



Legal Opinion Memo

Meeting Date: October 28, 2025

Agenda Item: City Manager's Authority to Create Positions

Staff Contact (name, email, phone): Steven T. Chesebro, schesebro@whitewater-wi.gov, 262-458-2780

QUESTION

1. What authority does the City Manager have to create positions?

DISCUSSION

A City manager's powers are created by state statute under Wis. Stat. § 64.11(2). Wis. Stat. § 64.11(2) states "the city manager shall have the power to create minor administrative offices and positions and to discontinue such offices and positions according to the city manager's judgment of the needs of the city." Minor Administrative offices and positions is not defined in Ch. 64 nor does the provision appear to have been interpreted by an appellate court or the Wisconsin Supreme Court. Reading Wis. Stat. § 64.11(2) in isolation provides at least three reasonable methods of interpreting the phrase minor administrative offices and positions.

Option 1: Any office or position subordinate to the city manager.

Option 2: A hybrid interpretation excluding city officers and some departments within the city.

Option 3: Any position of low complexity or authority which carries out purely administrative tasks instead of discretionary tasks.

In dealing with ambiguous language the courts look to other statutes that may provide guidance as to what was intended. There are four sections of statutes within Ch 64 that place some additional context regarding a city manager's ability to create offices and positions. Below is a summary of each of the three statutes and what context is provided.

Wis. Stat. § 64.10 in relevant part provides common council with report and recommendation of the city manager shall have the power to create "general departments of city administration." That the Council has the authority to create general departments of city administration versus minor offices and positions implies that the manager is not able to unilaterally create all offices or positions subordinate to the city manager. If that had been intended the legislature likely would have used the same phrase in both sections.

Wis. Stat. § 64.11(3) provides in relevant part that the city manager has the power to appoint "all heads of departments, all subordinate city officials and all city employees and to remove them."

This provision again supports that not all subordinate positions to the city manager can be created by the City manager as the legislature did not use the same broad language in Wis. Stat. § 64.11(2).

Wis. Stat. § 64.30 does not apply to the city manager form of government. However, it does provide examples of general departments of city affairs to be Public Finance and accounts, Public Health Safety and sanitation, Streets and public improvements; Public Property; and public charities and corrections. As this language differs from Wis. Stat. § 64.10 not all of these may be general departments of city administration as city affairs is likely a broader scope than city administration.

Wis. Stat. § 64.32 does not apply to city manager form of government however for describing the council's ability to create positions it provides "create and fill offices ... and discontinue any office so created..." This is much broader language than used to describe the city manager's authority in § 64.11(2).

The legislature in creating Ch 34 defining both Manager Plan and Commission Government would likely permit both forms of government to hire the same positions regarding City Administration. The legislature in Ch 34 Subchapter II Commission Government, which does not apply to City Manager form of government, made it explicit that all positions could be created by the council. This differs from Ch 34 Subchapter I City Manager Plan, which designates the council as having authority to "create general departments of city administration" upon report and recommendation of the City manager, while designating the City Manager as having the ability to create minor offices and positions. This means that the City manager's authority to create positions is likely for any position which is not considered the "general departments of city administration" and within the Council's authority to create.

It should also be noted that the authority given to a City manager is to create minor **offices and** positions not just minor positions. That a city manager has the ability to create offices in addition to positions indicates that it was not intended to only create positions of low complexity or authority, but that it could create substantial offices that address city business but are not classified as general departments of city administration when the statute was created in.

CONCLUSION

The City manager has the authority to create and terminate minor offices and positions which would likely be defined as any position which is not a general department of city administration. General departments of city administration would likely be positions regarding Public Finance and accounts, Public Health Safety and sanitation, Streets and public improvements, Public Property, Police and Fire personnel, or named officers under Wis. Stat. § 62.09.
