



**WISCONSIN LEGISLATIVE COUNCIL
STAFF MEMORANDUM**

Memo No. 2

TO: MEMBERS OF THE SPECIAL COMMITTEE ON DIFFERENCES IN LAWS
APPLICABLE TO CITIES AND VILLAGES

FROM: Ronald Sklansky, Senior Staff Attorney, and Don Dyke, Chief of Legal Services

RE: Police and Fire Protection

DATE: July 24, 2008

This Memo reviews the current scheme of statutory regulation of police and fire protection for cities and villages. The Memo is intended to facilitate discussion by the Special Committee as to whether the committee should address differences in that regulation as applied to cities and villages.

POLICE PROTECTION

Cities

The statutes do not expressly require a city to provide police protection. However, given the statement in s. 62.09 (13) (a), Stats., that the chief of police has command of the police force of the city under the direction of the mayor and the language in s. 62.13, Stats., requiring most cities to create a board of police and fire commissioners, as discussed later in this Memo, it can be argued that a city is expected to provide a police presence in the community.

The statutes also authorize joint local governmental provision of police protective services in the following manner:

1. A city may create a joint police department with a village. [See s. 61.65, Stats.]
2. A city may create a joint police department with another city. [See s. 62.13 (2m) (a), Stats.]
3. A city may abolish its police department if it enters into a contract with a county for the county sheriff to provide law enforcement services in all parts of the city. [See s. 62.13 (2s) (a), Stats.]

Villages

Section 61.65 (1) (a), Stats., generally provides that each village with a population of 5,000 or more must, and each village with a population of under 5,000 may, 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, town, another village, or the county in which the village is located.
3. Creating a joint police department with a city, town, or another village.
4. Abolishing its police department and entering into a contract with a county for the county sheriff to provide law enforcement services in all parts of the village.

[Section 61.65, Stats., was created in Ch. 148, Laws of 1937. The original statute made no reference to the power of a village with a population of under 5,000 to create a police department. The drafting records of the Legislative Reference Bureau do not provide any rationale for the use of the 5,000 population figure.]

FIRE PROTECTION

Cities

Section 62.13 (8), Stats., provides that a city council may provide by ordinance for either a paid or a volunteer fire department.

Villages

Section 61.65 (2) (a), Stats., generally provides that each village with a population of 5,500 or more must 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, town, or another village.
3. Creating a joint fire department with a city, town, or another village.
4. Using a fire company organized under ch. 213, Stats.

[The requirement that a village having a population of 5,500 or more must have a fire department originally was created in Ch. 228, Laws of 1941. The drafting records of the Legislative Reference Bureau provide no rationale for the creation of the requirement and provide no rationale for applying the fire department requirement to a village having a population of 5,500 or more while the statutes of that day required a police department in each village having a population of 5,000 or more.]

POLICE AND FIRE COMMISSIONS

Cities

Section 62.13 (1), Stats., generally provides that each city must have a board of police and fire commissioners consisting of five citizens. However, this requirement does not apply to a city that:

1. Has a population of less than 4,000, unless the city imposes the requirement upon itself by an ordinance adopted by a majority of all of the members of the city's common council. [See s. 62.13 (2) (a), Stats.]
2. Creates a joint police or fire department with a village or with another city. [See s. 62.13 (2) (b) and (2m) (a), Stats.]
3. Abolishes its police department and enters into a contract with a county for the county sheriff to provide law enforcement services in all parts of the city. [See s. 62.13 (2s) (a), Stats.]

[At one time, the statutes required that every second and third class city create and maintain a board of police and fire commissioners. (See s. 959-40, 1919 Stats.) The current requirement that each city having a population of 4,000 or more must have a board of police and fire commissioner was first enacted in Ch. 242, Laws of 1921.]

Villages

Section 61.65 (1) (b) 2., Stats., provides that a village with a population of 5,500 or more that creates its own police department must create a board of police commissioners to govern the department. Similarly, s. 61.65 (2) (b) 1., Stats., provides that each village with a population of 5,500 or more that creates its own fire department must create a board of fire commissioners to govern the department. If joint departments are created with another municipality, a joint board of commissioners must be created to govern the joint department. [See s. 61.65 (1) (b) 1. b. and (2) (b) 2., Stats.]

RS:jal