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DATE: March 21, 2025

TO: Milwaukee County Board of Supervisors

FROM: Scott F. Brown, Corporation Counsel
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SUBJECT: 2024 Adopted Budget Amendment 19 concerning Citizen Review Boards

I. Introduction

Amendment 19 of the adopted 2024 Milwaukee County budget requested that the Office of Corporation Counsel (OCC) provide a written report to the Board “on the legal feasibility of establishing a Civilian Review Board (CRB) in Milwaukee County, modeled after the CRB approved by the La Crosse County Board of Supervisors in 2024.” CRBs are typically designed to provide civilian oversight of law enforcement agencies, improve transparency, and enhance public trust. In Wisconsin, CRBs generally take on a form similar to that of police and fire commissions, which by statute provide civilian oversight of municipal police and fire departments. Through this report, OCC provides an analysis of applicable state and local laws, limits to a CRB’s authority, and potential legal challenges that could arise.

II. Overview of the La Crosse County CRB

To commence the creation of its own CRB, on November 2, 2021, the La Crosse County Board created the Study Committee on Policing (SCOP). According to the Resolution by the Board, the SCOP was established to “consider and make recommendations to the County Board regarding the name, feasibility and framework for any future committee including scope and authority; structure; and funding while also taking into account the nature of a county-wide multi-jurisdictional approach.” The Committee included local law enforcement leaders, subject matter experts, representatives of disproportionately impacted communities, representatives with legal and civil rights expertise, and victim advocates

The SCOP provided the final recommendations on September 26, 2023 as attached. (Ex. 1.) The SCOP recommended creating a CRB with the following three primary functions:

1. Advocate and act as a liaison for civilians with law enforcement complaints or concerns.
2. Perform community outreach about the CRB to those with concerns or complaints.

3. Collect and annually share data about its work.

The SCOP recommended that “any recommendation, decisions and authority related to the hiring, termination or discipline of individual law enforcement officers remains under the control of each jurisdiction and their own law enforcement agency and personnel/Human Resource department.”

In February 2024, following the study by the SCOP, La Crosse County approved the creation of a pilot Civilian Review Board to provide oversight of local law enforcement for two years. The Judiciary and Law committee retained oversight over the CRB, including approval of the process and procedures of the CRB as necessary. In accordance with the recommendations of the SCOP, the La Crosse CRB was structured as an advisory board rather than an entity with independent investigative or disciplinary authority. It relies on voluntary cooperation from law enforcement agencies.¹

III. Legal Considerations for Milwaukee County

Like in La Crosse County, the Milwaukee County Sheriff, who is a constitutional office, may not be compelled to cooperate with a CRB created by the Milwaukee County Board of Supervisors. The OCC has previously opined on this topic (*see* Board File No. 18-242; a copy of the Report appended to this File is attached as Exhibit 3) regarding “examples, options, best practices, and strategies for implementation of a Citizen Review Board for Milwaukee County, including staff and resource requirements.” Importantly, that advisory opinion stated that “[i]t is the opinion of the OCC that a court would most likely conclude that a CRB in Milwaukee County could only provide recommendations regarding Sheriff’s Department policies and procedures, as well as the discipline of an employee of the Sheriff’s Department. Furthermore, it is not likely that a court would conclude that a CRB in Milwaukee County could compel the Sheriff’s Department to participate in or cooperate with any CRB investigation.” Because the Milwaukee County Sheriff remains a Constitutional Officer, OCC continues to believe that a Milwaukee County CRB would lack authority to direct any activities for which the Sheriff is responsible but could nevertheless recommend for the Sheriff’s consideration changes to departmental policies and procedures.

It is worth noting that even recommendations the Sheriff may wish to consider implementing may be prohibited or otherwise limited under state law due to requirements imposed on the Sheriff to bargain certain conditions of employment with the Milwaukee Deputy Sheriff’s Association (MDSA). When bargaining with public safety employees, a municipal employer is not required to bargain on subjects related to the formulation of management or policy but is required to bargain on subjects primarily related to wages, hours, and conditions of employment. *See Unified School District No. 1 of Racine County v. WERC*, 81 Wis.2d 89 at 90 (1977); Wis. Stat. § 111.70(4)(p). There is no statutory definition of wages, hours, or conditions of employment, so Wisconsin Courts have fashioned a balancing test to determine whether the issue is “primarily related to wages, hours, and conditions of employment.” *See West Bend Education Ass’n v. WERC*, 121 Wis.2d 1, 7-8, 357 N.W.2d 534 (1984). Issues that balance in favor of bargaining are categorized as “mandatory issues of bargaining.” *Id.* Where a dispute arises between the municipal employer and the collective bargaining unit as to whether a topic is a mandatory issue of bargaining, “the standard requires WERC in the first instance (and a court on review thereafter) to determine whether the proposals are ‘primarily related’ to ‘wages, hours and conditions of employment,’ . . . or to ‘formulation or management of public policy.’” *Id.* at 7-9. This inquiry is highly fact specific and weighs the need for the municipal employer to undertake “managerial prerogatives” or administration functions against the need

¹ As evidenced by the attached letter from the Holmen Village Chief of Police, law enforcement agencies may decline to cooperate with a county-created CRB. (Ex. 2.)

for the employees “legitimate interest” in issues affecting wages, hours, and conditions of employment. *See id.*

As a result of this limited authority of a CRB for Milwaukee County over the Sheriff’s Office and the requirements around bargaining subjects primarily related to wages, hours, and conditions of employment, the La Crosse County CRB is an appropriate model for Milwaukee County to mirror. With its authority specifically limited to exclude disciplinary or investigative powers, the La Crosse County CRB model is legally feasible.

A. The City of Milwaukee’s Fire and Police Commission (FPC)²

In considering the creation of a CRB and considering OCC’s 2018 opinion, it is important to note the statutory changes made to the authority of the City of Milwaukee’s Fire & Police Commission (FPC). Specifically, in June 2023, Wisconsin Act 12 was enacted after being adopted by the state legislature and approved by the governor. The new law eliminated much of the FPC’s oversight authority held for decades prior and instead granted the chiefs of the City of Milwaukee’s police and fire departments broad authority to establish policies relating to the control and management of their respective departments. The Act further provides that the City may suspend or modify policies established by the Police or Fire Chief only if the suspension or modification is approved by two-thirds of all members of the Common Council. The act authorizes the FPC to advise the Common Council regarding any recommended policy changes but effectively removed from the FPC all direct oversight of either department.

And while Act 12 surely muted the FPC’s authority over the City of Milwaukee’s police and fire departments to resemble something akin to a CRB Milwaukee County could lawfully create, one key difference remains: the City of Milwaukee’s police and fire departments are still statutorily mandated to cooperate with the FPC. No similar obligation may be imposed on the Sheriff’s Office should Milwaukee County establish a CRB.

B. Public Records and Open Meetings Requirements

If the Board were to establish a Milwaukee County CRB, the CRB would be a government body subject to the requirements of Wisconsin Open Meetings law and must adhere to all notice and openness requirements under the law. *See State ex rel. Krueger v. Appleton Area Sch. Dist. Bd. of Educ.*, 2017 WI 70, ¶¶ 27-34; *see also* Jacques Correspondence (Jan. 26, 2004) (Ex. 4). While not an exhaustive list, the most notable requirements include noticing and agendizing meetings and providing reasonable public access to all meetings a Milwaukee County CRB may undertake. Similarly, the Wisconsin Public Records Law grants public access to most government records; this would include any records created or maintained by a Milwaukee County CRB. Certain records or portions of records, however, may not be disclosed publicly which may create tension between a CRB’s interest in transparency and its obligations as an authority required to comply with Wisconsin’s Public Records Law.³ If established, a Milwaukee County CRB will need to carefully navigate these competing concerns, ensuring compliance with public records laws while promoting transparency.

² As a 1st class city, the City of Milwaukee’s Fire and Police Commission is authorized pursuant to Wis. Stat. § 62.50(1h); Wis. Stat. § 62.13 applies instead to all other Wisconsin municipalities.

³ For example, authorities may not disclose records if doing so would identify a confidential informant or records that contain individuals’ personal financial information. Wis. Stat. §§ 19.36(8)(b), 19.36(13).

IV. Conclusion

Milwaukee County may lawfully establish a CRB and empower it to serve as an advisory body to the Sheriff's Office but may not obligate the Sheriff's Office to cooperate with it or permit it to exercise any authority over the Sheriff or the Sheriff's Office. Given these limitations, a Milwaukee County CRB would need to be carefully structured to maximize its effectiveness while limiting any liability to Milwaukee County.