

MEMORANDUM

**FROM:** OFFICE OF THE CITY ATTORNEY  
MIDDLETOWN, CONNECTICUT 06457

**TO:** Mayor Dominique S. Thornton

**DATE:** June 8, 2000

**RE:** Legal Opinion Request

QUESTION PRESENTED:

Whether the Director or Chief of a City department is required to sign off on all department reviews for the Planning & Zoning Commission or whether that individual may delegate such authority to his/her designee?

ANSWER: The Director may delegate this responsibility.

ANALYSIS:

Section 55 of the Middletown Zoning Code concerns site plan approval. Subsection 55.05 provides as follows:

The review procedure for proposals in Categories 2, 3, and 4 may include requests for comments from any of the following departments or agencies:

- (1) Public Works including Building Division;
- (2) Water and Sewer;
- (3) Health;
- (4) Police Department Traffic Division;
- (5) Applicable Fire Department;
- (6) Superintendent of Schools shall comment on all proposals in Categories 3 and 4 if within 500 feet of a city school; and
- (7) Other technical agencies or organizations who may undertake additional studies and investigations.

Zoning Code §55.05.

Therefore, by its terms the Zoning Code does not require the department director or chief to comment but merely the department or agency listed in subsection 55.05. In fact, the subsection

specifically contemplates the comments of a subunit of a City department, Police Traffic Division, rather than that of the Chief.

The question naturally arises whether the Planning & Zoning Commission could amend Section 55 of the Zoning Code to require City directors or the Chiefs to sign off on departmental reviews. I think that such a requirement would be an impermissible intrusion upon powers specifically reserved to the Mayor and the Common Council by the Charter.

The Charter provides as follows regarding this issue:

It shall be the duty of the Mayor to cause to be prepared a statement of the duties and responsibilities of each position in the classified service, the compensation pertaining thereto, and of the minimum qualifications for such positions. These statements shall comprise the Classification Plan of the City which shall become effective upon approval by resolution of the Common Council and which may be amended by resolution of the Council, either upon the recommendation of the Mayor or upon the initiative of the Council itself. New or additional positions in the classified service may be created and changes in the duties and responsibilities of existing positions may be made by resolution of the Common Council upon recommendation of the Mayor or upon the initiative of the Council itself.

Charter, Chapter X §1.


Accordingly, only the Common Council has the authority to change job descriptions. To the extent that the Police and Fire Chiefs are contract employees, their duties and responsibilities are set by their employment contracts which include the job descriptions for those positions. These contracts were approved by resolution of the Common Council and any amendment would also require Council approval.

The Charter also provides that the "Mayor shall be directly responsible for the administration of Departments, Agencies and Offices . . . and shall supervise and direct the same." Charter, Ch. IV, §2. Therefore, the City directors and Chiefs work at the direction of the Mayor.

Further, with respect to the Water & Sewer Department, the Water Pollution Control Authority has jurisdiction over the operation of the department. This issue was the subject of a legal opinion by the City Attorney, a copy of which is attached hereto.

#### CONCLUSION:

The City directors and Chiefs work at the direction of Mayor, and in the case of the Water & Sewer Director, the direction of the Water Pollution Control Authority only. The Common Council has the authority to change a job description and add duties and responsibilities to a position. Further, Directors have the authority in their job descriptions to delegate work to subordinates.



Timothy P. Lynch  
Deputy City Attorney

TPL/es

cc: William Warner, AICP  
Director of Planning, Conservation & Development  
Guy P. Russo, Water & Sewer Director

MEMORANDUM

FROM: OFFICE OF THE CITY ATTORNEY  
MIDDLETOWN, CONNECTICUT 06457

TO: Mayor Sebastian J. Garafalo

DATE: April 12, 1993

RE: Legal Opinion Request - Powers and Duties of  
the Water Pollution Control Authority

ISSUE: What are the powers and duties of the Water Pollution Control Authority particularly with regard to the administration of the Water and Sewer Departments and their respective personnel?

DISCUSSION:

Chapter VIII, Section 1 of the City of Middletown Charter, as amended, provides, in pertinent part, that "[t]here shall be a Water Pollution Control Authority which shall also be the Sewer Authority, in accordance with the provisions of the General Statutes pertaining to Municipal Sewage Systems . . . Said Authority shall have the sole authority in the operation of the Water Department of the City of Middletown, subject to the provisions hereinafter specified". (Underlining added). Chapter VIII, Section 2 of the Charter of the City of Middletown, as amended, further provides, in pertinent part that "[t]he water works, reservoirs and all water supplies which are now being used in the City of Middletown and all pipes, hydrants, canals, aqueducts and other works, which are used for the conveying or the containing of water for intake purposes, shall be under the control of said Water Pollution Control Authority." Chapter VIII, Section 14 of the Charter of the City of Middletown, as amended, provides, in pertinent part, that "[s]ubject to the approval of the Common Council, the Water Pollution Control Authority shall make such bylaws or regulations for the preservation, protection and management of said water works as may be deemed advisable, and enforce the same by suitable penalties."

Chapter XIV, Section 1 of the Charter of the City of Middletown, as amended, provides, in pertinent part, that "[t]hose Chapters of the General Statutes pertaining to "Municipal Sewerage Systems", . . . are hereby adopted." §§7-245, et seq., of the Connecticut General Statutes, as amended, addresses municipal sewerage systems. §7-246(a), C.G.S., as amended, specifically provides that a municipality may create a new board or commission to act as its Water Pollution Control Authority. §7-247, C.G.S., as amended, provides, in pertinent part, that "[a]ny municipality by its water pollution control authority may

acquire, construct and operate a sewerage system or systems; . . . may establish and revise rules and regulations for the supervision, management, control, operation and use of a sewerage system, . . . may enter into and fulfill contracts, . . . , with any person or any other municipality or municipalities to provide or obtain sewerage system service for any sewage, and may make arrangements for the provision or exchange of staff services and equipment with any person or any other municipality or municipalities, or for any other lawful services . . . The water pollution control authority may establish rules for the transaction of its business. It shall keep a record of its proceedings and shall designate an officer or employee to be the custodian of its books, papers and documents."

Unlike most of the job descriptions for the Directors and Department Heads of the City, the job description for the Director of the Water and Sewer Departments, under the section of the job description entitled "General Duties", states that he/she receives general direction from the Mayor and the Water Pollution Control Authority. (Underlining added). "Direction" is defined as "[t]he act of governing; management; superintendence. . . . Also the body of persons (called "directors") who are charged with the management and administration of a corporation or institution. . . . That which is imposed by directing; a guiding or authoritative instruction; order; command . . . " Black's Law Dictionary, Revised Fourth Edition.

Both the Charter provisions addressing the Water Pollution Control Authority's role with respect to the Water Department and the Connecticut General Statutes addressing the Authority's role with respect to the Sewer Department use words such as "control", "supervision" and "management" in describing the Authority's role with respect to the "operation" of the Water and Sewer Departments. "Control" is defined as the "[p]ower or authority to manage, direct, superintend, restrict, regulate, govern, administer, or oversee." Black's Law Dictionary, Revised Fourth Edition. "Supervision" is defined as "[a]n act of occupation of supervising; inspection. . . ." Black's Law Dictionary, Revised Fourth Edition. "Management" is defined as "[g]overnment, control, superintendence, physical or manual handling or guidance; act of managing by direction or regulation or administration, as management of family, or of household, or of servants, or of great enterprises, or of great affairs . . . Discretionary power of direction; . . ." Black's Law Dictionary, Revised Fourth Edition. "Operation" is defined as the "[e]xertion of power; the process of operating or mode of action; an effect brought about in accordance with a definite plan; action; activity. . . ." Black's Law Dictionary, Revised Fourth Edition.

It is clear from the type of words used both in the Charter and in the General Statutes and in the job description for the Director of the Water and Sewer Departments that the role of the Water Pollution Control Authority goes beyond being of an

advisory nature and makes the Authority responsible for managing, directing, controlling and supervising the operations of the Water and Sewer Departments as those operations concern the provision of water and sewer services to the citizens of the City of Middletown, which provision of services is the sole duty and responsibility of the Authority. However, the Authority's management, direction, control and supervision of the operations of the Water and Sewer Departments is subject to other provisions of the City Charter, State Statutes, ordinances and labor contracts.

Chapter IV, Section 2 of the Charter of the City of Middletown, as amended, provides, in pertinent part, that . . . "[e]xcept as otherwise provided by law, the Mayor shall be directly responsible for the administration of all departments, agencies and offices, in charge of persons or boards appointed by the Mayor and shall supervise and direct the same. . . ." Chapter V, Section 14 of the Charter of the City of Middletown, as amended, further provides that "[t]he duties, powers and privileges of each Department of said City shall be determined by the Common Council." The Common Council was the body which adopted the job description of the Water and Sewer Departments' Director, which job description specifically states that the Director is to receive general direction from both the Mayor and the Water Pollution Control Authority.

The Water and Sewer Departments are established as a department of the City by the authority of Chapter V, Section 1 of the Middletown City Charter. That section provides, in pertinent part, that "[a]ll employees of said departments shall be subject to the City of Middletown Personnel Rules and Classification Plan. The duties, powers and privileges of each department of said City shall be as stated herein. The Common Council shall have the power to prescribe by Ordinance the powers, duties and privileges of each Department, not inconsistent with any of the provisions contained herein." Chapter V, Section 9 of the Middletown City Charter, as amended, further provides, that "[t]he Water and Sewer Department shall be responsible for the construction, repair, operation and maintenance of all water and sewer facilities of the City of Middletown. The Water and Sewer Department shall be headed by the Water and Sewer Director."

Both of the present Union Agreements, between the City and Local 466, Council #4, AFSCME, AFL-CIO and the City and the Middletown Managers and Professional Association, specifically afford certain management rights to the City which rights are recognized and cannot be abridged. Both contracts recognize the Mayor or the Mayor's duly authorized designee as the agent to negotiate on behalf of the City and act as the City's representative in all matters addressed in the respective contract.

Article III, Section 1 of the Agreement between the City of Middletown and Local 466, Council #4, AFSCME, AFL-CIO, effective July 1, 1991 through June 30, 1995 provides, in pertinent part,

that "[i]t is the right of the City, acting through its departments and agencies, except as otherwise abridged or modified by any provision of this agreement, to determine the standards of services to be offered by its departments and agencies; . . . direct its employees; . . . maintain the efficiency of governmental operations; determine the methods, means and personnel by which the City's operations are to be conducted; . . . exercise complete control and discretion over its organization and the technology of performing its work; . . . The aforesaid rights, responsibilities and prerogatives are inherent in the Court of the Common Council and the Mayor by virtue of statutory and charter provisions and cannot be subject to any grievance or arbitration proceeding except as specifically provided for in this agreement."

Article III, Section 2 of the 466 Agreement provides, in pertinent part, that "[i]n order to carry out any of the rights reserved to management pursuant to this Article, the employer may promulgate rules and regulations to be adhered to by bargaining unit employees. . . ."

Article XIII, Section 1 of the Agreement between the City of Middletown, Connecticut and the Middletown Managers and Professional Association, effective July 1, 1991 through June 30, 1994 provides, in pertinent part, that ". . . the City will continue to retain, whether exercised or not, all of the rights, powers and authority heretofore existing including but not limited to the following:

a. To determine the care, maintenance, and operation of equipment and property used for and on behalf of the City.

b. To establish or continue policies, practices, and procedures for the conduct of City business and from time to time, to change or abolish such policies, practices or procedures.

c. To discontinue processes, or operations, or to discontinue their performance by employees.

d. To select and to determine the number of types of employees required to perform the City's operations.

e. To employ, transfer, promote or demote employees or lay off, terminate, or otherwise relieve employees from duty for lack of work or other legitimate reasons when it shall in the best interests of the City or Department.

f. To prescribe and enforce reasonable rules and regulations for the maintenance and discipline and for the performance of work in accordance with the requirements of the City provided rules and regulations are made known in a reasonable manner to the employees affected by them." Both contracts hereinabove mentioned do specifically provide for

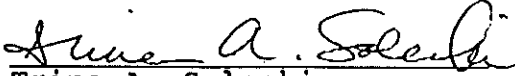
disciplinary and grievance procedures. Keeping in mind that the Mayor or his duly authorized representative is recognized as the City's representative under those contracts, the Mayor and/or his duly authorized representative would have exclusive jurisdiction with respect to the grievance and disciplinary procedures as outlined for the City employees covered by those contracts. The Director of the Departments, who is not a member of a specific union, would be covered by the provisions of the Charter and the Personnel Rules, which again give the Mayor exclusive jurisdiction in disciplinary matters. The Authority should also be cognizant of certain rights afforded to the employees covered by these contracts. Specifically, Article VIII, Section 4 of the Agreement between the City and Local 466 provides that "[a]n employee who is being questioned concerning an incident or action which may subject him/her to disciplinary action shall upon request be allowed union representation."

CONCLUSION:

To the extent that the Middletown Water Pollution Control Authority has been entrusted with certain obligations and responsibilities in controlling the provision of water and sewer services to the citizens of the City of Middletown by both the authority of the Connecticut General Statutes and the Middletown City Charter, the Authority is in control of and the sole body responsible for the regulation and distribution of all waterworks, reservoirs, water supplies and sewerage systems within the City of Middletown. In carrying out its duties and responsibilities, the Authority has the right to supervise, manage, direct and operate, as those terms have been defined herein, the operations of the Water and Sewer Departments of the City subject, of course, to the provisions of the applicable union agreements, Personnel Rules, Charter provisions, ordinances and State Statutes. However, the Authority may not, in any way, interfere with the duties, responsibilities and authority in personnel matters conferred upon the Mayor and the Director of the Departments. The Authority, in carrying out its statutory and Charter duties and responsibilities, should play a role in the administration of the department, subject to and not contrary to the powers and duties of the Mayor and the Director of the Departments in the daily administration of the departments and in dealing with matters relating to the departments' personnel. In short, the Authority, as a body, by the Statutes and Charter, has the right, authority, responsibility and obligation to become involved in the administration of the departments, as necessary



and required, to assure that water and sewer services are being adequately provided to the Middletown citizenry.

  
Trina A. Solecki  
City Attorney

TAS/es

cc: Members of Water Pollution Control Authority  
William Baron, Director, Water & Sewer Departments  
Joseph Milardo, Corporation Counsel  
Anthony Sbona, Town/City Clerk

**MEMORANDUM**  
**DEPARTMENT OF PLANNING, CONSERVATION AND DEVELOPMENT**

**TO:** Mayor Dominique S. Thornton  
✓ Trina Solecki, City Attorney

**FROM:** William Warner, AICP, Director of Planning, Conservation and Development

**DATE:** May 25, 2000

**RE:** REQUEST FOR LEGAL OPINION

**ISSUE**

The Planning and Zoning Commission has expressed concern over which city Officials are authorized to sign off on departmental reviews and the exposure the Commission may face if the proper officials do not sign the review.

**Question**

Is the Director or Chief of the department required to sign off on all departmental reviews or can that individual delegate such authority to their designee?

The Commission feels very strongly that this issue needs to be addressed. They have decided not to take any further action on applications until they receive this legal opinion.

It is requested that this opinion be completed and submitted to this office by Thursday June 8<sup>th</sup> at 4:30 p.m.

Thank you.

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**CITY ATTORNEY'S OFFICE**  
**00 MAY 25 AM 10:10**