

Municipal LAW

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September 9, 2026

James Davel
Village of Kronenwetter

RE: Police and Fire Commission and Utilities Committee Dual Service

Dear Mr. Davel:

You asked us to review whether a current member of the Village's Police and Fire Commission (PFC) may also serve on the Village's Utilities Committee (UC), and whether the Village could amend its Code to permit simultaneous service on both bodies.

Village Code. As an initial matter, we agree that simultaneous service is prohibited under the Village Code as currently written. Section 14-16(A) provides that the PFC consists of five members, "none of whom may be elected or appointed officials or employed by the village." Although Section 14-22(A) refers to three of the five UC members as "citizen members," UC members are appointed by the Village President with consultation and confirmation by the Village Board, Section 14-22(B). More importantly, Section 14-22(G) characterizes the UC members as "sworn public officials." Thus, under the plain language of Sections 14-16(A), 14-22(B), and 14-22(G), the person cannot simultaneously serve on the PFC and UC with Section 14-16(A) as currently written.

State Law. PFCs in villages are governed by Wis. Stat. § 61.65 which directs that village PFC boards "shall be organized in the same manner as boards of police and fire commissioners under s. 62.13 (1)." Wis. Stat. § 62.13(1) provides a PFC consists of five "citizens," with no more than three members from the same political party, but it does not prohibit PFC members from simultaneously holding other appointed positions, such as that of a member on the Village's UC.

The League has taken the position that a member of a municipal governing body (members of the village board) may also serve on a PFC based on Wis. Stat. § 66.0501(2), which generally permits a municipal governing body to be represented on municipal boards and commissions. LWM Police and Fire Commissions Op. #165. An informal (unpublished) attorney general opinion dated June 28, 2004 disagrees with that conclusion and reasons that the term "citizen" in Wis. Stat. § 62.13 arguably means a person who does not hold a municipal office or employment. The League's response to that opinion is as follows:

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[T]hat conclusion...is premised entirely upon the legislative intent of creating the PFC to insulate the police and fire department from politics. The short, informal opinion fails to acknowledge that the predecessor to sec. 66.0501(2) specifically excluded governing body representation on the PFC while the current version of the statute does not.

The League itself characterizes this as an unsettled question rather than a definitive statutory prohibition. That brings us to the question of whether this person's membership on the PFC and UC is compatible, even if the Village amended Section 14-16(A).

Compatibility of Positions. The incompatibility doctrine is a court-created doctrine that prohibits a public official from simultaneously holding dual offices or an office and a position of public employment where the two are incompatible. *Otradovec v. City of Green Bay*, 118 Wis. 2d 393 (Ct. App. 1984). An incompatibility exists whenever the statutory functions and duties of the office conflict or require the officer to choose one obligation over another.

The authority assigned to the PFC and UC do not appear to overlap in any material respect. The UC has no authority over the appointment, promotion, discipline, or removal of police or fire personnel, while the PFC has no responsibility for the Village's water or sewer utilities, broadband, stormwater, utility budgets, or other matters assigned to the UC. Neither body supervises the other, reviews the other's decisions, or appears to exercise authority over the other's members. The performance of the duties of one position therefore does not appear to place the individual in a position of reviewing, supervising, or otherwise acting upon decisions made in the other position.

Options. Based on the foregoing, the Village appears to have two options for addressing the individual's simultaneous service on the PFC and UC: (1) the Village may leave Section 14-16(A) unchanged, in which case the individual cannot continue serving on both bodies, or (2) amend Section 14-16(A) to permit PFC members to serve on other appointed Village boards, commissions, or committees that are legally compatible. We can provide further guidance regarding the applicable procedures or proposed ordinance language once the Village determines which option it would like to pursue.

Yours very truly,
MUNICIPAL LAW & LITIGATION GROUP, S.C.

s/ Remzy D. Bitar

Remzy D. Bitar

s/ Hailey R. Lipinski

Hailey R. Lipinski