



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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OAG—07—13

Mr. Mark Grady
Deputy Corporation Counsel
Milwaukee County
901 North 9th Street, Rm. 303
Milwaukee, WI 53233

Dear Mr. Grady:

¶ 1. Former Milwaukee County Corporation Counsel Kimberly Walker asked whether the Milwaukee County Board (“Board”) may require confirmation of the county executive’s or other administrator’s appointments to positions in the unclassified service other than specific positions for which the Legislature has authorized the Board to require confirmation. I conclude that the Board may require confirmation of the county executive’s appointments to any position in the unclassified service that is a department head. The Board may not require confirmation of the executive’s or other administrators’ appointments to positions in the unclassified service that are not department heads.

¶ 2. The Legislature has explicitly authorized the Board to require confirmation of the executive’s appointments to certain specific positions: medical examiner, corporation counsel, and the five positions enumerated in Wis. Stat. § 59.17(2)(bm)1. *See* Wis. Stat. § 59.17(2)(bm)1. (director of parks recreation and culture; director of county department of human services; director of county department of administration; director of personnel of county civil service commission; director of transportation); Wis. Stat. § 59.38(5) (medical examiner); and Wis. Stat. § 59.42(2)(a) (corporation counsel). In addition, the Board controls the management of the house of corrections. *See* Wis. Stat. § 303.17(1). Former corporation counsel did not raise any question concerning the Board’s authority to require confirmation of appointments to those positions.

¶ 3. Section 17.30(2) and (3) of the Milwaukee County ordinance requires that, in addition to those positions, appointments to a number of other positions in the unclassified service must also be confirmed:

Chief information officer, Director of child support enforcement, Airport director, Director of county economic development, Behavioral health administrator, Director department on aging, Zoological gardens director, Director of employee benefits, Director of family care, Fiscal and budget administrator, Deputy director

of child support enforcement (administration); Chief deputy medical examiner, Chief of operations, Deputy Director D[e]partment of P[ublic] W[orks]/transportation, Director of highway engineering and operations, Deputy airport director (operation/maintenance), Chief of recreation services, and Deputy zoological director (administration/finance).

Former corporation counsel asked whether the Board may require confirmation of appointments to these positions.

¶ 4. As to appointments to positions in the unclassified service that are department heads, the Board may require confirmation. Wisconsin Stat. § 59.17(2)(b)1. provides that, in a county with a population of 750,000 or more, the county executive “[a]ppoint[s] and supervise[s] the heads of all departments except where the statutes provide that the appointment shall be made by a board or commission or by other elected officers.” Wisconsin Stat. § 59.17(2)(b)1. also provides that “[a]ny appointment by the county executive under this subdivision requires the confirmation of the county board unless the county board, by ordinance, elects to waive confirmation.” The Board has express statutory authority to require confirmation of all department heads, including department heads that are not specifically mentioned in Wis. Stat. §§ 59.17(2)(b)1., 59.38(5), and 59.42(2)(a).¹

¶ 5. As to other positions in the unclassified service, there is no such statutory authority. Other than Wis. Stat. §§ 59.17(2)(b)1., 59.38(5), and 59.42(2)(a), there are no other statutes that expressly authorize the Board to require confirmation of the executive’s appointments to positions that are not department heads. Absent that authority, the Board may not require confirmation of the executive’s appointments.

¶ 6. Wisconsin Stat. § 59.51(1) grants county boards “the authority to exercise any organizational or administrative power, subject only to the constitution and any enactment of the legislature which grants the organizational or administrative power to a county executive . . . or to a person supervised by a county executive . . . or any enactment which is of statewide concern and which uniformly affects every county.” The Legislature has chosen to grant broad administrative and managerial powers to county executives. Wisconsin Stat. § 59.17(2)(a) provides that the county executive “[c]oordinate[s] and direct[s] all administrative and

¹Although appointments of department heads under what is now Wis. Stat. § 59.17(2)(b)1. originally were not subject to county board confirmation, the Legislature authorized a confirmation requirement in 1985 Wisconsin Act 29, § 1156. *See* Wis. Stat. § 59.031(2r) (1985-86).

management functions of the county government not otherwise vested by law in other elected officers.”²

¶ 7. Among the county executive’s administrative functions is the selection or appointment of an individual to a position. Selecting or appointing an individual to perform a particular task or function is an organizational or administrative power. *Harbick v. Marinette Cnty.*, 138 Wis. 2d 172, 176-77, 405 N.W.2d 724 (Ct. App. 1987); OAG-01-13, ¶ 13. A requirement that the executive’s appointment be confirmed gives the county board the ability to negate the administrative power to appoint. Because Wis. Stat. § 59.17(2)(a) vests administrative and management functions in the county executive to the exclusion of the county board, county boards can require confirmation of the county executive’s appointments only if authorized by the Legislature to do so. No statute authorizes the Board to require confirmation of the executive’s appointments to any position in the unclassified service listed in § 17.30(2) and (3) of the Milwaukee County ordinance unless the position is a department head.

¶ 8. Former corporation counsel also questioned whether the Board can require confirmation of appointments by department heads or other administrators to subordinate positions in the unclassified service listed in § 17.30(2) and (3) of the Milwaukee County ordinance. No statute expressly authorizes the Board to require confirmation of such appointments. The Board may not require confirmation if the power to make appointments to those positions is an “organizational or administrative power [statutorily granted] to a county executive . . . or to a person supervised by a county executive[.]” Wis. Stat. § 59.51(1).

¶ 9. Among the county executive’s organizational or administrative powers is the duty to “administer, supervise, and direct all county departments[.]” Wis. Stat. § 59.17(2)(b)1. This broad language grants the county executive the authority to direct department heads and administrators to make appointments of specific, eligible persons to subordinate positions in the unclassified service, or to make such appointments directly if the executive chooses to do so. The Board cannot require confirmation of appointments by department heads or other administrators to subordinate positions in the unclassified service because a confirmation requirement would negate the county executive’s authority.

²The “‘elected officers’ referred to in Wis. Stat. § 59.17(2)(a) are those enumerated in subchapter IV of Wis. Stat. ch. 59 and do not include county board supervisors.” OAG-01-13, ¶ 12 (April 9, 2013). The phrase “elected officers” in Wis. Stat. § 59.17(2)(b)1., which is applicable to Milwaukee County, similarly does not include county board supervisors.

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¶ 10. I therefore conclude that the Board may require confirmation of the county executive's appointments to any position that is a department head, but it cannot require confirmation of appointments by the executive or by other administrators to other positions in the unclassified service except in cases where the Board is authorized by statute to require confirmation.

Sincerely,

J.B. VAN HOLLEN
Attorney General

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