

**INTEROFFICE COMMUNICATION
COUNTY OF MILWAUKEE**

DATE: August 19, 2013

TO: County Board of Supervisors

FROM: Mark A. Grady, Acting Corporation Counsel *MAG*

SUBJECT: File No. 13-622; A resolution authorizing the payment of attorneys' fees incurred by the Sheriff in order to resolve pending litigation between the Sheriff and the County or the Civil Service Commission

The County Board of Supervisors referred the above file to the Office of Corporation Counsel with several questions. The following provides our understanding of the questions referred and our response.

- 1) The Board's first question, as we understand it, is why the claims are not separated and whether there is a legal reason why the claims were consolidated and put into one resolution with one vote.

As noted by the question, the proposed resolution settles attorneys' fees claimed by the Sheriff in several different legal proceedings with different legal issues. Nevertheless, the resolution addresses all of the claims in one file because that is the settlement that was proposed by the Sheriff. As with any party who has more than one claim against the County, the party can propose a settlement of each claim separately, all claims together or some other combination. With respect to this File, the Sheriff apparently wished to terminate all of the pending litigation and resolve all of his claims for attorneys' fees at once and presumably did not find merit to addressing his claims in a piecemeal fashion. Furthermore, all of these claims share one legal issue; that is, the Sheriff's legal right to payment of these attorney fees as an elected official seeking to protect his understanding of his legal responsibilities. Our office believes that the proposed settlement is only possible because it does resolve all of these claims; we believe that a settlement on these terms is not likely if each claim were addressed separately.

Therefore, because all of the claims share one legal issue and because a consolidated settlement is how the Sheriff proposed to resolve his claims, the claims were consolidated into one resolution. We continue to recommend the proposed settlement.

- 2) The Board's second question, as we understand it, is whether the Sheriff had the legal ability to enter into separate, or serial, professional services agreements with the same law firm for each separate claim and whether a \$50,000 limit would apply to each separate claim.

The answer to the referred question is not well defined in the ordinance. Contracts for professional services are generally governed by §56.30 of the Ordinances. Among other things, such contracts must describe the purpose of the contract. The choice between the use of one contract with amendments and the use of serial, separate contracts is largely based on the knowledge the contracting department reasonably has at the time that the department initially contracts. If a department head (here the Sheriff) is aware prior to the initial contract that there will be a need for legal services in more than one related legal matter, then the contract should be written with that understanding and the provisions of the Ordinances applied accordingly. Thus, for example, the County Board has approved a single contract for outside counsel in labor relations matters that is utilized for various legal matters because our office contemplated the need for assistance in more than one matter.

In addition, even where the need for future services in additional matters is unknown at the time of the initial contract, the legal services in this resolution all relate to representation of the Sheriff in litigation where the Sheriff believed separate counsel was necessary. In such a situation, it could be argued that subsequent cases should result only in amendments to the initial contract and not new contracts. Those amendments would require Board approval if the contract amount increased to a total over \$50,000 and no RFP was completed. Thus, with either of these situations, there would be only one contract, with required amendments, subject to Board approval.

On the other hand, if the department head (here the Sheriff) was unaware at the time of the initial contract that other services would be needed and when it can be argued, as it can be here, that each of the new matters, as they arose, involved different suits and different substantive legal issues, then each matter is legitimately the subject of a new, separate contract. With respect to the claims addressed in this resolution, the various legal matters arose over a period of many months (or longer) and it is not obvious that each of those matters could have been anticipated at the time of the first contract. Under this analysis, it can be argued that the department head would be able to enter into separate contracts with the same firm for each separate legal matter as it arose. Consequently, each contract would be individually subject to a separate \$50,000 limitation, without an RFP being issued for each.

We do not believe that §56.30 provides a direct answer to the referred question.

- 3) The Board's third question, as we understand it, is whether the Sheriff's agreement, that future requests for representation will first be directed to Corporation Counsel for assistance, is legally enforceable.

If the resolution in this matter is approved, the Sheriff will sign a settlement document in a manner similar to any claimant. That document will release the Sheriff's claim for the balance of the attorneys' fees that were incurred, but which are not being paid in this compromise settlement. That document will also set forth the Sheriff's agreement to consult with Corporation Counsel first. The document is a binding legal agreement like any similar settlement agreement.

We hope this has answered your questions.

cc: Janelle Jensen
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