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May 10, 2017

VIA E-MAIL

Professor Gregory Gelembiuk
gwgeleb@wisc.edu

Dear Professor Gelembiuk

Thank you for your email requesting my opinion on the duty of police chiefs in Wisconsin to obey policy directives from common councils, in this case the Madison Common Council, regarding the use of deadly force. The short answer is that in my opinion police chiefs in Wisconsin, including in Madison, do have the duty to obey lawful orders of the common council regarding policies, including the use of deadly force.

I wrote an article entitled *Police Accountability in Wisconsin* that was published in 1974 Wis. Law Rev. 1131. I am informed that article has been used as part of the instructional materials in certain University of Wisconsin Law School courses ever since. It also continues to be cited in the Wisconsin Statutes, e.g. §62.09 Wis. Stats., along with cases and attorney general opinions interpreting the statute. Thus, the research disclosed in my article is deemed to be useful in interpreting the law by both the faculty of the University of Wisconsin Law School and the Wisconsin Legislature.

The nub of the problem is this. How should Wisconsin keep illegitimate political influences out of the police force, while admitting legitimate political influences?

As noted in my article at page 1133, using Milwaukee as an example:

Prior to 1885 in Milwaukee, improper political influence in the police department was the major obstacle to fair and effective police services. A Milwaukee ordinance provided that the mayor appoint the chief of police subject to confirmation by the common council, and this resulted in eight changes of police chiefs in thirty years. Incoming mayors typically appointed a new chief, and at times the whole police force would quit upon the arrival of a new chief, knowing that otherwise they would be fired.

I further cited a contemporary reporter, who wrote:

They looked the legislators in the eye and said, when we hire a policeman or a fireman we don't give a hoot in Wauzeka whether

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he voted for Hayes or Tilden, for Blaine or Cleveland. All we want is a policeman to catch crooks and a fireman to put out fires.

See article at page 1333, Footnote 13.

These concerns led to change in the law. But in correcting this problem, the legislature went too far the other way. Among other changes, the police chief in Milwaukee was appointed for life. That insulated him from political manipulation, but it occasionally gave rise to police chiefs who were so set in their ways that they rejected any directives from the common council, even though they were required by law to obey them.

One of the recommendations I made in my article at page 1166 was that the police chief be given a limited tenure, so the chief would be insulated from manipulation, but could also be non-renewed if he or she continued to reject common council policy directions.

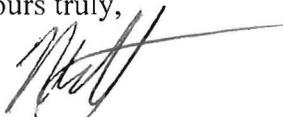
The legislature accepted this proposal, and the police chief in Milwaukee is now subject to a four-year tenure, renewable by appointment of the mayor and confirmation of the common council. This has worked well in Milwaukee.

I believe that the Madison police chief still has life tenure. Milwaukee's experience was that life tenure in a police chief can result in the chief's ignoring lawful orders from the mayor and the common council. The best solution to the problem you describe is to change the law to give the Madison chief a term of years, subject to renewal by the mayor and the common council.

Finally, you may want to suggest that anyone interested in the full history of police accountability in Wisconsin, review my article.

Thank you for your message, and I wish you well.

Yours truly,

A handwritten signature in black ink, appearing to read 'Matt Flynn', with a long horizontal line extending to the right.

Matthew J. Flynn

MJF:mt