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Corporation Counsel

PAUL D. KUGLITSCH
ANNE B. KEARNEY
Deputy Corporation Counsel

ALAN M. POLAN
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DALE R. NIKOLAY
SCOTT F. BROWN
TEDIA K. GAMIÑO
DAVID N. FARWELL
LISA M. PROCACCIO
NELSON W. PHILLIPS III
MELINDA S. LAWRENCE
Assistant Corporation Counsel

TO: Commissioners of the Milwaukee County Commission on Aging

FROM: David N. Farwell, Assistant Corporation Counsel^{DF}

DATE: April 19, 2019

RE: Advisory Memorandum Regarding Proposed Revisions to the Bylaws of the Milwaukee County Commission on Aging ("COA")

Pursuant to certain votes of the COA at its March 29 meeting, you have asked the Office of Corporation Counsel to provide advice relating to the COA's recent efforts to revise its bylaws. First, you have asked for a description of Milwaukee County Board (the "County Board") practices as to the creation of committees and appointment of committee members and chairpersons. Second, you have asked for advice pertaining to proposed revisions to the COA bylaws and their conformance to Milwaukee County General Ordinances ("MCGO"). This memorandum sets forth our advice on these matters.

Milwaukee County Board Practices

MCGO Chapter 1 prescribes the rules applicable to the County Board. The rules regarding the creation of and applicable to committees are contained in MCGO §§ 1.11-1.14. Section 1.11 governs the creation of standing committees and Section 1.12 governs select committees. While not defined in the ordinances, the forms of these committees generally align with Robert's Rules of Order on the subject. Whether standing or select, the powers and duties of committees are generally determined by the ordinance or resolution creating the committee, unless otherwise specified in the organization's bylaws or in its governing charter.

Standing Committees. Under Robert's Rules, standing committees are appointed for a definite time, such as a session or a year. Standing committees typically handle business that is central to the purpose of the governing body or that constitutes an ongoing core function of the body. MCGO Section 1.11 establishes nine separate standing committees dealing with various core County functions (e.g., finance and audit, judiciary and safety, parks, etc.), and defines the committees' powers and duties. The County Board chair is empowered to appoint both the chairperson **and** the members of the standing committees, governed only by the remaining provisions of that section.

Select Committees. In contrast to standing committees, select committees generally are appointed for a special, particular purpose (e.g. a bylaws review committee) and for a limited time. MCGO Section 1.12 allows the creation of select committees, undefined in the ordinance but presumably intended to operate as select committees as defined in Robert's Rules. Select committees of the County Board may be created and their powers and duties defined by ordinance or resolution or by the County Board chair. If the chair of a select committee is not defined by the enabling resolution, the members of the committee are permitted to elect the chair.

Rules Governing COA Bylaws

The COA is a creation of the County Board and thus it is governed primarily by ordinances, which are enacted as MCGO Chapter 53. (The COA is, of course, also governed by other state and federal laws—for example, Wis. Stat. § 46.82 and 42 USCA § 3026—which are beyond the scope of this memorandum.) Where the ordinances prescribe the form, function and/or activities of the COA, its actions are constrained. However, to the extent that the ordinances are silent as to such matters and/or such constraints are not imposed, the COA generally has the discretion to adopt rules of procedure. MCGO § 53.06 allows the COA to appoint committees consisting of either members, nonmembers or both, and requires the COA to adopt bylaws of procedure. The ordinances are silent, however, as to the method of creating and staffing committees and as to the form of such bylaws. As such, although the COA may adopt the practices of the Milwaukee County Board set forth above, it is not required to do so.

Proposed Revisions to COA Bylaws

With the foregoing in mind, this memorandum now turns to the specific sections of the COA bylaws on which the Office of Corporation Counsel was asked to provide advice.

1. Article II, Section 3 – Terms of Office, Succession and Vacancies. The phrase “, §46.82 Wis. Stats., and 42 USCA § 3026.” should be added to the end of Article II, Section 3.
2. Article III, Section 1 – Duties of the Commission on Aging. The same phrase, “, §46.82 Wis. Stats., and 42 USCA § 3026.” should be added to the end of Article III, Section 1.
3. Article IV, Section 3 – Vacancies of Commission Officers. Although it was suggested at the March 29 meeting that Article IV, Section 3 be changed to specify that the County Executive should appoint commission officers in the event of vacancies, that suggestion was made in error. The County Executive has the power to appoint commissioners to the COA under MCGO § 53.02; however, such powers do not extend to commission **officers**. The commissioner appointments are governed in the COA bylaws under Article III, Section 3, which specifies that appointments and vacancies will be governed by MCGO Chapter 53. By contrast, Article IV, Section 3 applies only to **officers**, who may be appointed by the COA. If it so chooses, the COA could establish a different rule (e.g. appointment by the chair) and/or a more definite timeframe for filling vacancies (e.g. at the next meeting after a vacancy occur), but it is not required to do so.

4. Article IV, Section 4 – Duties of COA Officers. MCGO Chapter 53 does not prescribe the duties of COA officers, thus leaving it up to the COA to do so. As to the duties of the COA chair with respect to the appointment of committee members and chairpersons, the COA **may** choose to adopt the County Board’s approach—that is, enabling the COA chair to appoint both members **and** the chairpersons of standing committees and leaving the constitution of select committees up to the COA as a whole—but the ordinances do not require it.

5. Article IV, Section 4(D) – Duties of the “Legislative Officer”. The office of “Legislative Officer” should be added to Article IV, Section 4(D) pursuant to MCGO § 53.06. The duties of the legislative officer are not defined in MCGO Chapter 53 or anywhere else in the ordinances. That stated, under MCGO § 53.09(5) the COA is required to “review federal data and projections to help in the county planning process, indicate the need for particular legislation, and...make available to the county board the information and research relating to the effects of proposed legislation.” These duties could be assigned to the legislative officer, along with a general duty to keep apprised of changes in federal, state and local laws that govern the COA’s client population and act as a liaison between the COA, the state legislature and the County Board with respect to such laws or proposed legislation.

6. Article IV, Section 5 – Duties of Commissioners. Although the COA did not ask our office to weigh in on the proposed changes to this section, the changes we reviewed appear to be reasonable. The COA should determine the rules and duties of the commissioners, bearing in mind any restrictions or requirements set forth in MCGO Chapter 53.

7. Article V – Commission Committees. As noted above, MCGO Chapter 53 does not specify the types, forms or functions of COA committees, the creation of which is left up to the COA to determine through its bylaws and resolutions. The COA certainly could adopt the County Board’s practices with respect to standing and select committees described above, but it is not required to do so. The COA should consider what is in the best interests of the body as a whole when deciding how to create standing and select committees.

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