CHAPTER 68

MUNICIPAL ADMINISTRATIVE PROCEDURE

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68.001 Legislative purpose. The purpose of this chapter is to afford a constitutionally sufficient, fair and orderly administrative procedure and review in connection with determinations by municipal authorities which involve constitutionally protected rights of specific persons which are entitled to due process protection under the 14th amendment to the U.S. constitution.

History: 1975 c. 295.

Investigatory and adjudicatory functions in administrative proceedings are discussed. DeLuca v. Common Council, 72 Wis. 2d 672, 242 N.W.2d 689 (1976).

68.01 Review of administrative determinations. Any person having a substantial interest which is adversely affected by an administrative determination of a governing body, board, commission, committee, agency, officer or employee of a municipality or agent acting on behalf of a municipality as set forth in s. 68.02, may have such determination reviewed as provided in this chapter. The remedies under this chapter shall not be exclusive. No department, board, commission, agency, officer or employee of a municipality who is aggrieved may initiate review under this chapter of a determination of any other department, board, commission, agency, officer or employee of the same municipality, but may respond or intervene in a review proceeding under this chapter initiated by another.

History: 1975 c. 295.

68.02 Determinations reviewable. The following determinations are reviewable under this chapter:

(1) The grant or denial in whole or in part after application of an initial permit, license, right, privilege, or authority, except an alcohol beverage license.

(2) The suspension, revocation or nonrenewal of an existing permit, license, right, privilege, or authority, except as provided in s. 68.03 (5).

(3) The denial of a grant of money or other thing of substantial value under a statute or ordinance prescribing conditions of eligibility for such grant.

(4) The imposition of a penalty or sanction upon any person except a municipal employee or officer, other than by a court.

History: 1975 c. 295; 1981 c. 79.

68.03 Determinations not subject to review. Except as provided in s. 68.02, the following determinations are not reviewable under this chapter:

(1) A legislative enactment. A legislative enactment is an ordinance, resolution or adopted motion of the governing body of a municipality.

(2) Any action subject to administrative or judicial review procedures under other statutes.

(3) The denial of a tort or contract claim for money, required to be filed with the municipality pursuant to statutory procedures for the filing of such claims.

(4) The suspension, removal or disciplining or nonrenewal of a contract of a municipal employee or officer.

(5) The grant, denial, suspension or revocation of an alcohol beverage license under s. 125.12 (1).

(6) Judgments and orders of a court.

(7) Determinations made during municipal labor negotiations.

(8) Any action which is subject to administrative review procedures under an ordinance providing such procedures as defined in s. 68.16.

(9) Notwithstanding any other provision of this chapter, any action or determination of a municipal authority which does not involve the constitutionally protected right of a specific person or persons to due process in connection with the action or determination.

History: 1975 c. 295; 1981 c. 79.

68.04 Municipalities included. In this chapter, "municipality" includes any county, city, village, town, technical college district, special purpose district, or board or commission thereof, and any public or quasi−public corporation or board or commission created pursuant to statute, ordinance, or resolution, but does not include the state, a state agency, a corporation chartered by the state, or a school district as defined in s. 115.01 (3).

History: 1975 c. 295; 1993 a. 399; 2015 a. 196.

68.05 Municipal authority defined. "Municipal authority" includes every municipality and governing body, board, commission, committee, agency, officer, employee, or agent thereof making a determination under s. 68.01, and every person, committee or agency of a municipality appointed to make an independent review under s. 68.09 (2).

History: 1975 c. 295.

68.06 Persons aggrieved. A person aggrieved includes any individual, partnership, limited liability company, corporation, association, public or private organization, officer, department, board, commission or agency of the municipality, whose rights, duties or privileges are adversely affected by a determination of a municipal authority.

History: 1975 c. 295; 1993 a. 112.

68.07 Reducing determination to writing. If a determination subject to this chapter is made orally or, if in writing, does not state the reasons therefor, the municipal authority making such determination shall, upon written request of any person aggrieved by such determination made within 10 days of notice of such determination, reduce the determination and the reasons therefor to writing and mail or deliver such determination and reasons to the person making the request. The determination shall be dated, and shall advise such person of the right to have such determination reviewed, the time within which such review may be obtained, and the office or person to whom a request for review shall be addressed.

History: 1975 c. 295, 421.

68.08 Request for review of determination. Any person aggrieved may have a written or oral determination reviewed by written request mailed or delivered to the municipal authority which made such determination within 30 days of notice to such person of such determination. The request for review shall state the ground or grounds upon which the person aggrieved contends that the decision should be modified or reversed. A request for review shall be made to the officer, employee, agent, agency, committee, board, commission or body who made the determination but failure to make such request to the proper party shall not preclude the person aggrieved from review unless such failure has caused prejudice to the municipal authority.

History: 1975 c. 295.

68.09 Review of determination. (1) INITIAL DETERMINATION. If a request for review is made under s. 68.08, the determination to be reviewed shall be termed an initial determination.

(2) WHO SHALL MAKE REVIEW. A review under this section may be made by the officer, employee, agent, agency, committee, board, commission or body who made the initial determination. However, an independent review of such initial determination by another person, committee or agency of the municipality may be provided by the municipality.

(3) WHEN TO MAKE REVIEW. The municipal authority shall review the initial determination within 15 days of receipt of a request for review. The time for review may be extended by agreement with the person aggrieved.

(4) RIGHT TO PRESENT EVIDENCE AND ARGUMENT. The person aggrieved may file with the request for review or within the time agreed with the municipal authority written evidence and argument in support of the person's position with respect to the initial determination.

(5) DECISION ON REVIEW. The municipal authority may affirm, reverse or modify the initial determination and shall mail or deliver to the person aggrieved a copy of the municipal authority's decision on review, which shall state the reasons for such decision. The decision shall advise the person aggrieved of the right to appeal the decision, the time within which appeal shall be taken and the office or person with whom notice of appeal shall be filed.

History: 1975 c. 295, 421.

The 15−day time limit in sub. (3) is mandatory, not directory. The municipal authority's failure to comply with the 15−day deadline for completing the paper review under sub. (3) violated the plaintiff's right to due process and warranted reversal of the panel's decision. Koenig v. Pierce County Department of Human Services, 2016 WI App 23, 367 Wis. 2d 633, 877 N.W.2d 632, 15−0410.

68.10 Administrative appeal. (1) FROM INITIAL DETERMINATION OR DECISION ON REVIEW. (a) If the person aggrieved did not have a hearing substantially in compliance with s. 68.11 when the initial determination was made, the person may appeal under this section from the decision on review and shall follow the procedures set forth in ss. 68.08 and 68.09.

(b) If the person aggrieved had a hearing substantially in compliance with s. 68.11 when the initial determination was made, the person may elect to follow the procedures provided in ss. 68.08 and 68.09, but is not entitled to appeal under this section unless granted by the municipal authority. The person may, however, seek review under s. 68.13.

(2) TIME WITHIN WHICH APPEAL MAY BE TAKEN UNDER THIS SECTION. Appeal from a decision on review under s. 68.09 shall be taken within 30 days of notice of such decision.

(3) HOW APPEAL MAY BE TAKEN. An appeal under this section may be taken by filing with or mailing to the office or person designated in the municipal authority's decision on review, written notice of appeal.

History: 1975 c. 295, 421.

68.11 Hearing on administrative appeal. (1) TIME OF HEARING. The municipality shall provide the appellant a hearing on an appeal under s. 68.10 within 15 days of receipt of the notice of appeal filed or mailed under s. 68.10 and shall serve the appellant with notice of such hearing by mail or personal service at least 10 days before such hearing.

(2) CONDUCT OF HEARING. At the hearing, the appellant and the municipal authority may be represented by an attorney and may present evidence and call and examine witnesses and cross−examine witnesses of the other party. Such witnesses shall be sworn by the person conducting the hearing. The municipality shall provide an impartial decision maker, who may be an officer, committee, board, commission or the governing body who did not participate in making or reviewing the initial determination, who shall make the decision on administrative appeal. The decision maker may issue subpoenas. An appellant's attorney of record may issue a subpoena to compel the attendance of a witness or the production of evidence. A subpoena issued by an attorney must be in substantially the same form as provided in s. 805.07 (4) and must be served in the manner provided in s. 805.07 (5). The attorney shall, at the time of issuance, send a copy of the subpoena to the decision maker. The hearing may, however, be conducted by an impartial person, committee, board or commission designated to conduct the hearing and report to the decision maker.

(3) RECORD OF HEARING. The person conducting the hearing or a person employed for that purpose shall take notes of the testimony and shall mark and preserve all exhibits. The person conducting the hearing may, and upon request of the appellant shall, cause the proceedings to be taken by a stenographer or by a recording device, the expense thereof to be paid by the municipality.

History: 1975 c. 295; 1989 a. 139.

The review of a city council decision by an administrative review appeals board that included the mayor did not violate the requirement of an impartial decision maker when the mayor did not participate in making or reviewing the resolution. City News & Novelty, Inc. v. City of Waukesha, 231 Wis. 2d 93, 604 N.W.2d 870 (Ct. App. 1999), 97−1504.

68.12 Final determination. (1) Within 20 days of completion of the hearing conducted under s. 68.11 and the filing of briefs, if any, the decision maker shall mail or deliver to the appellant its written determination stating the reasons therefor. Such determination shall be a final determination.

(2) A determination following a hearing substantially meeting the requirements of s. 68.11 or a decision on review under s. 68.09 following such hearing shall also be a final determination.

History: 1975 c. 295.

68.13 Judicial review. (1) Any party to a proceeding resulting in a final determination may seek review thereof by certiorari within 30 days of receipt of the final determination. The court may affirm or reverse the final determination, or remand to the decision maker for further proceedings consistent with the court's decision.

(2) If review is sought of a final determination, the record of the proceedings shall be transcribed at the expense of the person seeking review. A transcript shall be supplied to anyone requesting the same at the requester's expense. If the person seeking review establishes impecuniousness to the satisfaction of the reviewing court, the court may order the proceedings transcribed at the expense of the municipality and the person seeking review shall be furnished a free copy of the transcript. By stipulation, the court may order a synopsis of the proceedings in lieu of a transcript. The court may otherwise limit the requirement for a transcript.

History: 1975 c. 295, 421; 1981 c. 289.

Judicial Council Note, 1981: Reference in sub. (1) to a "writ" of certiorari has been removed because that remedy is now available in an ordinary action. See s. 781.01, stats., and the note thereto. [Bill 613−A]

A litigant cannot bring a claim for money damages grounded upon 42 U.S.C. s. 1983 in a certiorari proceeding under ch. 68. Failure to join an s. 1983 claim with a ch. 68 certiorari action does not preclude the claimant from bringing an s. 1983 claim. Hanlon v. Town of Milton, 2000 WI 61, 235 Wis. 2d 597, 612 N.W.2d 44, 99−1980.

The requirement of procedural due process is met if the state provides adequate post−deprivation remedies. Certiorari under this section is an adequate remedy. Failure to pursue certiorari under this section barred a claim that procedural due process was denied. Thorp v. Town of Lebanon. 2000 WI 60, 235 Wis. 2d 610, 612 N.W.2d 59, 98−2358.

This section unambiguously provides authority for the remand of an agency final order for further proceedings necessary to insure the legislative purpose set forth in s. 68.001. The circuit court had authority to remand a s. 68.12 final determination based upon a reconsideration motion that presented newly discovered recantation

evidence. M.H. v. Winnebago County Department of Health & Human Services, 2006 WI App 66, 292 Wis. 2d 417, 714 N.W.2d 241, 05−0871.

A court should not defer to a municipality's interpretation of a statewide standard. Doing so would give one locality disproportionate authority to influence state standards established by the legislature. If the language of the municipality's ordinance appears to be unique and does not parrot a state statute but rather the language was drafted by the municipality in an effort to address a local concern, applying a presumption of correctness, the court will defer to the municipality's interpretation if it is reasonable. Ottman v. Town of Primrose, 2011 WI 18, 332 Wis. 2d 3, 796 N.W.2d 411, 08−3182.

A municipality's interpretation of its own ordinance is unreasonable if it is contrary to law, if it is clearly contrary to the intent, history, or purpose of the ordinance, or if it is without a rational basis. An interpretation that directly contravenes the words of the ordinance is also unreasonable. Ottman v. Town of Primrose, 2011 WI 18, 332 Wis. 2d 3, 796 N.W.2d 411, 08−3182.

A certiorari court cannot order a board to perform a certain act. Thus, a court on certiorari review was without statutory authority to provide the equitable relief requested in this case. Certiorari exists to test the validity of decisions by administrative or quasi−judicial bodies. The scope of certiorari extends to questions of jurisdiction, power and authority of the inferior tribunal to do the action complained of, as well as questions relating to the irregularity of the proceedings. Guerrero v. City of Kenosha Housing Authority, 2011 WI App 138, 337 Wis. 2d 484, 805 N.W.2d 127, 10−2305.

Under sub. (1) and s. 68.12 (2) the decision subject to certiorari review is the final determination made by the administrative panel. However, there are two exceptions to the general rule that a petition for certiorari must go to the body whose acts are being reviewed: 1) when specially provided by statute, or in particular cases of necessity, as when the board or body whose acts are sought to be reviewed is not continuing or has ceased to exist; and 2) when service requirements are ambiguous, and there is an absence of a clear statutory identity of the board or body. Koenig v. Pierce County Department of Human Services, 2016 WI App 23, 367 Wis. 2d 633, 877 N.W.2d 632, 15−0410.

68.14 Legislative review. (1) The seeking of a review pursuant to s. 68.10 or 68.13 does not preclude a person aggrieved from seeking relief from the governing body of the municipality or any of its boards, commissions, committees, or agencies which may have jurisdiction.

(2) If in the course of legislative review under this section, a determination is modified, such modification and any evidence adduced before the governing body, board, commission, committee or agency shall be made part of the record on review under s. 68.13.

(3) The governing body, board, commission, committee or agency conducting a legislative review under this section need not conduct the type of hearing required under s. 68.11.

History: 1975 c. 295.

68.15 Availability of methods of resolving disputes. This chapter does not preclude any municipality and person aggrieved from employing arbitration, mediation or other methods of resolving disputes, and does not supersede contractual provisions for that purpose.

History: 1975 c. 295.

68.16 Election not to be governed by this chapter. The governing body of any municipality may elect not to be governed by this chapter in whole or in part by an ordinance or resolution which provides procedures for administrative review of municipal determinations.

History: 1975 c. 295.

In order for a municipality to elect not to be governed by a particular section of ch. 68, the municipality must enact an ordinance that shows that it chooses to opt out of the particular section. Tee & Bee, Inc. v. City of West Allis, 214 Wis. 2d 194, 571 N.W.2d 438 (Ct. App. 1997), 96−2143.