparable to those used by firefighters; the fairness in judging an applicant's strength and agility on the basis of such a requirement may be questioned. Asking applicants to lift and maneuver more common objects, comparable in weight to a ladder, may be a more equitable way to measure strength and agility.

If a physical aptitude examination is intended to measure an applicant's capacity to perform job-related tasks, then physical attributes might be measured by adopting tests commonly associated with physical fitness programs. Examples include the performance of pull-ups (or the flexed arm hang for females) to measure upper body strength; the standing long jump to assess lower body strength; running a measured distance to test speed and stamina; running an obstacle course to test agility.

Scores attained by all candidates in each component of a physical aptitude examination are usually ranked in descending order, divided into quartiles and a determination made about a candidate's overall physical aptitude in relation to other candidates.

Employers may not make inquiries about a job applicant's health or physical limitations. Yet, performing tasks required as part of a PAE could be affected by an applicant's physical condition. or the applicant might aggravate an existing health condition the employer does not know about. It is important that individuals be given detailed information about the physical aptitude examination and advised to contact a physician if an applicant thinks participation in the PAE may aggravate an existing condition.

**WRITTEN EXAMINATION SCHEDULED AND ELIGIBLE CANDIDATES NOTIFIED; EXAMINATION ADMINISTERED AND RESULTS REVIEWED BY THE COMMISSION. CANDIDATES FAILING TO MEET MINIMUM STANDARDS (SCORE OR PERCENTILE RANKING) NOTIFIED BY COMMISSION OF THEIR DISQUALIFICATION.**

Many different written tests are used in examining applicants for positions in the fields of law enforcement, fire fighting and emergency services. But, before settling on a particular type of exam, a commission must decide what it wants a test to measure.

Achievement tests are commonly used to learn if an individual has attained and can apply specific kinds of information or skills related to job performance. Achievement tests vary in what they are intended to measure; so tests used in selecting police officers and firefighters are likely to be quite different. For example, language comprehension and problem solving skills may be given special emphasis in achievement tests designed for entry-level police officers; knowledge of mechanics, math and chemistry may be emphasized in tests for entry-level firefighters. Achievement tests are usually objective in nature, easy to score (multiple choice questions are commonly used) and inexpensive to administer.

Candidates for senior management position in a police or fire department also can be tested using standardized tests. But, these are more difficult to find and often focus on technical aspects of police and fire operations while a commission is likely to be more interested in a candidate's knowledge of management principles and practices. Options open to a commission include written examinations calling for responses to either objective or essay type questions, participation in a structured problem solving situation, or a carefully planned oral interview, conducted by experienced managers, designed to assess the suitability of a job applicant to serve in a managerial position. (Administrative assessments are discussed in Chapter VII.)

## ORAL INTERVIEWS

**ORAL INTERVIEWS SCHEDULED AND ELIGIBLE CANDIDATES NOTIFIED; INTERVIEWS CONDUCTED AND RESULTS REVIEWED BY THE COMMISSION. CANDIDATES FAILING TO MEET MINIMUM STANDARDS NOTIFIED BY COMMISSION OF THEIR ELIMINATION.**

An oral interview is only one element of the selection process, and what is learned from the job application form, an applicant's resume, tests, reference checks and a background investigation is at least as important as oral interview. Still, much importance is usually attached to oral interviews. The brief discussion that follows looks at the purpose of interviews and guidelines a commission may want to observe, both to improve the effectiveness of the oral interview as a tool in the selection process and to minimize complaints about interviews a commission conducts.

The purpose of an oral interview is to assess individual skills and qualities that may be difficult to measure using other methods. When planned, structured and conducted carefully, oral interviews can help those involved in the selection process learn more about:

- ◆ Personal skills an employer considers important, such as an applicant's ability to communicate effectively.
- ◆ Personal qualities an employer considers important, such as an applicant's attitude toward work and authority.
- ◆ An applicant's experience and interests beyond those reflected in an application form and resume.
- ◆ An applicant's reasons for seeking appointment, as well as the applicant's expectations and goals, as a public employee.

A commission's approach to conducting oral interviews may depend on the number of applicants to be interviewed. In selecting a new chief or officers for senior positions, fewer than a dozen candidates may reach the oral interview stage; in this case only members of a commission may need to participate in the oral interview process. In selecting entry-level police officers and firefighters, the number of candidates reaching the oral interview stage may be large and a commission may find it useful to divide the labor among several groups; each group might include one member of the commission and two or three other individuals. As part of the interview process, a commission will want to:

- ◆ **Decide what job-related skills and qualities those conducting the interview should look for.** A careful distinction should be made between skills and qualities considered essential in performing job related tasks and skills or qualities that might enhance job performance. The position description should be used to provide guidance in this regard.
- ◆ **Prepare written questions a candidate will be asked.** Questions should be of the open-end variety; this encourages applicants to respond in their own way. "What do you like about your present job?" will draw a more useful response than asking, "Do you like your present job?" Using a numerical grading system, members of an oral interview panel may assign scores or numerical values to each response. Although the scores or values assigned usually represent subjective judgements, their use permits the responses of one job applicant to be compared with those of others.
- ◆ **Carefully review each question to make certain it is not discriminatory.** Questions should not be asked that require a person to disclose information concerning their age, race or nationality, marital status, disability, religious affiliation or beliefs, or membership in fraternal, social and political organizations. A rule of thumb: If a question cannot be asked on a job application form, it should not be asked during an interview.

- ◆ **Each candidate should be asked the same questions.** This provides a more equitable basis for evaluating one candidate's performance in relation to the performance of others. It should be decided ahead of time which members of the interview panel will ask a particular question. This does not mean members of an interview panel are limited to asking only the questions each has been assigned; follow-up questions may be appropriate or necessary to help a candidate clarify a response.
- ◆ **Allow sufficient time for each interview.** The amount of time should let the panel: acquaint a candidate with the purpose of the interview and how it will be conducted; conduct the interview; give the candidate a chance to offer additional information and ask questions about the position; close the interview; give members of the interview panel time to complete forms used to record impressions growing out of the interview.

## BACKGROUND INVESTIGATIONS

Some Job applicants choose not to reveal facts about past events that may prevent their being hired. An investigation of an applicant's background, by a law enforcement agency, is absolutely essential.

Law enforcement agencies are able to investigate a person's past to learn about convictions for felonies, misdemeanors or offenses that bar the appointment of an individual as a police officer or may affect the performance of job-related tasks in other positions. Wisconsin Statutes section 111.335, provides specific guidelines for using information related to arrest or conviction records.

Procedures for requesting an investigation, and establishing what information is needed by the agency conducting it, may vary from one community to another; a commission should look to the police chief for guidance in setting commission policies and procedures.

If a law enforcement agency needs information that is not included as part of a job application, or requests a photograph of the job applicant, care needs to be taken that it is obtained and provided to the agency without the direct involvement of the commission.

A commission also will want to conduct its own inquiry to verify key information provided as part of the application process. Special emphasis should be given to verifying claims concerning the completion of educational, vocational or professional programs, the award of diplomas, degrees or licenses, and certification of specialized skills or qualifications.

At this stage in the process, a commission will want to contact a job applicant's current employer, former employers and individuals named as personal references. Letters and other information received from references regarding an employee are closed records. (Wis. Stat. sec. 103.13(6)(b).) Assuring confidentiality may encourage employers or personal references to offer candid assessments of an applicant's qualities and fitness for a job.

## POLYGRAPH TESTING

The use of honesty testing devices, such as polygraphs, in employment situations is subject to limitations imposed by state law. (Wis. Stat. sec. 111.37.)

Employers using any form of lie detector tests, or who have lie detector tests administered on their behalf, must post a notice summarizing the key provisions found in state law. (Wis. Stat. sec.111.37(3).)

An exception to the limitations found in state law, concerning the use of lie detector tests, is granted to law enforcement agencies; a polygraph test may be administered to a prospective employee of a municipal police department. (Wis. Stat. sec. 111.37(5)(bm).)

**LIST OF CANDIDATES, FOUND TO BE FULLY QUALIFIED AND ELIGIBLE FOR APPOINTMENT, PREPARED AND PROVIDED TO CHIEF OF DEPARTMENT FOR CONSIDERATION.**

Often called an eligibility list, a list identifies candidates qualified to fill a position and is used by the police or fire chief to choose subordinates. (Wis. Stat. sec. 62.13(4)(a).)

State law does not prescribe how eligibility lists are to be created, except to strongly imply such lists are the result of testing and an evaluation of each candidate's experience and other qualifications for a position. (Wis. Stat. sec. 62.13(4)(c).) This gives a department discretion in adopting policies and rules that are consistent with the intent of state law.

A commission adopts rules governing how candidates, determined to be eligible for appointment, are listed. (Wis. Stat. sec. 62.13(4)(c).) As a rule, the individual considered to be best qualified for appointment is ranked first on the list and others are listed in order of merit based on test results or other criteria established by the commission.

**CHIEF SELECTS ONE OR MORE NAMES FROM LIST OF ELIGIBLE CANDIDATES AND SUBMITS NOMINEE TO COMMISSION FOR APPROVAL. (WIS. STAT. SEC. 62.13(4)(A).)**

**COMMISSION APPROVES OR DISAPPROVES CHIEF'S SELECTION; A FORMAL OFFER OF APPOINTMENT TENDERED, CONTINGENT ON COMPLETION OF A MEDICAL EXAMINATION (IF REQUIRED). (WIS. STAT. SEC. 62.13(4)(A).)**

Police and fire chiefs appoint all subordinates in their respective departments, but each appointment is subject to approval by the police and fire commission. Approval of a chief's appointments is a statutory responsibility that cannot be waived by a commission; it is intended to ensure qualified individuals are appointed to and promoted in each department.

Every offer of appointment, from an entry-level position to the position of chief, should be formalized in a letter spelling out the important details affecting the appointment. The date an appointee will take up his or her duties (contingent upon the successful completion of a medical examination), salary and conditions governing the completion of a probationary period are typical of the important details included in a written offer of appointment.

## Medical Examinations

**MEDICAL AND PSYCHOLOGICAL EXAMINATIONS SCHEDULED, ADMINISTERED AND RESULTS REPORTED TO THE COMMISSION.**

A comprehensive medical examination will usually provide for a thorough assessment of an individual's:

- ◆ Weight in relation to height and body structure.
- ◆ Vision and hearing.
- ◆ Heart and vascular system.

- ◆ Pulmonary system.
- ◆ Spine and musculoskeletal system.

A comprehensive medical may reveal disorders that could impair an individual's ability to engage in activities commonly associated with police, fire and emergency services. A commission establishes the qualifying medical standards it feels are in the best interests of the community, the police and fire departments, and their personnel.

Medical standards for firefighters, as recommended by the National Fire Protection Association, are listed in NFPA Standard 1001, *Standards for Fire Fighter Professional Qualifications*. There are no comparable national standards for police officers. A commission that chooses to adopt its own standards should seek the advice of professionals in the fields of medicine and occupational health.

The Americans with Disabilities Act (ADA) bars employers from ordering job applicants to undergo a medical examination until after an offer of employment has been made; an offer of employment is made conditional on the results of a medical examination. For local government employers, the term "employer" can be construed to mean a municipality, not individual municipal departments and agencies. It also should be noted that the ADA does not make a distinction between full-time and part-time employees.

The ADA prohibits asking job applicants if they have a disability. The presence and nature of a disability is likely to become known as the result of a comprehensive medical examination. It is vital that the examining facility have information concerning the nature of the job, functions performed, physical requirements, equipment used, and conditions under which work is performed; all this should be included in position descriptions. Employers are not required to hire applicants found to have a health condition or disability that inhibits the performance of essential job-related tasks.

While a medical examination cannot be required until after an individual is offered employment, the ADA does not bar (nor does it specifically authorize or endorse) testing for illegal drugs or alcohol abuse early as part of the testing and selection process.

A somewhat related area of concern could be a commission's policy requiring candidates for appointment as police officers or firefighters to undergo psychological testing. (Chapter VII discusses the use of psychological testing as part of the process leading to the appointment of a police or fire chief.) If psychological tests are used for the purpose of assessing aptitudes, skills, interests, preferences and behavioral characteristics, then their use would probably not be viewed as part of a medical examination and could be included as part of the screening and testing process.

A police and fire commission should be aware of some special provisions in state law affecting firefighters. Wisconsin Statutes section 391.45 provides that if a firefighter dies or becomes disabled and it is claimed that death or disability was the result of a heart or respiratory impairment or disease, the qualifying medical examination given prior to the firefighter's entry into employment will be used as a basis for settling the claim. If the examination showed no evidence of heart or respiratory impairment or disease, then a presumption must be made that the firefighter's death or disability was job-related. This provision applies to claims filed by individuals who have served as firefighters for at least five years and have engaged in duties related to fire fighting at least two-thirds of their working hours. Commissions must make sure applicants for employment as firefighters are thoroughly examined for heart conditions and respiratory diseases.

A final precaution entails the selection of medical examining facilities. The once common custom of letting a job applicant be examined by the applicant's own physician is not a sound policy, especially in the employment of police officers and firefighters. It is vital to have uniformity in the administration of medical examinations and the application of medical standards, that examinations be comprehensive and able to disclose conditions that legitimately disqualify an applicant from employment. A police and fire commission might want to consider a policy requiring that all applicants for appointment be examined by a physician, clinic or medical facility selected by the commission.

## ANNOUNCING APPOINTMENTS

### **APPOINTMENT ANNOUNCED.**

Whether selected for initial appointment as a police officer or firefighter, or appointment as chief, much time and effort will have been invested in finding the best individual for the position. A commission should take the opportunity to call attention to its efforts on behalf of the department and the community. A public ceremony, during which an appointee is administered the oath of office and given the badge of that office, is one way to call attention to a commission's efforts. Members of an appointee's family, other municipal officials, and the media might be invited to attend the ceremony.

### **CANDIDATES CONSIDERED BUT NOT SELECTED FOR APPOINTMENT NOTIFIED OF STATUS; NAMES RETAINED ON LIST OF ELIGIBLE CANDIDATES TO BE USED IN FILLING FUTURE VACANCIES.**

Maintaining a list of individuals found qualified for appointment to a position in a police or fire department is a responsibility of every commission. (Wis. Stat. sec. 62.13(4)(c).) Eligibility lists contain the names of individuals who competed for appointment, were found qualified, but not selected. Maintaining eligibility lists eliminates the need to engage in the lengthy process of finding suitable candidates for appointment as future vacancies occur.

## PROBATIONARY APPOINTMENTS

A commission can require individuals to complete a probationary period as a condition of achieving permanent status in a position. A commission or a police chief may also condition the promotion of a subordinate upon satisfactory completion of a reasonable period of probation. *Kraus v. City of Waukesha Police and Fire Comm'n*, 2003 WI 51, 261 Wis.2d 485,662 N.W.2d 294. Probation provides time to validate the choice of an individual as the best qualified person for a job. Stated another way, probation should be viewed as the last stage in the selection process, not as the first stage of employment.

The length of probationary periods vary from position to position and agency to agency. A twelve-month probationary period, beginning with the completion of recruit training, may be a reasonable period for entry-level police officers. Given the traditional way fire departments schedule full-time employees, eighteen-month probationary periods might be more appropriate for entry-level firefighters.

Key commission concerns in using probation as a management tool should include:

- ◆ Establishing a record showing an appointee understands that: successful completion of a probationary period is a condition that must be satisfied to attain tenure; a probationary period may be extended if it is to the advantage of both the employer and the employee; a probationary employee can be dismissed at any time without a reason

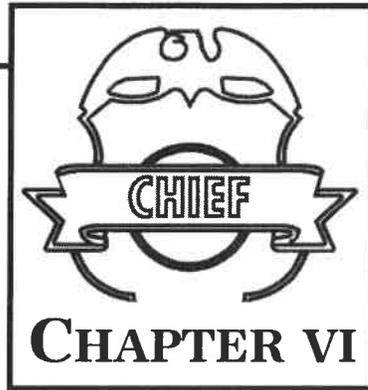
being given for the employer's action. (*Kaiser v. Board of Police and Fire Commissioners*, 104 Wis. 2d 498, 311 N.W. 2d 646 (1981).)

- ◆ Establishing a reasonable period of time during which an employee will serve in a probationary status and providing for periodic evaluations of performance during that period.
- ◆ Establishing who will evaluate the probationary employee's performance and who will review the evaluation.
- ◆ Establishing reasonable standards against which an employee's performance can be measured; a comprehensive, up-to-date position description can serve as the basis for evaluating performance.
- ◆ Insuring the employee is counselled following each evaluation.
- ◆ Providing an opportunity for the probationary employee to receive assistance or training needed to overcome significant shortcomings observed as part of the evaluation process.

Although it is a rare occurrence, extending a probationary period may benefit both the employer and the employee. An extension may provide time needed by some employees to show they have acquired the essential knowledge and skills to function effectively in a position; it also may save the time and costs in training a replacement should a probationary employee's appointment is terminated.

Conversely, a probationary employee could be granted permanent status before the established period of time expires. If an employee's performance is evaluated often enough and clearly shows the employee exceeds all performance standards set, early termination of probationary status could be a useful way to recognize and reward excellent performance.





## **Hiring A Chief**

### **IMPORTANCE OF THE TASK**

The choice a police and fire commission makes in selecting a police or fire chief can have a lasting effect on a community. It is the commission's task to assure a competent chief is appointed to lead each department, that the selection process is free of political influence, and the chief is selected on the basis of job-related competencies. The authority to appoint a chief is not shared with any other municipal body or official. (Wis. Stat. sec. 62.13(3).)

### **THE ELEMENT OF TIME**

Because the task of hiring a chief is of such critical importance, it is vital that a commission not rush through the selection process. A community is not likely to be pillaged or burn to the ground because a police chief or fire chief retires, resigns or is removed. Yet some commissions set about the task of finding a new chief convinced that individual must be hired in the shortest possible time; the selection process may be driven by an urge to meet a deadline rather than finding the best qualified person.

### **DETERMINING THE QUALITIES OF A CHIEF OFFICER**

Municipalities vary in size, in their needs and how they go about providing public services. Qualities a police or fire chief must have to manage a department successfully may also vary; qualities that spell success in managing the police or fire department in one community may not prove successful in another community.

A variety of personal, professional and managerial qualities tend to influence the selection of a chief officer, but the basic qualities tend to fall into four distinct areas of concern: technical competence vs. managerial competence; experience vs. education; managerial style; and social values.

### **TECHNICAL COMPETENCE VS. MANAGERIAL COMPETENCE.**

The head of a municipal agency generally needs both technical and managerial competencies. In selecting an individual to manage a police or fire department, a commission needs to decide if it is more important that a chief officer have experience in the technical aspects of law enforcement or fire suppression, or experience in managing a public agency. The relative importance of technical and managerial competencies invariably becomes a critical concern in selecting a chief officer. The size of a municipal police or fire department sometimes helps resolve this issue.

For example, in small communities a fire chief is likely to take an active part in fire suppression operations or in other emergency situations; the chief may have to make tactical decisions concerning the deployment of manpower and equipment, or direct the actions of personnel involved in the situation. This calls for extensive technical knowledge of fire fighting, as well as other emergency operations ranging from toxic spills to natural disasters. In large communities the size of a department, the range of services it provides and time needed to manage its activities may require that greater emphasis be placed on a chief's managerial experience and ability.

### **EXPERIENCE VS. EDUCATION.**

Related to the matter of technical vs. managerial competence is the question of how the competencies needed by a chief officer were acquired.

Some post-high school institutions grant two-year degrees in police or fire science; some award baccalaureate degrees in criminal justice or fire administration. In either case, the purpose of formal education is to equip a person with knowledge; the knowledge gained may be either specific or nonspecific.

Developing specific work skills, in contrast to gaining a body of knowledge, may or may not be a part of a degree granting program; it is more likely specific work skills will be developed as a result of experience gained in the performance of tasks.

When, where and how a person gains the knowledge and skills needed to function effectively as a police or fire chief should be a major concern. For example, a candidate for police chief in a community of 7,500 residents may claim a four-year degree in criminal justice, twelve years of experience as a police officer, including five as a detective in a large metropolitan police department; if formal education and experience in technical aspects of police work are considered particularly important by the commission, this candidate might merit very serious consideration.

Another candidate for the same position may have little formal education beyond high school, but may have attended many professional development programs and have twenty-three years of experience as a police officer in a community of 5,000 residents, including five years as its police chief. The commission might decide that this candidate's balance of technical knowledge and managerial experience effectively offset the first candidate's advantage in formal education and technical experience.

### **MANAGERIAL STYLE.**

Managerial style has more to do with how an individual manages than with how well the individual manages.

Varying approaches to managing organizations and the people in them are described in the literature of management and managerial psychology. Authoritarian, democratic and participative management are styles often discussed. Which style a police or fire chief ought to

use may vary from one department to another; a great deal depends on which style is likely to work and how adept a chief is in using a particular style to get things done.

In selecting a chief, members of a commission need to have a sense for the style of management that seems appropriate to the needs of the department a chief will manage. Hiring a chief who is wedded to using a style that is incompatible with the needs of a department can have serious, long-term consequences.

#### **SOCIAL VALUES.**

Compatibility of the social philosophy and values of a chief officer with those held by personnel in a department, and the community it serves, is a vital concern. This is especially true of police chiefs. How a police chief views diverse segments of the population a department serves, what a chief believes is the proper role of the department, and what constitutes professional conduct on the part of police officers influences the style of policing used by the department. A commission may choose to ignore social philosophy and values in the selection of a police or fire chief, but it does so at its own and the community's peril.

#### **SELECTION TECHNIQUES**

The screening and selection process leading to the appointment of a police or fire chief should be even more rigorous than the process used in selecting a chief's subordinates. Three of the five techniques discussed (oral interview, background investigation, medical examination) are commonly used in hiring entry-level personnel; each warrants special attention in the selection of police and fire chiefs. Two of the techniques (administrative assessment and psychological testing) are more commonly given special attention in the appointment of chief officers.

Administrative assessment, psychological testing and the oral interview share a common attribute: Each is intended to gauge an individual's skills, aptitudes and attitudes. Efforts to measure each of these attributes are critical in the selection process when a position: involves use of identifiable skills and are used consistently by a person in that position; requires a long, expensive training program before an employee is allowed to perform job-related tasks; calls for highly specialized or even unique qualities. Entry-level positions in police and fire departments fall into the first two categories; the position of police or fire chief qualifies for inclusion in the second category.

These techniques share another common distinction: Each requires a significant investment of time and usually the expenditure of municipal funds. Their use should be limited to evaluating the best qualified, most promising applicants for a position. From a pool of 50 candidates for the position of police or fire chief, perhaps ten might warrant being selected for administrative assessment and psychological testing.

#### **ADMINISTRATIVE ASSESSMENT.**

An administrative assessment gauges certain kinds of knowledge, skills, values and attitudes a person has gained through education, training and experience.

The first part of the assessment resembles an "open book" examination; a candidate develops written responses to prepared questions. Some questions may not have one "correct" answer, but responses reveal a lot about each candidate's level of knowledge, their capacity to think analytically and express themselves, as well as their beliefs and values. Examples of questions that could be asked in the written or oral phase of the assessment include:

What management style works best in managing a public safety agency?

- ◆ Describe your style of management, as well as its advantages and disadvantages.
- ◆ How does the development of an agency's annual budget fit into the management process?
- ◆ What is the role and what are the responsibilities of a police (or fire) chief while a municipality is engaged in collective bargaining with a union representing police (or fire) department personnel?
- ◆ What is your view of leadership in a public safety agency? How does the role of the chief as a leader differ from a chief's role as a command officer?

Based on results of the first phase, the most promising candidates meet individually with and answer questions posed by a small panel of experts convened for the occasion. The panel might include an individual representing the interests of the police and fire commission, a specialist in the area of public management, and one or two experienced police (or fire) chiefs.

The panel may spend several hours asking questions, posing hypothetical problems for a candidate to resolve, or inviting the candidate to elaborate on responses to questions asked in the written phase. This stage can be viewed as another kind of oral interview, except that it is much longer in length and more focused on the assessment of a candidate's knowledge, skills, values and attitudes.

Administrative assessments let a commission focus on problems and issues that may be of special concern at the time a new chief is selected. Suppose, for example, that a community plans to create the position of public safety director, but retain the positions of police chief and fire chief. An assessment of candidates for the position of police or fire chief might appropriately include questions dealing with the relationship between a public safety director and the chiefs of subordinate departments.

Results of the assessment are summarized for the commission; the summary, usually in writing, notes each candidate's strengths, weaknesses and job-related qualities exhibited by the candidate in responding to written and oral questions.

### **PSYCHOLOGICAL TESTING.**

Psychological tests assess an individual's traits, attitudes, interests, preferences or other behavioral characteristics; the tests are usually created by highly trained specialists in the fields of testing and human behavior. Interpreting tests also is the domain of specialists who score and explain the meaning of results, or they may provide a precisely detailed set of instructions permitting those who administer a test to score and interpret the results.

Psychological testing is based, at least in part, on an assumption that behavioral characteristics, such as a tendency to act in a dominant or submissive manner, or a preference to work alone instead as part of a group, can be accurately gauged and judgements made about an individual.

Employer reliance on psychological tests also reflects a hope that by identifying certain behavioral characteristics, judgements can be made about a person's capacity to perform job-related tasks. For example, a police and fire commission may conclude that a top candidate for the position of police chief, whose test results show evidence of a submissive person-

ality and a preference for working alone in an isolated setting, should not be offered the position despite having qualifications that are in other ways quite superb.

Before a commission decides to require psychological testing, it should consider the costs, advantages, disadvantages and possible consequences. Reliance on psychological testing may prompt opposition from collective bargaining units. It is also possible some candidates for appointment may object to such tests because they are unsure of what the tests are intended to measure, how the results will be used, and who may have access to the results.

A commission also must believe that the test it expects will be used can yield results that relate to specific job-related abilities; it must also decide how weight will be given to test results in making hiring decisions.

In considering the use of psychological tests, a commission may want to seek expert advice; sources for advice include testing specialists in public school districts, colleges or universities or large employers that routinely use such tests.

The Americans with Disabilities Act bars employers from requiring job applicants to undergo medical examination until after an offer of employment is made. Some psychological tests attempt to determine the presence, nature and severity of certain mental impairments; these probably would be considered part of a medical examination. But, if a test is designed to measure personal traits, attitudes, interests, or other job-related characteristics, it would not be viewed as part of a medical examination and could be required as part of the testing and selection process.

#### **ORAL INTERVIEWS.**

Oral interviews are discussed in Chapter VI; all the same principles and practices discussed apply to oral interviews in selecting a police or fire chief.

A special concern of commissions is the question: Should other public officials, or representatives of special interest groups, take part in oral interviews?

For example, since the mayor is the statutory head of a city's police and fire departments, should the mayor be permitted to join members of a commission in interviewing applicants for the chief's position? Members of a common council, village or town board might argue that the governing body should be represented in the interview process; collective bargaining units, representing police officers or firefighters, also might ask to be included.

It is clear that state law assigns responsibility for the appointment of police chiefs and fire chiefs to police and fire commissions. (Wis. Stat. sec. 62.13(3).) No statutory language governs participation in oral interviews conducted by a police and fire commission.

In selecting a chief, a commission faces the prospect of living a long time with the decision it makes; in making decisions of this magnitude a commission should not place itself in a position where opinions, beliefs or vested interests of others clouds its judgement in choosing a police or fire chief.

#### **BACKGROUND INVESTIGATION.**

Chapter VI includes a discussion of the background investigation, but its vital importance in the process leading to the selection of a police chief or fire chief prompts additional discussion.

Even under ordinary circumstances, human nature and the urge to succeed may prompt a job applicant to alter, purposely omit or withhold information from a prospective employer. Because public trust in government is a legitimate concern, the background of a person under consideration for appointment to a position of public trust deserves to be carefully scrutinized. This is the purpose of a background investigation.

A background investigation is a formal inquiry to verify the accuracy of what an individual claims to be true; it also may uncover information not made known by the individual, information that, if made known, might influence a person's standing as a job applicant.

Law enforcement agencies are able to investigate a person's past to learn of convictions for felonies, misdemeanors or offenses that bar appointment of an individual as a police officer or may affect the performance of job-related tasks in other positions.

Section 111.335, *Wisconsin Statutes* provides guidelines for using information related to arrest or conviction records.

An agency conducting a background investigation also can verify the accuracy of statements made or data provided as part of a job application, such as an applicant's claim to have served in the military or verification of a place of residence claimed by the applicant.

A law enforcement agency outside the community, such as the county sheriff's department or the police department in a neighboring municipality, might be asked to check the background of candidates for the position of police chief.

Inquiries to verify certain information provided by an applicant may also be made by a police and fire commission, including claims concerning completion of educational or professional programs, the award of diplomas, degrees or licenses, and certification of specialized qualifications.

At this point in the process, a police and fire commission may want to contact the applicant's current employer, former employers and individuals named as personal references. Letters and other information received from references are closed records under Section 103.13(6)(b), *Wisconsin Statutes*, assuring confidentiality may encourage employers or personal references to offer frank assessments of an applicant's qualities and fitness for a job.

Screening finalists for the position of police or fire chief calls for extraordinary care, especially in the case of applicants who may live in other communities. In this case newspapers serving those communities may be useful sources of information concerning applicants. Calling the publisher or editor of a newspaper may yield information that otherwise might not come to light as the result of a background investigation, but such information should be verified by other sources, especially if the information is derogatory.

The *State of Wisconsin Blue Book* contains a list of daily and weekly newspapers in Wisconsin. There are national directories of newspapers, but they are likely to be found only in large public libraries and in the offices of major newspapers published in Wisconsin.

#### **MEDICAL EXAMINATION.**

The Americans with Disabilities Act bars an employer from directing job applicants to undergo a medical examination until after an offer of employment is made; the offer is conditional on the results of a medical examination.

A commission may adopt qualifying medical standards for the positions of police chief and fire chief; these should not differ from standards set for police officers and firefighters, especially if a chief officer is expected to function as a police officer or firefighter as conditions warrant.

If a commission extends an offer of employment, but the medical examination produces evidence of a condition that may impair or prevent the performance of job-related tasks, the commission may withdraw its offer. It is vital that the medical examining facility be provided with detailed information about work performed by a police or fire chief, physical requirements, equipment used, and conditions under which work is performed; this should be part of the position description.

## THE UTILITY OF PROBATIONARY APPOINTMENTS

A municipality's authority to require successful completion of a probationary period, as a condition of employment, is established in Wisconsin case law. Acting as a municipal body, a commission may require completion of a probationary period for most positions in a police or fire department. (*Kaiser v. Board of Police and Fire Commissioners*, 104 Wis. 2d 498, 311 N.W. 2d 646 (1981).)

It is less clear if a commission can require a newly appointed police or fire chief to complete a probationary period to attain tenure. State law contains no language specifically authorizing a commission to establish a probationary period for chief officers; however, when this issue was raised with the League of Wisconsin Municipalities, the League's legal counsel concluded that requiring a police chief or fire chief to serve a probationary appointment would probably violate Section 62.13, *Wisconsin Statutes*, which provides that police and fire chiefs "hold their offices during good behavior, subject to suspension or removal by the board for cause."

## THE ROLE OF THE DEPARTING CHIEF

Departing chiefs may differ in the amount of interest they have in helping select a successor; some maintain a hands-off attitude while others try to influence the choice of a successor. When a chief resigns in order to accept another job, the chief will usually want to leave as soon as possible and managing the department may be left to an acting chief; the departing chief may have little time to help a commission deal with the problem of succession. In the case of a chief who elects to retire at some established future date, it is more likely the chief will offer to aid the commission.

Commissions can benefit from the advice and help of a departing chief in dealing with several matters. One is the need to review and update a chief's position description. Another is the choice of a recruitment strategy, one the commission feels would be in the best interests of the department and the community: Is there an adequate pool, both in size and quality, of potential candidates for the post of chief within a department, or should the commission recruit candidates on a regional, state or national basis?

A departing police or fire chief also can be helpful to candidates, especially finalists for the position, in answering questions some will have about departmental operations.

Sometimes a departing chief asks, or is invited to help select finalists, participate in oral interviews or evaluate finalists appearing before the commission. Conventional wisdom suggests a chief should not be involved in these activities.

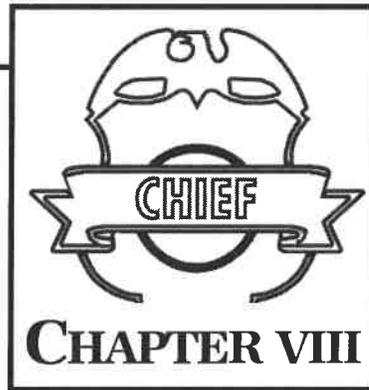
## APPOINTING A PUBLIC SAFETY DIRECTOR

Some communities establish the position of public safety director. Usually this is done to unify management of the police and fire departments, reduce administrative costs, or both. The position of public safety director should not be confused with the concept of a public safety department or the position of public safety officer.

While a few Wisconsin municipalities have been granted special legislative authority to employ public safety officers, trained to function as both police officers and firefighters, all other municipalities are barred from creating the position of public safety officer. But, there appears to be no legal impediment to creating the position of public safety director and charging the individual in that position with the task of managing both the police and fire departments. Nor does there appear to be a barrier to having the individual appointed to

serve in this position function as the municipality's police chief, fire chief or the chief of both departments.

While the post of public safety director is not mentioned in any law governing Wisconsin municipalities, it is generally conceded that if a public safety director also serves as a municipality's police chief, fire chief or both, that person's appointment is a responsibility the police and fire commission. This responsibility is coupled with a commission's authority to suspend or remove a public safety director, based on actions or conduct engaged in as police chief or fire chief.



## PROMOTIONS

### OVERVIEW

Decisions a police and fire commission makes in relation to the promotion of police officers and firefighters can be as crucial as judgments in the selection of a police or fire chief. Promotion policies and procedures can have a direct, long-term effect on the quality of services provided by either a police or fire department. Appointments by a police chief or fire chief are subject to a commission's approval, whether or not a promotion process is used for the purpose. (Wis. Stat. sec. 62.13(4)(a).)

Current state law calls for the use of a promotion process in appointing subordinates "when this can be done with advantage." (Wis. Stat. sec. 62.13(4)(a).) The chief of the department, rather than the police and fire commission, initially determines whether the appointment of a subordinate can be accomplished "with advantage." (Wis. Stat. sec. 62.13(4)(a).) This promotion authority includes the power to promote subject to satisfactory completion of a reasonable probation period. *Kraus v. City of Waukesha Police and Fire Comm'n*, 2003 WI 51, 261 Wis. 2d 485, 662 N.W. 2d 294.

While it may be the practice in some communities for the police and fire commission to conduct promotional examinations and require the chief to appoint from a list of eligible candidates from within the department, there is no basis in state law for the commission to impose such limitations on the chief's discretion. The only statutory role of a commission, as specified under state law, is to approve or disapprove the chief's selection of a subordinate. A promotion process, once adopted, need not be used each time a vacancy occurs; the chief and other senior officers are usually in the best position to know if personnel within a department are qualified for promotion and if use of a promotion process is necessary or not in each case.

Appointment of subordinates need not be limited to consideration of only qualified individuals within a department. The promotion process may provide for consideration of eligible candidates from outside a department. Called lateral entry, appointing individuals from "outside" agencies or departments is not a common practice in Wisconsin. In part, this is because of a traditional view that promotions should reward those within an organization

and that choosing an “outsider” to fill a position will cause resentment or internal opposition. Variations in salary levels and employee benefits among Wisconsin communities are other factors at work.

## **RULES GOVERNING ELIGIBILITY**

Promotion eligibility rules serve to control how large a pool of potential candidates the chief of a department will have to draw from in filling vacancies. A department may choose to adopt rules that are very restrictive, thus limiting the number of prospective candidates for promotion, or it may adopt rules designed to enlarge the potential pool of candidates.

Rules adopted may govern matters as varied as the preference given to seniority, minimum length of time an applicant must have served in his or her current rank, supervisory or managerial experience needed, minimum education and training, and certification or licensure in a specific job-related field.

Promotions should reflect a chief’s needs and the department’s interests. Police and fire chiefs are often in the best position to determine the kinds of knowledge, skills and experience subordinates at progressively higher levels of responsibility in a department need to possess.

Conflicts over a department’s authority to establish rules, such as one governing the weight given to seniority in promoting police officers and firefighters, may arise out of language contained in a collectively bargained labor agreement. In one case it was held that a chief’s discretion in appointing subordinates may be restricted by language in a contract negotiated under Wis. Stat. sec. 111.70 (*Glendale Professional Policemen’s Association v. Glendale*, 83 Wis. 2d 90, 254 N.W.2d 594 (1978)). This should not be interpreted to mean a police and fire commission is obligated to approve the chief’s appointment of a subordinate; the commission retains final authority in approving or disapproving the chief’s choice of subordinates.

## **RULES GOVERNING TESTING REQUIREMENTS**

A department may have wide latitude in setting policies and rules regarding the use of promotion tests. Any number of readily available tests, designed to measure specific kinds of knowledge, may be used for the purpose; these include written examinations for promotion to the ranks of sergeant, lieutenant and captain in law enforcement agencies or to the grades of lieutenant, captain and assistant chief in municipal fire departments.

Most promotion examinations attempt to measure an individual’s technical, supervisory or managerial knowledge at levels that vary from position to position. As a rule, emphasis on a mastery of technical subjects decreases and emphasis on supervisory or managerial knowledge increases with progression through the ranks of both police and fire departments.

A department may choose other kinds of examinations as part of the promotion process, including physical aptitude examinations and psychological tests if either or both kinds of tests are appropriate to the position and in the interests of a department.

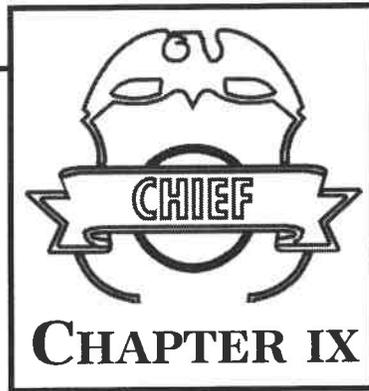
## **RULES GOVERNING PROBATIONARY APPOINTMENTS**

Chapters VI and VII discuss probation as a way of validating decisions in choosing entry-level police officers, firefighters, police chiefs and fire chiefs. The satisfactory completion of probation, as a condition of attaining permanent status in either a police or fire department, may be applied to promotions as well, but its use can create problems that initial appointments

rarely present: Failure to complete probation, following promotion to a higher rank, may directly affect the advancement and work assignments of other personnel when an individual, selected for promotion, later reverts to his or her previous rank and position.

Provisions of a labor contract may protect represented members of a collective bargaining unit who fail to complete probation following promotion to a higher grade. "Bumping rights" let individuals who are affected reclaim their previous grades and may even guarantee a return to their former positions. Where there are no provisions in a labor contract or departmental rules governing this type of occurrence, it is important that a police and fire commission adopt written policies to guide the chief of a department.





## **Discipline And Complaints**

### **OVERVIEW**

When a police and fire commission exercises its statutory powers and responsibilities in matters related to either discipline or complaints, it acts as a quasi-judicial body. A quasi-judicial body is one that is authorized, under state law, to use certain powers bearing on the administration of justice; facts are presented before the body, then carefully weighed and a decision made.

Very few boards in Wisconsin's local government system exercise quasi-judicial powers, but their number includes police and fire commissions, boards of review (which hear appeals involving the assessed value of property), and ethics boards (which may be granted authority to act on matters related to the conduct of public officials and employees). The quasi-judicial powers of a police and fire commission are limited to matters involving the conduct of police officers and firefighters. (Wis. Stat. sec. 62.13(5).)

The exercise of quasi-judicial powers does not mean members of a police and fire commission ought to be attorneys or need to attend special schools; nor does it mean that proceedings conducted by a commission must follow rules similar to those governing civil, and criminal procedures in a court of record, such as a circuit court. It does mean a commission must use procedures protecting the rights of an individual whose conduct is being scrutinized and that a complete, accurate record of commission proceedings be kept. More will be said about these concerns later in this chapter.

### **Impact of 1993 Act 53**

In 1993, the Wisconsin Legislature changed state law governing the use of discipline in matters related to the conduct of certain municipal employees. These changes, adopted as part of 1993 Wisconsin Act 53, affect police officers and firefighters employed by Wisconsin cities, villages and towns. (Municipalities, including counties, that do not have a police and fire commission are required to appoint a discipline committee to carry out the legislative mandates found in Act 53.)

The most critical change affects how a police and fire commission determines whether charges, filed with the commission and relating to the alleged conduct of a police officer or firefighter, warrant the use of discipline.

Historically a commission could impose discipline “for cause” or, in other words, when there was sufficient reason to suspend, demote or terminate a police officer or firefighter. With enactment of changes found in Act 53, a commission may discipline a police officer or firefighter only when a majority of commissioners are satisfied there is “just cause” for imposing discipline; that is to say when certain prescribed standards are satisfied before it is determined the use of discipline may be justified.

This new portion of the law, Wis. Stat. sec. 62.13(5)(em), states that:

No subordinate may be suspended, reduced in rank, suspended and reduced in rank, or removed by the board ... based on charges filed by the board, members of the board, an aggrieved person or the chief ... unless the board determines whether there is just cause [emphasis added], as described in this paragraph, to sustain the charges.

Importantly, 62.13(5)(em) does not apply to a police officer who is promoted on a probationary basis but returned to his or her prior rank for nondisciplinary reasons. *Kraus v. City of Waukesha Police and Fire Comm’n*, 2003 WI 51, 261 Wis.2d 485, 662 N.W.2d 294. However, it does apply to a police officer who is promoted on a probationary basis and is ordered during the probationary period to resume his or her prior rank for disciplinary reasons. *Antisdel v. City of Oak Creek Police and Fire Comm’n*, 2000 WI 35, 234 Wis.2d 154, 609 N.W.2d 464.

How does a commission determine if “just cause” exists? Wisconsin Statutes section 62.13(5)(em) sets forth seven standards a commission must apply, to the extent that each standard applies, in making a “just cause” determination. These standards are:

1. Whether the police officer or firefighter, against whom charges have been filed, could be expected to have known the probable consequences of the alleged conduct.
2. Whether the rule or order the individual allegedly violated is a reasonable rule or order.
3. Whether the chief, before filing charges against a subordinate, made a reasonable effort to discover if the subordinate actually violated the rule or order.
4. Whether the chief’s effort, to discover if the subordinate actually violated the rule or order, was fair and objective. This standard calls for the chief, and subordinates assisting the chief, to be impartial and unbiased in their effort to learn if a rule or order was violated.
5. Whether the chief discovered substantial evidence that the subordinate named in the charges actually violated the rule or order described in the charges.
6. Whether the chief has applied, or is applying, the rule or order impartially and without discrimination against the subordinate.

7. Whether the form of discipline proposed reasonably relates to the seriousness of the alleged violation and to the subordinate's record of service with the chief's department.

Standards 3 through 6 appear to reflect an implicit belief that it will be the police chief or fire chief who charges a subordinate with having violated a rule or order; these four standards specifically mention the chief of a department, not a police and fire commission, its individual members, another municipal official or individual citizen. It seems reasonable to suppose that if a person other than the police chief or fire chief files charges against a police officer or firefighter, a commission would not be bound by the same four standards. This finds support in language contained in Wis. Stat. sec. 62.13(5)(em) stating that the commission "shall apply the ... standards **to the extent applicable** [emphasis added]."

It also should be noted that there appears to be some ambiguity as to whether the Legislature, in adopting 1993 Wisconsin Act 53, intended that the same seven standards be satisfied in any effort to discipline a police chief or a fire chief. This is because sec. 62.13(3) states a chief can only be disciplined "for cause" while the standards in sec. 62.13(5)(em) are specifically aimed at the determination of "just cause" in any effort to sustain charges against a police officer or firefighter who is subordinate to the chief.

However, section 62.13(5)(j), clearly states the same seven standards "shall apply to disciplinary actions against the [police and fire] chiefs where applicable." A police and fire commission should find that applying the seven standards in disciplinary actions against a police chief or a fire chief are easy steps to take in relation to the total process of conducting hearings and determining what form of discipline, if any, is appropriate.

Moreover, by carefully applying the seven standards, a commission eliminates a possible basis for having its decision challenged and possibly invalidated by a court. For, it is important to note, that 1993 Act 53 also broadened the discretion of a circuit court judge in the event a disciplinary action, taken by a police and fire commission, is appealed to a circuit court under sec. 62.13(5)(i). Prior to Act 53, a circuit court's standard of review, when faced with an appeal of a commission's decision, was limited to asking the question: Based on available evidence, was the action taken by a commission reasonable? Section 62.13(5)(i) now requires that a circuit court ask: Based on available evidence, was there "just cause" for charging that a police officer or firefighter violated a rule or order?

As a result of this change, a circuit court is authorized to initiate a *de novo* review of the commission's "just cause" determination. *De novo* simply means to start anew; the court begins its own review of the matter without particular regard for what may have previously transpired or the decision made by a commission in the matter.

Under this revised standard for judicial review, the circuit court reviewing the matter makes a separate, independent determination, based on available evidence, of whether "just cause" exists to sustain the charges against the individual being disciplined. The court's determination of whether the seven standards are met is made without any particular regard for what the police and fire commission may have done or decided. While it does not especially matter to the court what the commission decided, it is imperative that sufficient evidence exist in records, submitted by the commission, to satisfy the court that the seven standards established by 1993 Act 53 were met.

## DISCIPLINARY ACTIONS INITIATED BY A POLICE OR FIRE CHIEF

The chief of a department may conclude the conduct of a subordinate warrants suspension from duty. Suspension from duty is used for two different purposes and the intended purpose determines which form of suspension will be used.

One form of suspension involves relieving a police officer or firefighter from duty for the express purpose of removing the person from the work place. In this case suspension is not imposed as a penalty; the individual continues to receive full pay, allowances and other customary benefits. Although usually relieved from duty by the chief, a commission also has the authority to suspend a police officer or firefighter pending disposition of charges against the individual. (Wis. Stat. sec. 62.13(5)(b).)

It is not necessary that a commission be notified when a police officer or firefighter is relieved from duty; however, if the reason for removing a subordinate from the work place is so serious that charges are likely to be filed with the commission, the chief of a department should inform the commission what actions have been taken in the matter.

A second form of suspension involves relieving a police officer or firefighter from duty for just cause and as a penalty; the individual does not receive pay or allowances during the period of suspension.

If a chief suspends a subordinate as a penalty, the chief must immediately file a report with the commission. (Wis. Stat. sec. 62.13(5)(c).) Since the state law governing suspension does not define “immediately,” it is vital a policy for notifying the commission be adopted. A commission might adopt a rule requiring that written notification be delivered to the president and secretary, with a copy mailed to other commission members, within twenty-four hours after a subordinate’s suspension for just cause is ordered by the chief of a department.

A subordinate suspended for just cause by the chief of a department has a right to request a hearing before the police and fire commission. The state law granting this right does not establish a fixed period of time during which a request must be filed. For this reason a chief, in ordering the suspension of a subordinate for cause, might establish a future date on which the suspension will take effect; fourteen to twenty-one calendar days following the date of the chief’s order would not be unreasonable.

One reason for following such a procedure is the staffing problems that sometimes are caused by the absence of a police officer or firefighter; setting a future date on which a suspension takes effect lets a department adjust work schedules and assignments to insure operations are not impaired.

A second reason for delaying the effective date of a suspension is the possibility a chief’s action may be set aside or modified by the commission following a hearing in the matter. If this occurs after a suspension has been served, the subordinate will be entitled to recover pay and allowances lost because of the suspension. Viewed in another way, the individual will have received what amounts to additional paid vacation.

A request for a hearing before a police and fire commission should be in writing and, depending on rules adopted by the commission, conveyed to the president or commission secretary. While a police officer or firefighter suspended for just cause might be expected to inform the chief that a hearing has been requested, nothing should be left to chance; once a request is received, the president or commission secretary should, without delay, inform the chief that a hearing has been requested.

There is a reason why a commission should take this initiative: If a hearing is requested, the chief must provide the commission with a copy of the charges upon which a subordinate’s suspension is based. (Wis. Stat. sec. 62.13(5)(c).) It is also the chief’s responsibility to serve the subordinate with a copy of the charges. (Wis. Stat. sec. 62.13(5)(d).)

Charges filed against a police officer or firefighter need not be technically drawn or meet the requirements of an indictment in a criminal matter, but should be sufficiently detailed so all parties understand the conduct involved, as well as the specific rules, regulations or standards of conduct violated.

Once a hearing is requested, the commission sets a hearing date that is not less than ten nor more than thirty days following the date the suspended subordinate was served with a copy of the charges. (Wis. Stat. sec. 62.13(5)(d).) To meet this requirement, it is vital that a chief give the commission written confirmation that a subordinate was served with a copy of the charges and the date he or she was served.

A commission is likely to encounter problems in its attempt to set a hearing date. One problem is finding a date convenient to all members of the commission, the chief, and the individual requesting the hearing. If that individual is represented by an attorney, the attorney will want time to become familiar with facts in the matter, review evidence and prepare for the hearing. A chief also is entitled to representation. Usually the municipal attorney, or another attorney hired for the purpose, will represent the chief and will want time to prepare for the hearing. All these factors have a bearing on a commission's efforts to set a hearing day.

Once a hearing date is set, all the interested parties should be notified, in writing, and public notice of the meeting posted.

### **DISCIPLINARY ACTIONS INITIATED BY THE COMMISSION OR AN INDIVIDUAL**

A police and fire commission is authorized to initiate disciplinary actions against members of a police or fire department, including the chief of a department. Any member of a commission may file charges against a police officer or firefighter, or the commission may act as a body in filing charges. (Wis. Stat. sec. 62.13(5)(b).) But, since the commission is the body which also will hear and act on charges it initiates, this authority should be used carefully and as a last resort.

The right to file formal charges is not limited to the chief of a department and members of a police and fire commission; "any aggrieved person" who feels there is reason to take disciplinary action against a police officer or firefighter may file charges with the commission. (Wis. Stat. sec. 62.13(5)(b).) An example of a complaint form that might be used by a commission, together with a sample letter of instructions to the person wishing to file a complaint, is included in the Appendix.

In every instance a complaint filed with or by a commission must be in writing. (Wis. Stat. sec. 62.13(5)(b).) If, upon reviewing the charges, a commission concludes the allegations warrant removing the individual charged from the work place, the commission may order the individual's suspension, with pay, pending disposition of the charges. (Wis. Stat. sec. 62.13(5)(a).)

### **PROCEDURAL DUE PROCESS**

Hearing and acting on allegations of wrongdoing or misconduct is a very serious matter. It is absolutely essential that all members of a police and fire commission, and every officer of a department under the commission's jurisdiction, understand the importance of insuring an individual's right to due process is not abridged.

Due process is a fundamental concept in most legal systems; it is based on a belief that governments may not deprive individuals of life, liberty or property unless certain procedures are observed. Both the Fifth and Fourteenth Amendments to the U.S. Constitution contain clauses safeguarding an individual's right to due process.

It should be noted that for purposes of due process, the concept of "property" is not limited to tangible goods, such as a person's home, land, cash or investments; it also means a person's interest in other forms of property, such as a job or position, salary or wages earned,

and benefits to which a person is entitled. Neither tangible nor intangible property may be taken from a person without due process.

The kind of due process members of a police and fire commission must be aware of is referred to as “procedural due process” and applies to situations in which an action is taken to deprive a police officer or firefighter of property (job, rank, income or benefits). Simply stated, in any action taken to discharge, demote or suspend a police officer or firefighter for just cause, that person must be afforded due process. Procedural due process involves several basic elements:

- ◆ The individual is entitled to an impartial decisionmaker.
- ◆ The individual is entitled to notice of charges that have been made, or will be made, as well as actions that will or may be taken against the individual.
- ◆ The individual is entitled to a hearing for the purpose of responding to the charges.
- ◆ The individual is entitled to representation.
- ◆ The individual is entitled to confront and cross examine his or her accusers.
- ◆ The individual is entitled to present evidence and argue his or her view of the facts.

Some actions do not require compliance with these procedural due process requirements. For example, a new probationary employee discharged during the probationary period does not have a constitutional or statutory right to a statement of specifications or hearing, either before or after termination. *Kaiser v. Board of Police and Fire Commissioners*, 104 Wis. 2d 498, 311 N.W.2d 646 (1981). Likewise, a police officer who is promoted on a probationary basis but returned to his prior rank for nondisciplinary reasons is not entitled to a just cause hearing under Wis. Stat. 62.13(5)(em). *Kraus v. City of Waukesha Police and Fire Comm’n*, 2003 WI 51, 261 Wis.2d 485, 662 N.W.2d 294.

## COMMISSION HEARINGS

A commission may be asked to take certain actions before a hearing gets underway. These actions are related to the appearance of witnesses and the introduction of evidence.

Both an individual named in charges filed with a police and fire commission and the party filing the charges have a right to call witnesses for the purpose of giving testimony on their behalf. If any person who is asked to give testimony refuses to attend the hearing called by a commission, the commission may issue a subpoena ordering the witness to testify. A subpoena also may be issued to obtain papers and other documents needed as part of the hearing. (Wis. Stat. sec. 62.13(5)(d).)

The format and procedures for serving subpoenas are found in Chapter 885, *Wisconsin Statutes*. Subpoenas issued by a police and fire commission are signed by its president. (Wis. Stat. sec. 62.13(5)(d).) Although the process is relatively simple, a commission would do well to ask the advice of legal counsel before proceeding to issue subpoenas.

There is another caution to be observed. Since individuals served with a subpoena are entitled to a fee for appearing as a witness, a commission should establish a fund for this

purpose or, before subpoenas are issued in the absence of such a fund, obtain approval to pay witness fees from other municipal accounts.

The president of a commission is in charge of the hearing and, as presiding officer, is responsible for keeping order and insuring the procedures used are fair and meet accepted standards for due process. Procedures used in a disciplinary hearing need not be as formal as those in judicial proceedings. Nor is a commission bound by the strict rules of evidence used in court proceedings.

It is vital that a commission meet before a hearing to establish and discuss the procedures it will use. Time should be given to a review of what is and what is not appropriate conduct, on the part of commissioners, when asking questions or commenting on testimony and evidence offered during a hearing; asking irrelevant questions or offering personal opinions may call into question a commission's capacity to render a fair, impartial decision.

Commissioners also must avoid saying anything that could possibly be construed as evidence that a conclusion had been reached before all the facts in a matter were presented. This admonition applies not only to what members of a commission may say during a meeting or formal hearing, but also to what commissioners might say to other individuals, including individuals not involved in any matter before the commission, in the course of a casual conversation or at a social gathering in the community.

Assuming financial resources are available, the commission may enlist outside help in a disciplinary proceeding. A hearing examiner is one type of outside help that might be used. Use of a hearing examiner may be decided on a case-by-case basis or established by rule of the commission. However, the commission may not delegate the authority to make a final decision or disposition to a hearing examiner. *Conway v. Board of Police and Fire Commissioners*, 2003 WI 53, 262 Wis.2d 1, 662 N.W.2d 335. In addition, a commission must ensure an impartial proceeding and not allow that obligation to be undermined by even the minor participation of an outsider in the proceeding. *Heil v. Green Bay Police and Fire Comm'n*, 2002 WI App 228, 256 Wis.2d 1008, 652 N.W.2d 118.

The president calls the hearing to order, explains the purpose of the hearing and the procedures that will be followed. It should be clearly stated, for the benefit of all parties, that the commission is not an investigative tribunal and that the hearing is not a judicial inquisition, but rather a formal inquiry into the facts of the matter at hand.

The president then reads the charges, as filed with the commission, cites the rules, regulations or standards of conduct allegedly violated, and then invites the presentation of testimony by both sides.

Testimony always begins with the side that filed the charges. The complainant, or a person representing the complainant, usually makes an opening statement, followed by a presentation of facts leading to the charges filed with the commission; this may involve calling witnesses and introducing evidence, such as departmental or municipal rules, regulations, reports and correspondence.

Individuals giving testimony before a police and fire commission usually do so under oath. Although any commission member may lawfully administer an oath, it is commonly administered by the commission's secretary; an oath (or affirmation) may take any of the generally accepted forms used for the purpose.

The presiding officer or hearing officer are free to ask questions intended to clarify statements made or related to evidence offered during the proceedings. Members of a commission also are entitled to ask questions, but questioning by individual commissioners should be controlled by the president to insure they are germane.

The individual charged, or the individual's attorney, may challenge the testimony of any person appearing on behalf of the complainant as well as evidence that is introduced. This corresponds to the cross-examination of witnesses in a judicial proceeding and is intended to resolve questions concerning the truthfulness of statements made by those giving testimony; the process must be carefully regulated by the president to insure fairness to both sides. Failure to allow proper cross examination is a denial of due process. *Umhoefer v. Police and Fire Comm'n of City of Mequon*, 2002 WI App 217, 257 Wis.2d 539, 652 N.W.2d 412.

After the complainant's side has been presented, the individual charged is given the opportunity to present facts, call witnesses and introduce evidence in an effort to show the individual was wrongly charged or that a penalty, imposed by the chief of a department, was inappropriate. The complainant may challenge any testimony or evidence offered during this stage of the hearing.

When the presiding officer is satisfied both sides received a fair chance to present testimony and evidence in support of their respective positions, each side is afforded an opportunity to argue their view of the facts presented and to summarize their position. The presiding officer then adjourns the hearing.

## POST-HEARING ACTIONS

Hearings conducted by a police and fire commission in disciplinary matters must be open to the public. (Wis. Stat. sec. 62.13(5)(d).) But, a commission may, prior to making a decision, meet in closed session to consider testimony and weigh evidence presented at a hearing. (Wis. Stat. sec. 19.85(1)(a).) Closed sessions held for this purpose are treated as separate meetings and must conform with all the requirements of Wisconsin's open meetings law. While no record needs to be made of discussions conducted in a closed session, the minutes of such a session must document every motion offered, the names of the commission members making and seconding each motion, and how every member voted on the motion. (Wis. Stat. sec. 19.88(3).)

In reviewing and acting on a disciplinary action already taken or proposed by the chief of a department, a commission has several options to choose from: The commission can approve the chief's action without change; dismiss or modify one or more of the charges filed by the chief; modify any penalty imposed; or void the chief's action.

In acting on a complaint filed with a commission, members of the commission traditionally choose from three basic options:

- ◆ The complaint may be dismissed.
- ◆ Certain charges found in the complaint may, in light of testimony and evidence presented, may be dismissed or modified.
- ◆ The commission may conclude the testimony and evidence presented sustain the charges heard and warrant imposing a penalty.

If a commission decides a penalty is justified, its next task is to settle on one that is appropriate and reasonable in light of the commission's factual findings in the case.

A fire and police commission can impose penalties that range from suspension without pay, reduction in rank, a combination of suspension and reduction in rank, to termination of employment. Orders of suspension without pay, reduction in rank, a combination of suspen-

sion and reduction in rank, or removal must be in writing and filed with the commission secretary within three days following the close of hearings. (Wis. Stat. sec. 62.13(5)(f).)

If a commission determines the charges against a police officer or firefighter cannot be sustained on the basis of testimony and evidence offered during a hearing, and if the individual was suspended pending disposition of the charges or suspended by the chief for cause, the commission may order that the person charged be returned to duty, all benefits restored, and any lost wages paid to the individual. If an individual, acquitted of all charges, is a member of a city police or fire department, the city may reimburse the individual for reasonable expenses incurred and attorney's fees.

The post-hearing decision of a police and fire commission in disciplinary matters or complaints brought before the commission are announced in a written order. Unlike subpoenas issued by a commission or certain other forms, there is no prescribed format for a written order, but it should, at a minimum, include:

- ◆ A reiteration of all charges filed with the police and fire commission.
- ◆ The specific rules, regulations or standards of conduct violated.
- ◆ A list of those charges the commission found could not be proved by testimony and evidence presented.
- ◆ A list of those charges the commission found to be proved by a preponderance of testimony and evidence presented.
- ◆ A summary of disciplinary actions considered by the commission.
- ◆ The disciplinary action ordered by the commission and any special conditions attached to the action ordered.

A commission's order is subject to judicial review. For this reason it is in a commission's interest to have an order drafted and reviewed by legal counsel before it is formally adopted and issued. The order must be signed by the president and filed with the commission's secretary; copies should be provided to the parties concerned as soon as possible.

An order issued by a commission need not contain a summary of the testimony or evidence on which the commission's action in a matter is based. However, conclusions reached by a commission and any penalty imposed must be supported by the record of the proceedings.

## RECORDING COMMISSION HEARINGS

Actions taken by a police and fire commission may be appealed. The individual requesting an appeal must serve written notice of the appeal with the commission secretary within ten days after the order is filed. (Wis. Stat. sec. 62.13(5)(j).) Within five days after receiving notice of appeal, the commission must certify to the clerk of circuit court the record of the proceedings, including all documents, testimony and minutes. (Wis. Stat. sec. 62.13(5)(j).)

It is important that a complete, accurate record of proceedings, conducted by a commission, be available to the court and it is the commission secretary who makes sure the proceedings are recorded. A simple and inexpensive method for creating a record of any public

hearing is to make an audio recording. It is a good idea to ask someone, who is familiar with the equipment a commission will use, to test both the equipment and tapes before a hearing begins. If possible, two separate units should be used to record the hearings preferably units that accommodate two or more microphones; if multiple microphones cannot be accommodated, then the two units should be positioned far enough apart to insure what is being will be recorded by one unit or the other.

It is not essential that what is recorded during the course of a hearing be immediately transcribed; it may become necessary to do so later if the actions of the commission are challenged. It should be noted, however, that tapes made during a public hearing are open to inspection and may be copied under Wisconsin's public records laws; for this reason, tapes should be stored in a secure place when not in use. (Wis. Stat. sec. 19.35(l)(c).)

Contracting for the services of a professional court reporter or stenographer is a better, but more costly means of insuring the production of a comprehensive hearing record. If a commission believes a verbatim, written record of a hearing will be needed, this may be the most cost-effective alternative in the long run. Attorneys with experience in disciplinary actions before a police and fire commission may recommend hiring a court reporter to insure a complete, accurate record of the proceedings is made.

A commission might consider a third option for creating a record of its proceedings. This involves use of video equipment to produce both an audio and video record. Some firms employing professional reporters and stenographers provide video recording services; some police and fire departments also have the resources required to videotape proceedings.

## Judicial Review

A police officer or firefighter, disciplined by a police and fire commission, may take advantage of two separate avenues of appeal: That provided for in Wis. Stat. sec. 62.13(5)(i), and that allowed under a common law writ of certiorari. Significantly, commencement of the sec. 62.13(5)(i) appeal does not require a filing in circuit court. Rather, the appeal is commenced in circuit court by serving written notice of the appeal on the PFC within ten days of the filing of the PFC's order. *Truttschel v. Martin* 208 Wis.2d 361, 560 N.W.2d 315 (Ct. App. 1997).

If the direct statutory appeal right of section 62.13(5)(i) is selected, the question before the court is: "Upon the evidence is there just cause, as described under par. (em), to sustain the charges against the accused?" (Wis. Stat. sec. 62.13(5)(em) sets forth the seven standards to be used, to the extent they are applicable, in making a just cause determination.)

Under certiorari review, the scope of a court's review is limited to a determination of: (1) whether the police and fire commission acted within its jurisdiction; and (2) whether the commission acted under a correct view of the law.

Prior to Act 53 a court's standard of review, when faced with an appeal of a commission's decision under sec. 62.13(5)(i) was limited to asking the question: Based on available evidence, was the action taken by a commission reasonable?

As a result of this change, a circuit court is authorized to initiate a *de novo* review of the commission's "just cause" determination; the court begins its own review of the matter without particular regard for what may have previously transpired or the decision made by a commission in the matter.

Under this revised standard for judicial review, the circuit court reviewing the matter makes a separate, independent determination, based on available evidence, of whether "just cause" exists to sustain the charges against the individual being disciplined. The court's determination of whether the seven standards set for in sec. 62.13(5)(em) are met is made without any particular regard for what the police and fire commission may have done or

decided. While it does not especially matter to the court what the commission decided, it is imperative that sufficient evidence exist in records, submitted by the commission, to satisfy the court that the seven standards established by 1993 Act 53 are met.

If the court concludes the evidence presented does not support the commission's action, it may order the individual disciplined to be reinstated (in the case of a demotion or firing) and to receive all back pay and allowances (in the case of suspension for just cause, demotion or firing). The court also may direct a commission to consider and impose a different penalty, one that may be less severe than the penalty called for in a commission's written order.

It is possible that an individual who is disciplined might choose to initiate a lawsuit in which it is alleged that procedures used by the commission served to deny the individual his or her right to due process; if this argument proves to be persuasive, a court may order the commission to conduct a new hearing and use procedures that meet the accepted standards of due process.

A commission's failure to meet requirements under Wisconsin's open meetings law provides yet another possible avenue of appeal. An individual disciplined by a police and fire commission, or any other person with an interest in the matter, may file a complaint with the district attorney claiming the commission failed to meet one or more requirements governing meetings of public bodies. A circuit court may penalize a governing body, found in violation of the open meetings law, by voiding an action taken by the body while in violation of the law. (Wis. Stat. sec. 19.97(3).) If this occurs, a commission could face the prospect of having to conduct another hearing on the same charges.

Police and fire commissions should be aware of an important decision concerning another avenue police officers had hoped to use to appeal suspension orders by the chief of a department. The collective bargaining proposal by a union representing police officers would have given a suspended subordinate the right to submit his or her suspension to arbitration rather than seeking a hearing before the police and fire commission. An appellate court held that the proposed right to arbitration conflicted with Wis. Stat. sec. 62.13(5), and that a police and fire commission's power to determine whether charges against a subordinate should be sustained may not be transferred to an arbitrator. (*City of Janesville v. Wisconsin Employment Relations Commission*, 193 Wis. 2d 492, 535 N.W. 2d 34 (1995).) Likewise, a fire chief's decision to return a firefighter promoted on a probationary basis to his previous rank for failure to successfully complete probation may not be subjected to arbitration. *City of Madison v. WERC*, 2003 WI 52, 261 Wis.2d 423, 662 N.W.2d 318.

## LEGAL COUNSEL AND REPRESENTATION

As a municipal body, a police and fire commission is entitled to request the advice and assistance of the municipality's legal counsel. The involvement of a municipal attorney in commission affairs can range from answering a commission's questions about its powers and responsibilities to serving as a hearing officer or representing the commission in legal proceedings.

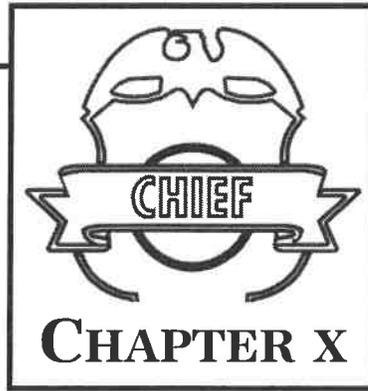
This does not mean that a lawyer serving as city, village or town attorney always must, will or can provide legal counsel to the municipality's police and fire commission. A municipal attorney may sometimes have a conflict of interest in a matter before a police and fire commission. For example, a police chief or fire chief may be engaged in a departmental matter that requires the chief to seek the advice of the municipality's legal counsel. If the chief acts on the basis of that advice and another party, with an interest in the same matter, elects to file charges against the chief with the police and fire commission, the municipality's legal counsel would be unable to represent the commission since the chief acted on the basis of

advice provided by the same attorney. In other words, the municipal attorney has a conflict of interest in the matter.

Legal services needed by a city, village or town are frequently provided by an attorney engaged in a private law practice. In this instance, the attorney may have occasion to represent the private interests of a police officer, a firefighter, or the chief of a department who later becomes a party in a matter before a police and fire commission. An attorney could not represent the interests of his or her client as well as the interests of the municipality and, in this instance, would have to decline the commission's request for advice or representation.

Nor may a municipal attorney act in the dual role of legal advisor to a police and fire commission and legal representative for the person bringing a complaint before the commission. This may be the case when the person filing a complaint is the police chief, fire chief or another municipal official. Because of the long-term advisory relationship a municipal attorney often may have with the commission, the municipal attorney should act as legal advisor to the commission the person filing a complaint should retain outside counsel to prosecute the matter.

It is an attorney's professional responsibility to make it known that he or she has an actual or potential conflict of interest and cannot provide the services needed by a police and fire commission. When this happens, the attorney will usually offer a commission recommendations for seeking legal counsel and representation. The costs of legal services needed by a commission are paid by the municipality. It is important to keep in mind that a commission has no independent authority to hire special counsel, but it may request authorization from the governing body to hire and pay special counsel.



## OPEN MEETINGS AND PUBLIC RECORDS

### KEY PROVISIONS IN WISCONSIN'S OPEN MEETINGS LAW

Governmental bodies must give notice each time they intend to meet, what matters they will take up, and meet at a place accessible to the public. These rules apply to all police and fire commissions in Wisconsin. (Wis. Stat. sec. 19.82(1).) Under normal circumstances a commission must give written notice it intends to meet at least twenty-four hours before the meeting is scheduled to begin; a commission may meet with only two hours notice if the meeting is in response to an emergency. (Wis. Stat. sec. 19.84.)

Except for those purposes spelled out in state law, a commission must conduct its meetings in open session. (Wis. Stat. sec. 19.83.) Anyone may attend an open meeting and record the proceedings on audio or video tape, providing they do not interfere with the conduct of business. (Wis. Stat. sec. 19.90.)

Wisconsin Statutes section 19.85 permits certain exemptions to the requirement that a governmental body, conduct its business in open session. A commission may meet in closed session for any of the following purposes:

- ◆ Deliberating on a matter that was the subject of a hearing before the commission. (Wis. Stat. sec. 19.85(1)(a).)
- ◆ Considering the dismissal, demotion or discipline of any member of a police or fire department, or investigating charges against that individual. (Wis. Stat. sec. 19.85(1)(b).)
- ◆ The person charged is notified of the evidentiary hearing or meeting and that he or she has a right to demand the hearing or meeting be held in open session. (Wis. Stat. sec. 19.85(1)(b).)
- ◆ In acting on charges filed against a member of a police or fire department, a commission is also subject to section 62.13(5), Wisconsin Statutes, requiring that disciplinary

hearings shall be public. At the conclusion of the hearing, a commission may meet in closed session to weigh evidence and its options in the matter; formal action would be deferred until the commission meets in open session, with the individual subject to discipline is present.

- ◆ Considering the employment, promotion, compensation or evaluating the performance of any employee under the commission's jurisdiction. (Wis. Stat. sec. 19.85(1)(c).)
- ◆ Considering personnel matters, including potential charges against a police officer or firefighters which, if discussed in public, might harm the reputation of any person involved in the matter. (Wis. Stat. sec. 19.85(1)(f).)
- ◆ Conferring with legal counsel concerning commission strategy in litigation the commission is or is likely to become involved in. (Wis. Stat. sec. 19.85(1)(g).)
- ◆ Deliberating on matters related to purchasing or selling property, investing public funds or other matters where competitive reasons require a closed session. (Wis. Stat. sec. 19.85(1)(e).) This exemption is only likely to affect commissions that exercise optional powers.

State law requires that certain procedures be followed when a closed meeting is planned. If a closed session is planned at the time a meeting notice is prepared, the notice must announce the governmental body's intent to meet in closed session and cite the specific statutory authority permitting a closed session. (Wis. Stat. sec. 19.84(2).) The agenda should be structured in a way that lets a commission begin its meeting in open session, move into closed session at the appropriate time, then return to open session to take up other matters.

If the intent to meet in closed session is not part of a meeting notice, but in the course of the meeting it is decided that one is appropriate, a motion to go into closed session may be made by a member of the governmental body. The nature of the matter to be taken up in closed session must be stated as part of the motion, the specific statutory authority for doing so cited, and the vote of each member on the motion recorded. (Wis. Stat. sec. 19.85(1).) In this case, once the governmental body moves into closed session, it cannot return to open session for at least twelve hours, so it would be wise to postpone taking up a matter in closed session until all the other items on the agenda have been dealt with. (Wis. Stat. sec. 19.85(2).)

The minutes of commission meetings need not recount what was discussed in a closed session, but any formal action taken by the commission while in closed session, including each motion made, the identity of members offering or seconding a motion, and how each member present voted on the motion, must be recorded and is treated as an open record. (Wis. Stat. sec. 19.88(3).) Documents related to matters taken up in closed session may be closed to public access; once the purpose for closing a meeting and shielding documents from disclosure have been served, the documents should be open to public access.

Exactly who is entitled to participate in a closed session and who may be invited to be present are two separate matters. All members of a police and fire commission are entitled to be present, even members who object to or vote against a motion to meet in closed session. (Wis. Stat. sec. 19.89.) Contrary to beliefs sometimes expressed by other municipal officials, non-members of a commission are not entitled to be present during a closed session unless specifically invited by the body to be present. A police and fire commission is an independent

body created under state law, not a subordinate body of a common council, village or town board; other officials cannot claim a right to be present when a commission meets in closed session, no matter what office an official holds.

Public notice requirements under the open meetings law can be met by posting a written notice in one or more locations where it is likely to be seen by the public. Most police and fire commission can post notices in the same places used by other municipal bodies; additional copies should be posted in each police and fire station.

Newspapers, radio and TV stations are entitled to file requests with governmental bodies asking that they routinely receive a copy of meeting notices. (Wis. Stat. sec. 19.84(1)(b).) A commission would be obliged to deliver or mail a copy to each requester, but the requester is not obligated to publish, announce or publicize a scheduled meeting. Notice of commission meetings must be provided to the municipality's official newspaper or, if none exists, to news media in the area likely to publicize meetings conducted by governmental bodies. (Wis. Stat. sec. 19.84(1)(b).)

A sample meeting notice can be found in the Appendix. Note that it treats each agenda item in some detail; it is the intent of the open meetings law that a person, by reading a notice, will know what matters a governmental body intends to take up.

Sometimes the need to be reasonably explicit in announcing a governmental body's intention to meet must be balanced against a need to protect the identity and reputation of persons who may be the subject of discussion when that body meets in closed session. Suppose, for example, that a commission receives a letter alleging a member of the fire department has engaged in misconduct as a public employee. If a closed session is scheduled to take up the allegation, the meeting notice might say, "Motion to go into closed session, pursuant to section 19.85(1)(b), Wisconsin Statutes, to consider allegations of misconduct by a public employee." At this stage in the commission's review of the allegations, it probably would be inappropriate to name the employee or the individual making the allegations.

Additional matters, not included as separate agenda items, have often been taken up and discussed by governmental bodies under the heading of "other business." In response to an inquiry concerning this practice, the Wisconsin Attorney General has stated that "if the meeting notice contains a general subject matter designation and a subject that was not specifically noticed comes up at the meeting, a governmental body should refrain from any information gathering or discussion or from engaging in any action that would deprive the public of information about the conduct of governmental affairs." (Informal Opinion of Wis. Att'y Gen. to Elizabeth Adelman, Attorney, 1-5-93, April 26, 1993.)

Members of all governmental bodies should be aware of an important presumption made under the open meetings law: It is presumed that when one-half or more members of a governmental body are present at one time and in the same place, they are meeting for the purpose of conducting business as a governmental body, even if a meeting has not been called or notice given. (Wis. Stat. sec. 19.82(2).) In other words, it can be argued that any time three of a commission's five members are together, they may be conducting commission business.

State law recognizes the likelihood of chance gatherings or attendance at social functions that are not intended to circumvent the law. Attendance at conferences or programs of instruction, involving one-half or more members of a governmental body, also are exceptions to the basic presumption made under Wisconsin's open meetings law. (Wis. Stat. sec. 19.82(2).)

A court can impose penalties on members of a governmental body who violate the open meetings law. Forfeitures of between \$25 and \$300 can be imposed on each member of the

body found in violation of the law. These forfeitures are treated as a personal liability and cannot be reimbursed by a municipality. (Wis. Stat. sec. 19.96.)

A potentially more costly penalty stems from an option open to a court that finds a governmental body has violated the open meetings law: The court may void an action taken by a body held in violation of the open meetings law. (Wis. Stat. sec. 19.97(3).)

Consider, for example, the commission that meets in open session and orders the discharge a police officer for just cause. Meeting in open session, the commission directs media representatives at the meeting to leave. Citing their right to be present under state law, the media representatives are nevertheless escorted by police officers from the meeting room. The discharged officer files a complaint with the district attorney alleging that the commission, by excluding media representatives from an open session, violated the open meetings law. The officer's complaint results in charges by the district attorney and, after some months go by, a circuit court finds the commission did violate the open meetings law.

In finding the commission in violation of the open meetings law, the court may choose to void the commission's order to discharge the officer because the action was taken in the course of a meeting conducted in violation of the open meetings law. The court might order the officer's reinstatement and reimbursement of all compensation and benefits lost as a result of the commission's action. The commission would have to meet again and take action in the officer's case.

It should be noted that the open meetings law action initiated by the discharged officer could have been initiated by members of the media or any individual. Compliance with the state's open meetings law is a duty all governmental body members need to take very seriously.

## KEY PROVISIONS IN WISCONSIN'S PUBLIC RECORDS LAW

State law defines a public record as any written, printed or recorded information created or held by a public official, agency or body. Excluded are drafts of documents, notes or preliminary computations prepared for the originator's personal use, materials that are personal in nature, and materials to which access is limited by copyright, patent or bequest. (Wis. Stat. sec. 19.32(2).)

Each public record has a legal custodian, even if no formal action has been taken to appoint one. The president is the custodian of a police and fire commission's records unless another person, such as the commission secretary or an employee of the municipal agency providing administrative support to the commission, has been designated to serve as legal custodian. (Wis. Stat. sec. 19.33(4).) At least one deputy custodian should be appointed to act on a commission's behalf in the event the custodian is absent or unavailable when access to commission records is requested. (Wis. Stat. sec. 19.33(6).)

Any person, regardless of age or residence, may request access to or a copy of a public record. A person seeking access to records held by a commission also has a statutory right:

- ◆ To know who the legal custodian is and the conditions governing access (place, days, hours) to commission records. (Wis. Stat. sec. 19.34(1).)
- ◆ To inspect a record and obtain a copy of it, within any limitations set by federal or state law. (Wis. Stat. secs. 19.35(1) and 19.36(1).)
- ◆ To withhold their name or the reason for seeking access to a record. (Wis. Stat. sec. 19.84(1)(i).)

- ◆ To have their request for access to a record acted on within a time period described in state law “as soon as practicable and without delay.” (Wis. Stat. sec. 19.35(4)(a).)
- ◆ When the request is made in writing, to have reasons used for denying access to a record put in writing and to receive a copy of the denial. (Sec. 19.35(4)(b).)
- ◆ To use legal remedies provided in state law if there is reason to think the custodian violated state law by delaying action on a request, denying access without sufficient reason, or imposing fees that exceed direct, reasonable costs. (Wis. Stat. sec. 19.37.)

A person seeking access to records held by a commission also has certain obligations; these include a responsibility:

- ◆ To be reasonably specific in describing, by subject matter and time period covered, the public record or information to which they are seeking access. (Wis. Stat. sec. 19.35(1)(h).)
- ◆ To comply with reasonable restrictions, set by the custodian, for inspecting or copying a record. (Wis. Stat. sec. 19.35(1)(k).)
- ◆ To pay the direct, reasonable costs associated with making copies of a record. (Wis. Stat. sec. 19.35(3)(a).)

The legal custodian of public records held by a police and fire commission has statutory authority:

- ◆ To appoint one or more deputy custodians. (Wis. Stat. sec. 19.33(6).)
- ◆ To insist that a request be reasonably specific in terms of subject matter and the time period covered by a public record. (Wis. Stat. sec. 19.35(1)(h).)
- ◆ To impose reasonable restrictions for handling and making copies of records. (Wis. Stat. sec. 19.35(1)(k).)
- ◆ To collect a fee, not exceeding direct, reasonable costs for copying a public record, and to require that the fee be prepaid if it is expected to exceed five dollars. (Wis. Stat. sec. 19.35(3)(a).)
- ◆ To limit public access to only those records, or portions of records, the public is legally entitled to inspect or copy. (Wis. Stat. sec. 19.35(1).)

A commission’s responsibility to provide access to public records only when that access is permitted by law is particularly important in light of the types of records held by commissions. Generally, those records can be grouped into five groups.

The first group involves records related to public employees. Such records can be either exempt from disclosure or subject to certain limitations and procedures. For example, Wis. Stat. Sec. 103.16(6) identifies some records that are closed to inspection and include letters of

reference, test documents, future compensation among others. The public records law contains three categories of employee records: a). employee-related records that are absolutely closed to public access under the open records law; b). employee-related records that may be released under the balancing test only after a notice of impending release and the right of judicial review have been provided to the employee record subject, and c). employee-related records that may be released under the general balancing test without providing a right of notice or judicial review to the employee record subject. Further information about these records and procedures for release can be found in the October 2003 legal comment “Public Records Law Amended to Answer Questions Raised by Court Decisions” from the League of Wisconsin Municipalities published in *the Municipality*. League Opinions Public Records 100, 101, 102.

The second group involves records about persons other than employees. These records are closed if they contain information of a personal nature about a person other than an employee, which, if disclosed, would be an invasion of that person’s privacy.

The third group involves records about local public officials such as police chiefs, fire chiefs and commission members. These records are not exempt from disclosure and may be disclosed in their entirety or partially if the commission determines that the public interest in access outweighs any public interest in nondisclosure. However, records pertaining to local public officials that have home address, home e-mail address, home phone number or social security number cannot be released unless authorized by the individual. An exception exists which allows the release of the home address of a person holding an elected public office or an individual subject to a residency requirement. If the commission decides to permit access to a record containing information relating to an officer or employee holding a local public office or a state public office, notice must be provided to that person and there is an opportunity for the person to augment the record(s) to be released. Further information about this process can be found in the October 2003 legal comment Public Records Law “Amended to Answer Questions Raised by Court Decisions” from the League of Wisconsin Municipalities published in *the Municipality*. League Opinions Public Records 100, 101, 102.

The fourth group involves records of commission proceedings. Such records can be either exempt from disclosure or open to public access. For example, if a commission meets in closed session, minutes of that proceeding are not subject to disclosure so long as the need for confidentiality remains. Minutes of open session meetings and documents or materials provided to the commission during such a meeting, unless otherwise subject to a limitation or prohibition, are accessible to the public. A general discussion about the treatment of records held by a governmental body such as a commission can be found in Chapter VII of the *Handbook for Wisconsin Municipal Officials*, pages 178-191, available from the League of Wisconsin Municipalities.

The fifth group involves records that reveal the identity of applicants for employment with a public agency such as the police department or fire department. Public access to these records is either limited or prohibited. For example, if an applicant for a position with a police or fire department requests in writing that his or her identity not be revealed, then access is not permitted unless or until the applicant is a “final candidate” for the position sought. Wis. Stat. 19.36(7)(b).

The legal custodian of public records held by a police and fire commission has certain obligations; these include an obligation:

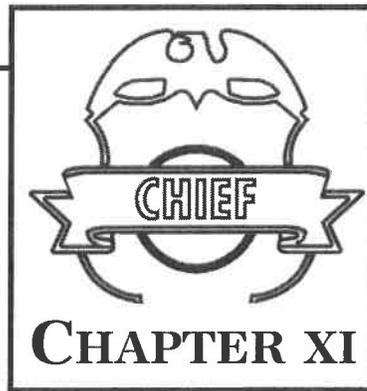
- ◆ To provide access to records under the conditions set (place, days, hours) and posted ahead of time. (Wis. Stat. sec. 19.34.)

- ◆ To provide a copy of the record requested that is as good as the original (this includes audio or video tapes, photos, etc.) or, in the case of computerized records, extracting the data requested. (Wis. Stat. sec. 19.35(1)(b), (c) and (d).)
- ◆ To act on a request “as soon as practicable and without delay.” (Wis. Stat. sec. 19.35(4)(a).)
- ◆ To give specific reasons why a request for access to a record is being denied, either in whole or in part. (Wis. Stat. sec. 19.35(4)(b).)
- ◆ With regard to certain types of records specified in Wis. Stat. sec. 19.356(2)(a), to provide notice to a record subject if the custodian decides to release the record. (Wis. Stats. sec. 19.356.)

Unintentional violations of the public records law are common; intentional violations are probably less common, but in either case can lead to unwanted problems, including litigation. It is vital that a police and fire commission make sure the person appointed to serve as custodian of the commission’s records becomes familiar with what state law requires. A custodian would do well to record each request for access to a public record and the action taken. Whether a request is made orally or in writing, or if a request must be denied in whole or in part, the reason for denying the request should be put in writing with one copy given to the requester, another to the municipality’s legal counsel, and a copy retained by the custodian.

There is a basic rule every commission and any other public entity should observe: If it is believed there is a legitimate basis for denying a request for access to a public record, or to information contained in a public record, legal counsel should be contacted before acting on the request.





## **Municipal and Public Official Liability**

### **OVERVIEW**

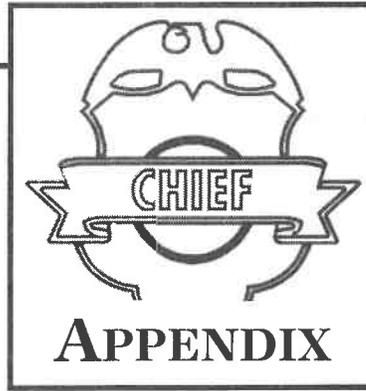
A municipality can be held responsible and accountable for the negligent acts of its officers and employees, but only if these acts are done in their official capacity. State law sets limits on what actions, claiming municipal liability, can be taken and the procedures that need to be followed. Among the limitations is an important one affecting police and fire commissions: No legal action can be initiated against a municipality or its officials for acts done in the exercise of legislative, quasi-legislative, judicial or quasi-judicial functions. This limitation provides protection for a police and fire commission in performing its important functions as a quasi-judicial body.

In addition to actions claiming damages growing out of negligent acts, lawsuits can be initiated by individuals who seek to hold a municipality liable for alleged violations of their constitutional rights, including an individual's civil rights. A growing body of federal law deals with municipal liability in cases involving individual rights under the U.S. Constitution and federal law.

It is unlikely members of a police and fire commission would be held personally liable for damages growing out of an act done in their capacity as appointed officials; in most cases involving judgments for damages, a municipality and its insurer pay any damages and the costs of defending officials named in an action. This assumes a municipal official committed an act within the scope of his or her office. (There is a notable exception to this rule of personal liability; it is discussed in Chapter X and involves the payment of forfeitures for violation of the open meetings law.)

There are other instances in which a public official cannot escape personal liability for the consequences of acts in violation of state law. These include the serious penalties that can be imposed for violating provisions found in Wisconsin Statutes Chapter 946. Prohibited acts include: Soliciting or accepting a bribe to influence a public official; having a private interest in a public contract (if the public official would realize benefits exceeding \$15,000 in any one year); or engaging in any form of misconduct described in Wis. Stat. sec. 946.12.

The area of municipal liability is very complex and matters arising out of claims against a city, village or town are best left to attorneys appointed or hired to represent municipal interests. Members of police and fire commissions should simply remain aware that, as a municipal official, what one does or fails to do in their official capacity could be the subject of a claim or lawsuit filed against the municipality.



## Table of Contents

### SELECTED STATUTORY PROVISIONS AFFECTING POLICE AND FIRE COMMISSIONS AND JOINT COMMISSIONS – WISCONSIN STATUTES 2003-04 UPDATE

Chapter 60, Towns .....	74
Chapter 61, Villages .....	75
Chapter 62, Cities .....	76
POSITION DESCRIPTION .....	82
APPLICATION FOR EMPLOYMENT .....	86
LETTER OF INSTRUCTIONS TO APPLICANTS .....	91
COMPLAINT FORM .....	93
NOTICE OF PUBLIC MEETING .....	97
REQUEST FOR ACCESS TO OR COPY OF PUBLIC RECORDS .....	98

## SELECTED STATUTORY PROVISIONS

The following are selected statutory provisions affecting police and fire commissions and joint commissions — Wisconsin Statutes 2003-04 Update

### CHAPTER 60. TOWNS

**60.55 Fire protection.** (1) GENERAL AUTHORITY. (a) The town board shall provide for fire protection for the town. Fire protection for the town, or any portion of the town, may be provided in any manner, including:

1. Establishing a town fire department.
2. Joining with another town, village or city to establish a joint fire department. If the town board establishes a joint fire department with a village under s. 61.65 (2) (a) 3., the town board shall create a joint board of fire commissioners with the village under s. 61.65 (2) (b) 2.

3. Contracting with any person.

4. Utilizing a fire company organized under ch. 213.

(b) The town board may provide for the equipping, staffing, housing and maintenance of fire protection services.

(2) FUNDING. The town board may:

- (a) Appropriate money to pay for fire protection in the town.

- (b) Charge property owners a fee for the cost of fire protection provided to their property under sub. (1) (a) according to a written schedule established by the town board.

- (c) Levy taxes on the entire town to pay for fire protection.

- (d) Levy taxes on property served by a particular source of fire protection, to support the source of protection.

**60.56 Law enforcement.** (1) GENERAL AUTHORITY. (a) The town board may provide for law enforcement in the town or any portion of the town in any manner, including:

1. Establishing a town police department.

2. Joining with another town, village or city to create a joint police department. If the town board establishes a joint police department with a village under s. 61.65 (1) (a) 3., the town board shall create a joint board of police commissioners with the village under s. 61.65 (1) (b) 1. b.

3. Contracting with any person.

(am) If a town board establishes a town police department under par. (a) 1. or 2. and does not create a board of police commissioners singly or in combination with another town, village or city, the town may not suspend, reduce, suspend and reduce, or remove any police chief or other law enforcement officer who is not probationary, and for whom there is no valid and enforceable contract of employment or collective bargaining agreement which provides for a fair review prior to that suspension, reduction, suspension and reduction or removal, unless the town board does one of the following:

1. Establishes a committee of not less than 3 members, none of whom may be an elected or appointed official of the town or be employed by the town. The committee shall act under s. 62.13 (5) in place of a board of police and fire commissioners. The town board may provide for some payment to each member for the member's cost of serving on the committee at a rate established by the town board.

2. Appoint a person who is not an elected or appointed official of the town and who is not employed by the town. The person shall act under s. 62.13 (5) in place of a board of police and fire commissioners. The town board may provide for some payment to that person for serving under this subdivision at a rate established by the town board.

**60.57 Police and fire commission.** (1) The town board may:

- (a) If the town has a police department, establish a board of police commissioners.
- (b) If the town has a fire department, establish a board of fire commissioners.
- (c) If the town has both a police and fire department, establish a board of police and fire commissioners.

(2) A board created under this section shall be organized in the same manner as boards of police and fire commissioners under s. 62.13 (1).

(3) A board created under this section is subject to the provisions of s. 62.13 (2) to (5) and (7) to (12) to the extent that the provisions apply to 2nd and 3rd class cities. In applying s. 62.13 under this section, the town board chairperson has the powers and duties specified for a mayor, the town board has the powers and duties specified for a common council and the town has the powers and duties specified for a city.

## CHAPTER 61. VILLAGES

**61.65 Police and fire departments; pension funds.** (1)(a) Except as provided under s. 61.66, each village with a population of 5,000 or more shall provide police protection services by one of the following methods:

1. Creating its own police department.
2. Contracting for police protective services with a city or town, with another village or with the county in which the village is located. A village that contracts for police protective services shall pay the full cost of services provided.
3. Creating a joint police department with a city or town or with another village.

(am) If a village establishes a police department and does not create a board of police commissioners singly or in combination with another municipality, the village may not suspend, reduce, suspend and reduce, or remove any police chief or other law enforcement officer who is not probationary, and for whom there is no valid and enforceable contract of employment or collective bargaining agreement which provides for a fair review prior to that suspension, reduction, suspension and reduction or removal, unless the village does one of the following:

1. Establishes a committee of not less than 3 members, none of whom may be an elected or appointed official of the village or be employed by the village. The committee shall act under s. 62.13 (5) in place of a board of police and fire commissioners. The village board may provide for some payment to each member for the member's cost of serving on the committee at a rate established by the village board.
2. Appoint a person who is not an elected or appointed official of the village and who is not employed by the village. The person shall act under s. 62.13 (5) in place of a board of police and fire commissioners. The village board may provide for some payment to that person for serving under this subdivision at a rate established by the village board.

(b).1.a.. Each village with a population of 5,000 or more but less than 5,500 that creates its own police department may create or designate a committee of the board of trustees to perform any duty conferred by the board relating to police protective services, or may create a board of police commissioners to govern the department.

b. Each village with a population of 5,000 or more that creates a joint police department with another municipality shall create a joint board of police commissioners with that municipality to govern the joint department.

2. Each village with a population of 5,500 or more that creates its own police department

shall create a board of police commissioners to govern the department.

(2)(a) Except as provided under s. 61.66, each village with a population of 5,500 or more shall provide fire protection services by one of the following methods:

1. Creating its own fire department.
2. Contracting for fire protection services with a city or town or with another village. A village that contracts for fire protection services shall pay the full cost of services provided.
3. Creating a joint fire department with a city or town or with another village.
4. Utilizing a fire company organized under ch. 213, except that this subdivision does not apply in a village that provides fire protection services under subd. 1. on December 9, 1993.

(b) 1. Each village with a population of 5,500 or more that creates its own fire department shall create a board of fire commissioners to govern the department.

2. Each village with a population of 5,500 or more that creates a joint fire department with another municipality shall create a joint board of fire commissioners with that municipality to govern the joint department.

(3g)(a) Any village with its own board of police commissioners and its own board of fire commissioners may consolidate the boards into one board of police and fire commissioners.

(b) Municipalities with a joint protective services department shall create a joint board of commissioners to govern that department. If a village operates both of its protective services departments jointly with one municipality, the village and the other municipality may create a joint board of police and fire commissioners to govern each department. The municipalities may jointly determine the apportionment between the municipalities of costs relating to the joint department or departments and the joint board.

(c) Any village that has created one separate protective services department and one joint protective services department may authorize the joint board governing the joint department also to govern the separate protective services department, subject to the approval of the joint board. A village that receives the approval of the joint board is not required to create or maintain a separate board of commissioners to govern the separate protective services department.

(d)1.a.. A board created under this section shall be organized in the same manner as boards of police and fire commissioners under s. 62.13 (1).

## CHAPTER 62. CITIES

### 62.13 Police and fire departments.

(1) COMMISSIONERS. Except as provided in sub. (2m), each city shall have a board of police and fire commissioners consisting of 5 citizens, 3 of whom shall constitute a quorum. The mayor shall annually, between the last Monday of April and the first Monday of May, appoint in writing to be filed with the secretary of the board, one member for a term of 5 years. No appointment shall be made which will result in more than 3 members of the board belonging to the same political party. The board shall keep a record of its proceedings.

(2) EXCEPTION. (a) Except as provided under sub. (6m), subs. (1) to (6) shall not apply to cities of less than 4,000 population except by ordinance adopted by a majority of all the members of the council. A repealing ordinance may be adopted by a like vote.

(b) A city that creates a joint police or fire department with a village under s. 61.65 is not required to create a separate board of police and fire commissioners under this section. The city shall create a joint board of commissioners to govern the joint department, as required in s. 61.65. If the city also creates one separate protective services department in addition to the joint protective services department, the city shall create a separate board of commissioners to govern that department. A city's joint board of commissioners is subject to s. 61.65 (3g)

(d). A city's separate board of commissioners is subject to this section.

(2m) JOINT DEPARTMENTS; CONTRACT SERVICES. (a) A city may create a joint police department or a joint fire department, or both, with another city.

(b) A city that creates a joint police department or a joint fire department, or both, with another city under par. (a) is not required to create a separate board of police and fire commissioners under this section. The cities shall create a joint board of commissioners to govern the joint department. If only one joint department is created, each city shall retain its existing board of police and fire commissioners to govern the separate department. The cities may jointly determine the number of commissioners to be appointed to the joint board by each city and the length of the commissioners' terms. A majority of the commissioners is a quorum. A joint board of commissioners that is created under this paragraph to govern a joint police department is subject to the provisions of subs. (3) to (7n), a joint board of commissioners that is created under this paragraph to govern a joint fire department is subject to the provisions of subs. (8) to (12) and a joint board of commissioners that is created under this paragraph to govern a joint police and fire department is subject to the provisions of subs. (2) to (12).

(3) CHIEFS. The board shall appoint the chief of police and the chief of the fire department, who shall hold their offices during good behavior, subject to suspension or removal by the board for cause.

4) SUBORDINATES. (a) The chiefs shall appoint subordinates subject to approval by the board. Such appointments shall be made by promotion when this can be done with advantage, otherwise from an eligible list provided by examination and approval by the board and kept on file with the clerk.

(b) Any person who, on June 23, 1943 has served and acted as a full-time city police patrolman, patrolwoman or police officer performing the services by virtue of regular assignment therefor under the orders and supervision of the chief of police of said city, and receiving his or her salary on the regular official payroll of said police department for a continuous period of more than 10 years, although not regularly appointed from an eligible list, is deemed to have been regularly appointed, as of the time of the commencement of his or her service.

(c) For the choosing of such list the board shall adopt, and may repeal or modify, rules calculated to secure the best service in the departments. These rules shall provide for examination of physical and educational qualifications and experience, and may provide such competitive examinations as the board shall determine, and for the classification of positions with special examination for each class. The board shall print and distribute the rules and all changes in them, at city expense.

(d) The examination shall be free for all U.S. citizens over 18 and under 55 years of age, with proper limitations as to residence, health and, subject to ss. 111.321, 111.322 and 111.335, arrest and conviction record. The examination, including minimum training and experience requirements, shall be job-related in compliance with appropriate validation standards and shall be subject to the approval of the board and may include tests of manual skill and physical strength. All relevant experience, whether paid or unpaid, shall satisfy experience requirements. The board shall control examinations and may designate and change examiners, who may or may not be otherwise in the official service of the city, and whose compensation shall be fixed by the board and paid by the city. Veterans and their spouses shall be given preference points in accordance with s. 230.16 (7).

(e) The council of any city of the 2nd, 3rd or 4th class may provide that members of the police force shall be of both sexes. The fire and police commission shall select each police

officer from an eligible list.

(5) DISCIPLINARY ACTS AGAINST SUBORDINATES. (a) A subordinate may be suspended as hereinafter provided as a penalty. The subordinate may also be suspended by the commission pending the disposition of charges filed against the subordinate.

(b) Charges may be filed against a subordinate by the chief, by a member of the board, by the board as a body, or by any aggrieved person. Such charges shall be in writing and shall be filed with the president of the board. Pending disposition of such charges, the board or chief may suspend such subordinate.

(c) A subordinate may be suspended for just cause, as described in par. (em), by the chief or the board as a penalty. The chief shall file a report of such suspension with the commission immediately upon issuing the suspension. No hearing on such suspension shall be held unless requested by the suspended subordinate. If the subordinate suspended by the chief requests a hearing before the board, the chief shall be required to file charges with the board upon which such suspension was based.

(d) Following the filing of charges in any case, a copy thereof shall be served upon the person charged. The board shall set date for hearing not less than 10 days nor more than 30 days following service of charges. The hearing on the charges shall be public, and both the accused and the complainant may be represented by an attorney and may compel the attendance of witnesses by subpoenas which shall be issued by the president of the board on request and be served as are subpoenas under ch. 885.

(e) If the board determines that the charges are not sustained, the accused, if suspended, shall be immediately reinstated and all lost pay restored. If the board determines that the charges are sustained, the accused, by order of the board, may be suspended or reduced in rank, or suspended and reduced in rank, or removed, as the good of the service may require.

(em) No subordinate may be suspended, reduced in rank, suspended and reduced in rank, or removed by the board under par. (e), based on charges filed by the board, members of the board, an aggrieved person or the chief under par. (b), unless the board determines whether there is just cause, as described in this paragraph, to sustain the charges. In making its determination, the board shall apply the following standards, to the extent applicable:

1. Whether the subordinate could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct.
2. Whether the rule or order that the subordinate allegedly violated is reasonable.
3. Whether the chief, before filing the charge against the subordinate, made a reasonable effort to discover whether the subordinate did in fact violate a rule or order.
4. Whether the effort described under subd. 3. was fair and objective.
5. Whether the chief discovered substantial evidence that the subordinate violated the rule or order as described in the charges filed against the subordinate.
6. Whether the chief is applying the rule or order fairly and without discrimination against the subordinate.
7. Whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the subordinate's record of service with the chief's department.

(f) Findings and determinations hereunder and orders of suspension, reduction, suspension and reduction, or removal, shall be in writing and, if they follow a hearing, shall be filed within 3 days thereof with the secretary of the board.

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

(h) No person shall be deprived of compensation while suspended pending disposition of charges.

(i) Any person suspended, reduced, suspended and reduced, or removed by the board may appeal from the order of the board to the circuit court by serving written notice of the

appeal on the secretary of the board within 10 days after the order is filed. Within 5 days after receiving written notice of the appeal, the board shall certify to the clerk of the circuit court the record of the proceedings, including all documents, testimony and minutes. The action shall then be at issue and shall have precedence over any other cause of a different nature pending in the court, which shall always be open to the trial thereof. The court shall upon application of the accused or of the board fix a date of trial, which shall not be later than 15 days after such application except by agreement. The trial shall be by the court and upon the return of the board, except that the court may require further return or the taking and return of further evidence by the board. The question to be determined by the court shall be: Upon the evidence is there just cause, as described under par. (em), to sustain the charges against the accused? No costs shall be allowed either party and the clerk's fees shall be paid by the city. If the order of the board is reversed, the accused shall be forthwith reinstated and entitled to pay as though in continuous service. If the order of the board is sustained it shall be final and conclusive.

(j) The provisions of pars. (a) to (i) shall apply to disciplinary actions against the chiefs where applicable. In addition thereto, the board may suspend a chief pending disposition of charges filed by the board or by the mayor of the city.

(5m) DISMISSALS AND REEMPLOYMENT. (a) When it becomes necessary, because of need for economy, lack of work or funds, or for other just causes, to reduce the number of subordinates, the emergency, special, temporary, part-time, or provisional subordinates, if any, shall be dismissed first, and thereafter subordinates shall be dismissed in the order of the shortest length of service in the department, provided that, in cities where a record of service rating has been established prior to January 1, 1933, for the said subordinates, the emergency, special, temporary, part-time provisional subordinates, if any, shall be dismissed first, and thereafter subordinates shall be dismissed in the order of the least efficient as shown by the said service rating.

(b) When it becomes necessary for such reasons to reduce the number of subordinates in the higher positions or offices, or to abolish any higher positions or offices in the department, the subordinate or subordinates affected thereby shall be placed in a position or office in the department less responsible according to the subordinate's efficiency and length of service in the department.

(c) The name of a subordinate dismissed for any just cause set forth in this section shall be left on an eligible reemployment list for a period of 2 years after the date of dismissal, except that if the dismissal was for disciplinary reasons the subordinate may not be left on an eligible reemployment list. If any vacancy occurs, or if the number of subordinates is increased, in the department, the vacancy or new positions shall be filled by persons on the eligible reemployment list in the inverse order of the dismissal of the persons on the list.

(6) OPTIONAL POWERS OF BOARD. (a) The board of fire and police commissioners shall have the further power:

1. To organize and supervise the fire and police departments and to prescribe rules and regulations for their control and management.

2. To contract for and purchase all necessary apparatus and supplies for the use of the departments under their supervision, exclusive of the erection and control of the police and fire station buildings.

3. To audit all bills, claims and expenses of the fire and police departments before the same are paid by the city treasurer.

(b) The provisions of this subsection shall apply only if adopted by the electors. Whenever not less than 42 days prior to a regular city election a petition therefor, conforming to the requirements of s. 8.40 and signed by electors equal in number to not less than 20%

of the total vote cast in the city for governor at the last general election, shall be filed with the clerk as provided in s. 8.37, the clerk shall give notice in the manner of notice of the regular city election of a referendum on the adoption of this subsection. Such referendum election shall be held with the regular city election, and the ballots shall conform with the provisions of ss. 5.64 (2) and 10.02, and the question shall be "Shall s. 62.13 (6) of the statutes be adopted?"

(6m) If a city of less than 4,000 population has not by ordinance applied subs. (1) to (6) to the city, the city may not suspend, reduce, suspend and reduce, or remove any police chief or other law enforcement officer who is not probationary, and for whom there is no valid and enforceable contract of employment or collective bargaining agreement which provides for a fair review prior to that suspension, reduction, suspension and reduction or removal, unless the city does one of the following:

(a) Establishes a committee of not less than 3 members, none of whom may be an elected or appointed official of the city or be employed by the city. The committee shall act under sub. (5) in place of the board of police and fire commissioners. The city council may provide for some payment to each member for the member's cost of serving on the committee at a rate established by the city council.

(b) Appoint a person who is not an elected or appointed official of the city and who is not employed by the city. The person shall act under sub. (5) in place of the board. The city council may provide for some payment to that person for serving under this paragraph at a rate established by the city council.

(7) COMPENSATION. The salaries of chiefs and subordinates shall be fixed by the council. Unless the council otherwise provides, in cities of the 4th class rewards for the apprehension of criminals may be retained by the person entitled thereto. Such salaries when so fixed may be increased but not decreased by the council without a previous recommendation of the board. The council may provide that the salaries shall increase with length of service.

(7m) REST DAY. (a) The council of every city of the fourth class shall provide for, and the chief of the police department shall assign to, each police officer in the service of such city one full rest day of 24 consecutive hours during each 192 hours, except in cases of positive necessity by some sudden and serious emergency, which, in the judgment of the chief of police, demands that such day of rest not be given at such time. Arrangements shall be made so that each full rest day may be had at such time or times as will not impair the efficiency of the department.

(b) The council of every city of the second or third class shall provide for, and the chief of the police department shall assign to, each police officer in the service of such city 2 full rest days of 24 consecutive hours each during each 192 hours, except in cases of positive necessity by some sudden and serious emergency, which, in the judgment of the chief of police, demands that any such day of rest not be given at such time. Arrangements shall be made so that each full rest day may be had at such time or times as will not impair the efficiency of the department. This section shall not apply to villages to which s. 61.65 is applicable.

(7n) HOURS OF LABOR. Except when a labor agreement under subch. IV of ch. 111 that governs hours of employment exists, the council of every 2nd, 3rd or 4th class city shall provide for a working day of not more than 8 hours in each 24 except in cases of positive necessity by some sudden and serious emergency, which, in the judgment of the chief of police, demands that such workday shall be extended beyond the 8-hour period at such time; and, when such emergency ceases to exist, all overtime given during such emergency shall be placed to the credit of such police officer, and compensatory time under s. 103.025 given therefor.

(8) FIRE DEPARTMENT. The council may provide by ordinance for either a paid or a volunteer fire department and for the management and equipment of either insofar as not otherwise provided for by law. In the case where a combination of paid and volunteer fire department is provided for, such city shall be reimbursed by the department of transportation, not to exceed \$500 for any fire calls on a state trunk highway or on any highway that is a part of the national system of interstate highways and is maintained by the department of transportation if the city submits written proof that the city has made a reasonable effort to collect the cost from the insurer of the person to whom the fire call was provided or from the person to whom the fire call was provided, except that the city may attempt to collect the cost from the person only if the city is unsuccessful in its efforts to collect from the person's insurer or if the person has no insurer. If the city collects the cost from an insurer or such person after the department reimburses the city, the city shall return the amount collected to the department.

(10m) RULES GOVERNING LEAVING CITY. Subject to approval of the common council the fire chief may establish rules requiring fire fighters to obtain permission before leaving the city.

(11) FIRE FIGHTERS; REST DAY. The common council of every 4th class city, having a population of 5,000 or more and a fire department shall provide for, and the chief of the fire department shall assign to each full paid member thereof, a period of 24 consecutive hours off duty during each 72 hours, except in cases of positive necessity by some sudden and serious fire, accident or other peril, which, in the judgment of the chief engineer or other officer in charge demands that the day of rest not be given at that time. The provisions of this section shall not apply to cities having a 2-platoon or double shift system.

(11a) FIRE DEPARTMENT PLATOONS. The common council, or other governing body of every city of the first, second and third class, whether organized under a general or special charter, having a paid fire department, shall provide for, and the governing power of the fire department shall divide the full paid fire fighting force in the fire department into 2 or more bodies or platoons. Each platoon shall work, or be on duty, alternately an equal number of hours or as nearly so as the governing power of the fire department of each such city decides, but no member of said platoon shall be on duty for a longer continuous period of time than the governing power of the fire department designates, except in cases of positive necessity by some sudden and serious fire, accident, or other peril, which in the judgment of the chief engineer or other officer in charge demands.

(b) The hours of duty of each member of the fire fighting force of the fire department in every city of the first class shall be limited to 72 hours in any one week. If any such department shall be on a platoon system of hours of duty, 12 hours may be added to one of 2 successive weeks and such period of time deducted from the previous or succeeding week, as the case may be.

(12) LEGISLATIVE INTENT. Section 62.13 and chapter 589, laws of 1921, chapter 423, laws of 1923, and chapter 586, laws of 1911, shall be construed as an enactment of statewide concern for the purpose of providing a uniform regulation of police and fire departments.

## POSITION DESCRIPTION

### Title of Position: Police Chief

(D.O.T. RELATED CODE 375.117-010)

WORK UNIT: Village of Seneca Police Department

IMMEDIATE SUPERVISOR: Village Administrator

### POSITION IN BRIEF:

This is a senior management position in which a person functions as the chief officer of an organization providing services that include, but are not necessarily limited to, crime prevention, investigation, routine patrol, traffic control, accident investigation, alcohol and drug abuse prevention, community education, response to citizen complaints and calls for assistance.

The Police Chief operates under the direction of the Village Administrator; the chief directs day-to-day operations of the department and exercises all powers and responsibilities assigned to police chiefs and law enforcement officers under state statute and municipal ordinance. As the department's chief officer, the chief must exercise independent judgement in often complex matters related to emergency situations.

### SECTION A. ESSENTIAL KNOWLEDGE, Skills AND JOB-RELATED EXPERIENCE REQUIRED

Intermediate to advanced knowledge of management theory, principles and practices which meet the needs of senior managers in efforts to plan, organize, staff, direct and control the operations of a public safety organization.

Intermediate to advanced knowledge of municipal management including the structure and functions of village government, principles of public administration, capital budgeting, municipal budgeting, purchasing and contracting, public personnel management, labor law and labor relations; knowledge of the role and authority of a village board of trustees under Chapter 61, and a police and fire commission under Section 62.13, *Wisconsin Statutes*.

Intermediate to advanced knowledge of principles, techniques and procedures used to evaluate individual, work unit and agency performance.

Advanced knowledge of constitutional theory and principles, federal laws, state statutes, principles and accepted practices growing out of case law with clear evidence of knowledge in the following areas of concern:

- ◆ Nature, purpose and protection of civil rights including criminal sanctions and civil liability for the violation of civil rights by police agencies and officers.
- ◆ Legal issues and practices affecting police agencies in conducting searches, seizing property, making arrests, using force, conducting interrogations and investigations.
- ◆ Legal principles and practices insuring due process in dealing with members of the department and members of the public served by the department.

Advanced knowledge of principles and practices used in determining the need for and appropriate use of discipline in a police agency.

Basic to intermediate knowledge of labor relations and the statutory provisions governing municipal labor relations under Chapter 111, *Wisconsin Statutes*. Basic to intermediate knowledge of federal, state and other sources of funding for law enforcement training and operations; ability to prepare grant applications or requests for funding; ability to manage and accurately account for funds provided by external sources.

Basic to intermediate knowledge of microcomputers and software used in database management, data analysis and report generation in support of police operations.

Basic to intermediate knowledge of principles, techniques and procedures used to measure and improve productivity.

Skills in developing or directing development of detailed operational policies governing agency practices, particularly those governing high speed pursuit, use of force, and handling citizen complaints.

Skills in preparing and presenting reports.

Skills in oral and written communication and public speaking.

Three or more years of satisfactory performance in a senior management or senior staff position in law enforcement, including two or more years of experience in managing a law enforcement agency or a major work unit within such an agency; preference given to experience gained as a command officer or senior staff officer in a municipal police department.

## SECTION B. SPECIAL QUALIFICATIONS REQUIRED OR DESIRED

A baccalaureate or graduate degree from an accredited college or university desired; preference given to a field of study associated with law, police science, criminology, sociology, public administration, business administration or management.

A valid Wisconsin motor vehicle operator license is required.

Certification or capacity to meet certification requirements established for police officers under section 165.85(4), *Wisconsin Statutes*.

## SECTION C. TASKS ROUTINELY PERFORMED AND APPROXIMATE TIME (%) GIVEN TO EACH

Under direction of the Village Administrator proactively plan, organize, staff, direct and control operations of the department; coordinate activities with the Board of Trustees, the Board of Police and Fire Commissioners, and Village Administrator; coordinate planning with other village agencies and units of government as required. (25%)

Function as a law enforcement officer performing routine patrol, responding to calls for assistance, apprehending individuals and investigating crimes. (20%)

Review, develop and implement policies and procedures related to the day-to-day administration of the department. (10%)

Direct or monitor activities of subordinates and staff. (10%)

Monitor the planning, conduct and systematic evaluation of entry-level training programs, in-service training programs and other activities designed to meet the continuing education and training needs of police officers and civilian staff. (10%)

Provide a channel of communication between the department and the Board of Trustees, the Board of Police and Fire Commissioners, the Village Administrator, other village agencies, elementary and secondary schools, the business community and the community at large. (10%)

Monitor department expenditures and revenues; coordinate needed adjustments to capital improvements and operating budgets with the Board of Trustees and the Village Administrator. (5%)

Maintain appropriate records and prepare reports. (5%)

Attend professional conferences; participate in continuing education and training programs to maintain or develop the knowledge and skills needed to perform tasks associated with this position. (5%)

#### **SECTION D. TASKS PERIODICALLY PERFORMED AND FREQUENCY OF EACH**

Direct the development of a proposed annual operating budget for department operations; submit for review by the Village Administrator and the Board of Trustees. (Annually)

Direct the periodic review of the police department's long range capital improvements plan and budget. (Annually)

Evaluate and document the performance of subordinates. (At least biannually)

Review, develop and propose, for consideration by the Village Administrator, policies governing prevention of crimes, enforcement of state statutes and village ordinances, the safe movement of people and goods, and the protection of people and property. (on need basis.)

Participate, under direction of Village Administrator, in periodic review and development of strategic plan for Village of Seneca with emphasis on public protection and law enforcement. (on need basis)

Assist the Board of Police and Fire Commissioners in developing policies and procedures governing the recruitment, screening, testing and appointment of police officers; advise and assist the board in matters related to the promotion and retention of officers in the department. (on need basis)

Serve as a non-voting member of designated village boards, commissions and committees. (on need basis)

Respond to emergencies, including natural disasters, which impair or threaten the public's safety and may require the use of department resources. (on need basis.)

#### **SECTION E. PHYSICAL REQUIREMENTS IN PERFORMING TASKS LISTED**

Performance of routine tasks associated with this position requires a capacity to intermittently sit, stand, walk, bend and lift moderately heavy (25-30 pounds) objects.

#### **SECTION F. WORKING CONDITIONS UNDER WHICH TASKS ARE PERFORMED**

The performance of tasks may involve risk to the physical safety or health of police officers operating under emergency conditions, and may require the use of firearms. Work may occasionally be performed outdoors in cold or inclement weather.

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**SECTION G. EQUIPMENT OR MACHINERY USED IN PERFORMING TASKS**

Police vehicles; radios and related communications equipment; radar or related speed detection devices; breathalyzers and other devices used to measure amounts of alcohol; facsimile machines; electronic calculators; microcomputers.

**SECTION H. OTHER POSITIONS AN EMPLOYEE IN THIS POSITION MAY BE EXPECTED TO ROUTINELY SUPERVISE**

Lieutenant (Second-in Command): Shift Supervisors.

Wage/Salary Currently Established For This Position: \$ 39,959 - 46,140 (annual basis).

Date This Position Description Was Last Revised: May 23, 1997.

APPROVED BY: \_\_\_\_\_  
President, Village Of Seneca    Date  
Police And Fire Commission

REVIEWED BY: \_\_\_\_\_  
President, Village Of Seneca    (Date)

REVIEWED BY: \_\_\_\_\_  
Administrator, Village Of Seneca    (Date)

# Application for Employment

Board of Police and Fire Commissions  
City of Wilmington

Position Applied for: \_\_\_\_\_

## PERSONAL INFORMATION

Last name: \_\_\_\_\_ First name: \_\_\_\_\_ MI: \_\_\_\_\_

Street: \_\_\_\_\_

City \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Home Telephone: (\_\_\_\_) \_\_\_\_\_ Business Telephone: (\_\_\_\_) \_\_\_\_\_

Social Security Number: \_\_\_\_\_  Check if you have no SSN

## EDUCATION

High School Attended: \_\_\_\_\_

City/Village: \_\_\_\_\_ State: \_\_\_\_\_

Did you graduate?  Yes  No GED Certificate?  Yes  No

College Attended: \_\_\_\_\_

City \_\_\_\_\_ State: \_\_\_\_\_ From (Mo/Yr): \_\_\_\_ / \_\_\_\_ to: \_\_\_\_ / \_\_\_\_

Did you graduate?  Yes  No Degree/Major: \_\_\_\_\_

College Attended: \_\_\_\_\_

City \_\_\_\_\_ State: \_\_\_\_\_ From (Mo/Yr): \_\_\_\_ / \_\_\_\_ to: \_\_\_\_ / \_\_\_\_

Did you graduate?  Yes  No Degree/Major: \_\_\_\_\_

Business/Technical School Attended: \_\_\_\_\_

City \_\_\_\_\_ State: \_\_\_\_\_ From (Mo/Yr): \_\_\_\_ / \_\_\_\_ to: \_\_\_\_ / \_\_\_\_

Did you graduate?  Yes  No Degree/Major: \_\_\_\_\_

## SPECIAL SKILLS OR TRAINING

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### EMPLOYMENT HISTORY

(Begin with current or most recent employer)

From (Mo/Yr): \_\_\_\_ / \_\_\_\_ / \_\_\_\_ To: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Employer's Name and Address:

Position Title or Job Classification:

\_\_\_\_\_

Duties: \_\_\_\_\_

Supervisor's Name & Telephone;

Annual Salary/Wages: \_\_\_\_\_

Reason for Leaving: \_\_\_\_\_

May we contact your current employer/supervisor?  Yes  No

From (Mo/Yr): \_\_\_\_ / \_\_\_\_ / \_\_\_\_ To: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Employer's Name and Address:

Position Title or Job Classification:

\_\_\_\_\_

Duties: \_\_\_\_\_

Supervisor's Name & Telephone;

Annual Salary/Wages: \_\_\_\_\_

Reason for Leaving: \_\_\_\_\_

May we contact your current employer/supervisor?  Yes  No

From (Mo/Yr): \_\_\_\_ / \_\_\_\_ / \_\_\_\_ To: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Employer's Name and Address:

Position Title or Job Classification:

\_\_\_\_\_

Duties: \_\_\_\_\_

Supervisor's Name & Telephone;

Annual Salary/Wages: \_\_\_\_\_

Reason for Leaving: \_\_\_\_\_

May we contact your current employer/supervisor?  Yes  No

From (Mo/Yr): \_\_\_\_ / \_\_\_\_ / \_\_\_\_ To: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Employer's Name and Address:

Position Title or Job Classification:

\_\_\_\_\_

Duties: \_\_\_\_\_

Supervisor's Name & Telephone;

Annual Salary/Wages: \_\_\_\_\_

Reason for Leaving: \_\_\_\_\_

May we contact your current employer/supervisor?  Yes  No

### MILITARY SERVICE

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Branch of Service	Mo/Yr From	Served To	Active Duty or Reserve	Highest Grade	Skill Specialty or Primary Duty
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List special schools attended/skills acquired during military service

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List any scholarships, apprenticeships, licenses, certifications, membership in professional organizations or other information you believe should be considered in evaluating your qualifications.

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### REFERENCES

(Avoid listing members of the clergy)

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Name: \_\_\_\_\_ Address: \_\_\_\_\_  
Position/Title/Profession \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Approximately how many years has this individual known you? \_\_\_\_\_

---

Name: \_\_\_\_\_ Address: \_\_\_\_\_  
Position/Title/Profession \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Approximately how many years has this individual known you? \_\_\_\_\_

---

Name: \_\_\_\_\_ Address: \_\_\_\_\_  
Position/Title/Profession \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Approximately how many years has this individual known you? \_\_\_\_\_

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**SUPPLEMENTARY INFORMATION**

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Type of employment desired:  Full-time  Part-time  Temporary

Are you now or were you ever employed by this city?  Yes  No

If yes, in what position? \_\_\_\_\_

From: \_\_\_/\_\_\_/\_\_\_ To: \_\_\_/\_\_\_/\_\_\_ Reason for leaving: \_\_\_\_\_

List any relatives employed by or currently holding an appointive or elective position in this city: \_\_\_\_\_  
\_\_\_\_\_

Do you have a valid driver's license?  Yes  No

Do you have a valid commercial driver's license?  Yes  No

Possession of a valid license is considered only when it relates to the duties of the position for which you have applied.

Have you ever been convicted of a felony?  Yes  No

If yes, please attach a separate sheet giving full information.

**APPLICANT PLEASE READ CAREFULLY AND SIGN BELOW**

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**CERTIFICATION**

All information provided and statements made by me as part of this application, or as part of any additional information provided in support of this application, are complete, correct and true to the best of my knowledge.

I understand that, if I am selected for employment, false information provided or false statements made as part of this application may be considered as cause for dismissal.

\_\_\_\_\_  
(Applicant's signature)

\_\_\_\_\_  
(Date signed)

Under the provisions of section 19.36, *Wisconsin Statutes*, I request that my identity as an applicant for employment not be revealed without my consent or until required under law.

\_\_\_\_\_  
(Applicant's signature)

\_\_\_\_\_  
(Date signed)

**FOR CITY USE ONLY**

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Applicant's name: \_\_\_\_\_

Position applied for: \_\_\_\_\_

Date application received: \_\_\_\_\_

Application reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_

- Action taken:
- Application screened
    - Ready for review as received
    - Additional information requested:  
\_\_\_\_\_  
\_\_\_\_\_
  
  - Application rejected
    - Received after deadline
    - Failure to meet minimum requirements:  
\_\_\_\_\_  
\_\_\_\_\_
  
  - Application withdrawn

Notes/comments:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

---

Application reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_

- Action taken:
- Applicant eligible for consideration
  - Additional information requested:  
\_\_\_\_\_  
\_\_\_\_\_
  
  - Applicant not eligible for further consideration:  
\_\_\_\_\_  
\_\_\_\_\_

Notes/comments:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# LETTER OF INSTRUCTIONS TO APPLICANTS

Board Of Police And Fire Commissioners  
Village Of Seneca  
418 North Park Street  
Seneca, Wisconsin

Letter of Instructions to Applicants for Position of: Firefighter I

Deadline for Receipt of Completed Applications: August 1, 1997

Thank you for your expression of interest in the position we are seeking to fill. Materials in this packet will tell you about the position, how to apply, and requirements an applicant must satisfy to be certified as eligible for appointment.

The Police and Fire Commission sets policies governing the screening, testing and selection of eligible candidates. All appointments to the police and fire departments are subject to final approval by the Commission. Individuals hired to serve as Police Officers and Firefighters are required to satisfactorily complete a one year probationary period.

To aid you in applying for employment, the Police and Fire Commission offers these suggestions:

1. Carefully read the position description included in the application packet. Pay special attention to sections A and B; these spell out the essential knowledge, skills and job-related experience applicants for the position are expected to have, and any special qualifications that are either required or desired. Please be sure the Application for Employment form you complete and return shows you meet the qualifications described in sections A and B; you also may attach, to the application form, any materials that help establish your qualifications for the position.
2. Carefully read the information describing the kinds of examinations applicants will be expected to complete as part of the screening, testing and selection process. Pay special attention to the information describing the Physical Aptitude Examination; if you believe you have a physical condition that would make it difficult to participate in the examination, or that participation might aggravate that condition, please contact your physician for advice before completing and returning the Application for Employment form.
3. Complete the Application for Employment form; read and sign the certification statement on the last page. If you would like to provide additional information, such as a resume, that may do so. However, we ask you to avoid including information that falls into any of the following categories:

- ◆ Date of birth or current age.
- ◆ Place of birth or the birthplace of your parents.
- ◆ Gender.
- ◆ Race or national origin.
- ◆ Marital status.
- ◆ Number of dependents.
- ◆ Citizenship.
- ◆ Religion.
- ◆ Membership in fraternal, social or political organizations (trade unions, professional and service organizations are permissible).
- ◆ Present membership in reserve component units of the Armed Forces, including units of the Army or Air National Guard.
- ◆ Condition under which separated or type of discharge received from the Armed Forces.

We also ask that you **not** include a photograph of yourself with the completed application.

Completed applications should be delivered or addressed to:

Secretary, Seneca Police and Fire Commission  
P.O. Box 100  
Seneca, Wisconsin

COMPLETED APPLICATIONS MUST BE RECEIVED BY 4 P.M. ON THE DATE SHOWN ON PAGE 1 OF THESE INSTRUCTIONS. AN EXCEPTION WILL BE MADE FOR APPLICATIONS WHICH ARE MAILED AND POSTMARKED NOT LATER THAN MIDNIGHT ON THE DATE SHOWN ON PAGE 1.

At some point during the process leading to the appointment of police department personnel, it may be necessary to disclose the name of applicants under consideration, their address and title or occupation. (Other information you provide, as part of your application, will normally be made available only to those involved in the screening, testing and selection process.)

Unless you inform us, in writing, that you do **not** wish to have your identity as an applicant revealed, your name cannot be kept confidential if a request for the names of applicants is made under the Wisconsin Public Records Law. The identity of applicants selected as finalists for the position must be revealed if a request is made under state law.

## COMPLAINT FORM

Board Of Police And Fire Commissioners  
City Of Pine River  
110 West Main Street  
Pine River, Wisconsin

If you believe a police officer or firefighter, employed by the City of Pine River, has violated a department rule, city ordinance, state or federal law, or standards of acceptable conduct, you may file a complaint with the Board of Police and Fire Commissioners. Enclosed is a complaint form that can be used for this purpose.

A complaint you file can be based on your personal knowledge of a matter or on information obtained from other sources; please provide the name and address of each source, or otherwise identify the source of your information, such as a document that has information supporting the complaint.

If your charges are made under oath, in the presence of a notary public, the complaint will be treated as a formal complaint; if the complaint form is not notarized, it will be treated as an informal complaint. In either case, the Board will carefully review your complaint. You should be aware that under the provisions of section 946.32, *Wisconsin Statutes*, making a false statement under oath or affirmation may be treated as a felony.

If you choose not to use the enclosed form, but wish to make the Board aware of a complaint you have about the actions of a police officer or a firefighter, you may write a letter to the Board detailing your concerns; please cite the rule, ordinance, law or standard of conduct you believe the individual violated. However, the Board cannot initiate a disciplinary action in the absence of a formal complaint.

If you file a complaint with this Board, you may ask that your identity, information you provide, or both be kept confidential. To the extent permitted by state law, the Board will respect your request. However, the Board cannot promise unlimited confidentiality; the news media or any person may ask to see a copy of your complaint and related documents; the Board may be legally required to honor such a request.

Before filing a complaint with the Board, you may want to consider first filing a complaint with the Chief of the Police Department or the Fire Department. Both departments have forms that can be used for this purpose. You also may wish to consult an attorney before filing a complaint with the Board or the department having jurisdiction over the police officer or firefighter involved.

Board of Police and Fire Commissioners  
Pine River, Wisconsin

## Complaint

This complaint is filed pursuant to Section 62.13(5)(b), Wisconsin Statutes, permitting charges to be filed against a police officer or firefighter. Charges may be filed by the chief of a department, by the Board of Police and Fire Commissioners or any of its members, or by an aggrieved person.

### INFORMATION ABOUT PERSON FILING COMPLAINT

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone number \_\_\_\_\_ Best time(s) to call \_\_\_\_\_

### INFORMATION ABOUT PERSON NAMED IN THE COMPLAINT

Name: \_\_\_\_\_

Rank (if known) Name: \_\_\_\_\_

Employing Department:  Police  Fire

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### STATEMENT OF CHARGES

Describe the action, on the part of the person named in this complaint, you believe violated a department rule, city ordinance, state or federal law, or standards of acceptable conduct. Use additional sheets if you need more space, initial each and attach them to this form.

Complainant's Initials \_\_\_\_

Page \_\_\_\_ of \_\_\_\_ Pages

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**STATEMENT OF CHARGES (CONTINUED)**

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**SOURCES OF INFORMATION**

If the actions described in the Statement of Charges are based, in whole or in part, on information obtained from other sources, please provide the name and address of each source, or otherwise identify the source of your information, such as a document that has information supporting the complaint.

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**SPECIFICATION OF VIOLATION**

Cite the department rule, city ordinance, state or federal law, or standards of acceptable conduct you believe the person name din this complaint violated.

Complainant's Initials \_\_\_\_

Page \_\_\_\_ of \_\_\_\_ Pages

**PREFERENCES CONCERNING CONFIDENTIALITY**

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- I request that my name be kept confidential.
- I request that my address and telephone number be kept confidential.
- I request that sources of information provided as part of this complaint be kept confidential.
- I do not request confidentiality in this matter.

---

Complainant's Signature

Date Signed

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**VERIFICATION UNDER OATH**

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State of Wisconsin        )  
\_\_\_\_\_County        )

I, \_\_\_\_\_, the above named Complainant, being duly sworn, on oath depose and state that I have read the foregoing complaint, and that I know it is true and complete to my own knowledge, except as to those matters based upon information and belief, and as to those matters I believe the same to be true.

---

Complainant's Signature

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

---

Notary Public, \_\_\_\_\_ County, Wisconsin

My Commission is (permanent) or (expires on \_\_\_\_\_).

Complainant's Initials \_\_\_\_\_

Page \_\_\_\_ of \_\_\_\_ Pages

## NOTICE OF PUBLIC MEETING

The City of Glenview Board of Police and Fire Commissioners will conduct its regular meeting for the month of August on Monday, August 18, 1997, at 7:30 P.M., in Room 201, City Hall, 110 Main Street, Glenview, Wisconsin.

### AGENDA

I. Reading of minutes: Meeting of July 21, 1997.

II. Reports:

- A. Fire Department
- B. Police Department

III. Unfinished business:

- A. Proposal to revise physical aptitude examination administered annually to fire fighting personnel.

IV. New business:

- A. Proposal to amend Board Rule 14.1 governing the granting of preference points to eligible veterans.
- B. Motion to go into closed session, pursuant to Section 19.85(1)(b), Wisconsin Statutes, to consider formal charges of misconduct filed by Chief of Police against officer John E. Stevens. Officer Stevens has the right to demand this portion of the meeting be conducted in open session.

V. Closed Session:

- A. Consideration of matters related to agenda item IV B.
- B. Recess.

VI. Open session:

- A. Other business within the scope of powers and responsibilities exercised by the Board under Wisconsin Statutes.

VII. Adjournment.

/s/ H. J. Baxter  
/t/ H. J. BAXTER  
Secretary

Posted: August 4, 1997

## REQUEST FOR ACCESS TO OR COPY OF PUBLIC RECORD

Town of Liberty Creek      Police and Fire Commission

### I. TO BE COMPLETED BY PERSON SUBMITTING REQUEST

Describe record to be inspected, copied or information requested:

Please note: A request "is deemed sufficient if it reasonably describes the requested record or the information requested. However, a request for a record without a reasonable limitation as to subject matter or length of time represented by the records does not constitute a sufficient request." [Wis. Stat. section 19.35(1)(h).]

Name of requester: \_\_\_\_\_

Mailing address: \_\_\_\_\_

Purpose of the request:

Please note: A request cannot be refused "because the person making the request is unwilling to be identified or to state the purpose of the request." [Wis. Stat. section 19.35(1)(i).]

### II. TO BE COMPLETED BY CUSTODIAN OR DEPUTY CUSTODIAN OF RECORD

Date and time request received: \_\_\_\_\_

Date and time action completed: \_\_\_\_\_

Action taken on request: \_\_\_\_\_

Approved     Denied     Approved in part and denied in part

Please attach copy of any statement denying access to, a copy of or information contained in any public record covered by this request.

Amount of any fee paid by requester: \_\_\_\_\_

\_\_\_\_\_  
Signature and position of custodian acting on request



*League of Wisconsin Municipalities*

# RESOURCES FOR MUNICIPAL OFFICIALS

Title	Price	Quantity	Total
Annual Directory of Wisconsin City & Village Officials (\$15.00 Member Municipality Price)	\$30.00	_____	_____
Annual Products and Services Guide for Wisconsin Municipalities	FREE	_____	_____
Annexation of Territory to Wisconsin Cities and Villages, 1998	15.00	_____	_____
Handbook for Wisconsin Municipal Officials, 2002	30.00	_____	_____
Handbook for Wisconsin Police & Fire Commissioners, 1997*	15.00	_____	_____
The Conduct of Common Council Meetings, 1987*	10.00	_____	_____
The Conduct of Village Board Meetings, 1987*	10.00	_____	_____
Municipal Licensing and Regulation of Alcohol Beverages, 1998*	15.00	_____	_____
The Powers & Duties of Wisconsin Mayors, 1996*	10.00	_____	_____
The Powers & Duties of Wisconsin Village Presidents, 1996*	10.00	_____	_____
Proceedings of the Annual Municipal Attorneys Institute	50.00	_____	_____
Reporter's Guide to Wisconsin city & Village Government, 2003	5.00	_____	_____
Special Assessments in Wisconsin, 1996*	15.00	_____	_____

\*reprinted with minor changes reflecting current Statute numbers

5.5 % WI State & Dane Co. Sales Tax (if applicable)

**AMOUNT INCLUDED**

**TOTAL \$** \_\_\_\_\_

**MAILING INFORMATION (PLEASE PRINT OR TYPE INFORMATION)**

Name: \_\_\_\_\_ Title \_\_\_\_\_

Municipality/company: \_\_\_\_\_

Address: \_\_\_\_\_

City, State Zip: \_\_\_\_\_

Return to: League of Wisconsin Municipalities  
202 State Street, Suite 300, Madison, WI 53703-2215, fax: (608) 267-0645

**League of Wisconsin Municipalities**  
**202 State Street, Suite 300**  
**Madison, Wisconsin, 53703**  
**(608) 267-2380; fax (608) 267-0645**  
**[www.lwm-info.org](http://www.lwm-info.org); e-mail: [league@lwm-info.org](mailto:league@lwm-info.org)**