
From: Brist, Steven
Sent: Thursday, January 26, 2017 2:41 PM
To: 'saul.stjohn@gmail.com'
Cc: Allen, Roger
Subject: RE: Question for Ethics Board

I will need to consult with other attorneys on this matter. I will inform you when action will be taken on your complaint. Thank you for your attention to this matter.

Steven C. Brist

Assistant City Attorney

City of Madison-- Office of the City Attorney 210 Martin Luther King Jr. Blvd. Room 401
Madison, WI 53703 telephone 608-266-4511 fax. 608-267-8715

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From: saul.stjohn@gmail.com [<mailto:saul.stjohn@gmail.com>]
Sent: Thursday, January 26, 2017 2:05 PM
To: Brist, Steven
Cc: Allen, Roger
Subject: Re: Question for Ethics Board

Dear Mr. Brist,

I would like to further clarify my request of the Ethics Board. The language I quoted before regarding the Ethics Board's readiness to hear and advise appears to originate from the Ethics Board's Policy Manual, which goes on to state "This includes the reviewing of actions which have occurred in the past, as well as giving opinions on activities contemplated in the future. Board opinions shall be based solely on the applicable provisions of Section 3.35 of the Madison General Ordinances ("MGO")."

So, to be very clear: I am not attempting to submit a complaint against the current commissioners of the MEOC, nor against the MEOC as an entity (as would be permitted by MGO 3.35(12)(a).)

I am, rather, seeking the Ethics Board's advice on a question, as is permitted by the Policy Manual. I was unfortunately unable to locate any procedure for submitting such a question other than the filing of a complaint; hence my use of the "Complaint Form."

Please let me know if I can in any way further clarify this request.

Thank you,
Saul St John

On Thu, Jan 26, 2017 at 1:13 PM, <saul.stjohn@gmail.com> wrote:
Dear Mr. Brist,

Thank you for your response. My understanding is that "The Ethics Board stands ready to hear and advise on all questions within its scope of authority brought to it by any city official, employee or citizen."

I seek the advice of the Ethics Board regarding the question of whether the Commissioners of the MEOC, when it is sitting as an adjudicative body to consider complaints against the City or organs thereof, are acting in keeping with the City's Ethics Code.

It is my contention that the City cannot sit in judgement of itself.

Sincerely,
Saul St. John

On Thu, Jan 26, 2017 at 1:07 PM, Brist, Steven <SBrist@cityofmadison.com> wrote:

Dear Mr. St John:

Roger Allen forwarded your email with the attached formal complaint form to me. I am sending this email to confirm receipt. While I do not make the final decision, I don't see what might constitute a violation of the ethics code based on a reading of your complaint.. Ethics code complaints are made against individuals covered by the Ethics Code, not against ordinances that you perceive as problematic. See Sec. 3.35(3) MGO. Your complaint is alleged against the EOC, but the Common Council adopts Ordinances, not the EOC. If you perceive a problem with an ordinance, I'd advise you to reach out to an elected policy maker, such as the Mayor or an Alder. I will keep you informed regarding the status of your complaint.

Steven C. Brist

Assistant City Attorney

From: Brist, Steven
Sent: Friday, February 03, 2017 4:29 PM
To: 'saul.stjohn@gmail.com'
Subject: Your request

Attached please find a four page of documents. which includes 2 pages containing Madison Ordinance 1955-2, relating to changing the way complaints against the City are handled by the EOC. Also included, is one page showing the way the Subdivision appeared before the adoption of the Ordinance and a page showing how the Subdivision appeared after the adoption. This change took place in July, 1982. These documents appear to answer your question regarding the prior method of handling complaints.

Steven C. Brist

Assistant City Attorney

City of Madison-- Office of the City Attorney 210 Martin Luther King Jr. Blvd. Room 401
Madison, WI 53703 telephone 608-266-4511 fax. 608-267-8715

From: Brist, Steven
Sent: Tuesday, February 14, 2017 8:45 AM
To: 'saul.stjohn@gmail.com'
Subject: RE: Your request

I believe that this is a legal rather than a City ethics code question. But I will distribute your email to the Board at the meeting and you can explain it.

Steven C. Brist

Assistant City Attorney

City of Madison-- Office of the City Attorney 210 Martin Luther King Jr. Blvd. Room 401
Madison, WI 53703 telephone 608-266-4511 fax. 608-267-8715

From: saul.stjohn@gmail.com [<mailto:saul.stjohn@gmail.com>]
Sent: Monday, February 13, 2017 12:00 PM
To: Brist, Steven
Subject: Re: Your request

Thank you for your response! I've found additional information regarding changes to that ordinance with respect to complaints against the city in the MEOC Commissioner's Handbook, at page 43, describing the changes made on June 1, 1976:

The largest change in procedures was in regard to complaints against the City. It appears that a number of discrimination complaints were being made against the City at this time. However, the EOC was finding problems in dealing with these complaints, due to the fact that the City Attorney was defending the City in these complaints. So, special procedures were devised that made the Common Council responsible to resolve complaints upon the recommendations of a joint EOC-City Attorney committee. This amendment to the procedure would save the City unnecessary legal costs.

So, given that history, I think I would like to append the query I seek to put to the Ethics Board with another question: "Can the City Attorney's Office ethically defend the City in an MEOC complaint while also acting as the MEOC's legal counsel?"

Incidentally, I'm curious to know how even older versions of the ordinance read-- where are the public records of prior editions of the MGO maintained?

Thanks,
Saul

On Fri, Feb 3, 2017 at 4:28 PM, Brist, Steven <SBrist@cityofmadison.com> wrote:

Attached please find a four page of documents. which includes 2 pages containing Madison Ordinance 1955-2, relating to changing the way complaints against the City are handled by the EOC. Also included, is one page showing the way the Subdivision appeared before the adoption of the Ordinance and a page showing how the Subdivision appeared after the adoption. This change took place in July, 1982. These documents appear to answer your question regarding the prior method of handling complaints.

Steven C. Brist

Assistant City Attorney

City of Madison-- Office of the City Attorney 210 Martin Luther King Jr. Blvd. Room 401
Madison, WI 53703 telephone [608-266-4511](tel:608-266-4511) fax. [608-267-8715](tel:608-267-8715)

Copy Mailed
to Aldermen 7-14-82

City of Madison, Wisconsin

AN ORDINANCE
amending Subdivision (d) of Sec. 3.23(9) of
the Madison General Ordinances to change
the way complaints against the City are
handled by the Equal Opportunities
Commission.

Presented June 1, 1982
Referred ECC, City Atty.

Rereferred _____

Reported Back JUL 20 1982

Adopted _____ POF _____
Rules Susp. _____ Tabled _____
Public Hrg. _____

* * * *

Drafted by: Eunice Gibson
Assistant City Attorney

Mayor Approved [Signature] Date 7-23-82
Published 7-30-82

* * * *

Date: May 24, 1982

ORDINANCE NO. 7795

Fiscal Note: No expenditure necessary

FILE NO. 1955-82

SPONSOR(S): Common Council (Request of
Equal Opportunities
Commission and City Attorney)

The Common Council of the City of Madison do ordain as follows:

Subdivision (d) of Subsection (9) entitled "Equal Opportunities
Commission" of Section 3.23 entitled "Equal Opportunities Ordinance" of
the Madison General Ordinances is amended to read as follows:

"(d) The Equal Opportunities Commission shall use the following
procedures in acting on complaints of discrimination filed against
the City of Madison.

1. Upon the receipt of a written, verified complaint naming the
City of Madison as a respondent, a copy of such complaint shall
be served on the City Attorney, the Mayor, and the City Clerk.
2. At the earliest possible date, the complainant shall be
presented to the Common Council, if the City is the
respondent. If the Council shall refer the complaint to a
board of community development or the Police or the Equal
Opportunities Commission and the City Attorney, the
investigation and recommendations of the board shall be
presented to the Council.

§ 2.

WITHIN SIXTY (60) DAYS FROM THE DATE OF EACH REFERRAL, THE JOINT COMMISSION SHALL REPORT TO THE FINDINGS AND RECOMMENDATIONS TO THE COMMISSION. If the Equal Rights Division of the Wisconsin Department of Industry, Labor and Human Relations has jurisdiction over the complaint, the Equal Opportunities Commission shall take no action, but shall refer the complaint to the Equal Rights Division for appropriate action as provided by law. If the U.S. Equal Employment Opportunity Commission has jurisdiction, a copy of the complaint shall be forwarded to that agency. The complainant shall be informed of all such referrals.

§ 3.

THE COMMISSION SHALL APPROVE OR DISAPPROVE THE RECOMMENDATIONS OF THE JOINT COMMISSION IN WHOLE OR IN PART AND THE COMPLAINANT SHALL BE ADVISED WITHIN A COPY OF THE DECISION. If the Equal Rights Division is without jurisdiction, the Equal Opportunities Commission shall follow the procedure provided in Sec. 3.23(9)(c) of this ordinance.

§1 THE EQUAL OPPORTUNITIES COMMISSION SHALL MONITOR THE NECESSITY AND IN SUCH MANNER AS IT SHALL DEEM APPROPRIATE, COMPLAINTS WITH ANY REMEDY APPROVED BY THE COMMISSION.

§2 NO FURTHER ACTION SHALL BE TAKEN ON THE COMPLAINT BY THE EQUAL OPPORTUNITIES COMMISSION, ANY COMPLAINANT, OR AT ANY TIME IN THE ABOVE DESCRIBED PROCESSES, PURSUANT TO ANY OTHER LEGAL OR EQUITABLE REMEDIES.

§3 THE PROCEDURES PROVIDED IN PARAGRAPHS 1 THROUGH 3 SHALL BE FOLLOWED BY THE EQUAL OPPORTUNITIES COMMISSION IN ACTING ON ALL COMPLAINTS WHICH HAVE BEEN FILED WITH THE COMMISSION AGAINST THE CITY OF MADISON, IN WHICH A WRITTEN NOTICE OF HEARING HAS NOT YET BEEN ISSUED AS OF THE EFFECTIVE DATE OF THIS ORDINANCE.

18

7795

- (d) The Equal Opportunities Commission shall use the following procedures in acting on complaints of discrimination filed against the City of Madison.
1. Upon the receipt of a written, verified complaint naming the City of Madison as a respondent, a copy of such complaint shall be served on the City Attorney, the Mayor, and the City Clerk. At the earliest possible date, the complaint shall be presented to the Common Council, if the City is the respondent. The Council shall then refer the complaint to a joint committee composed of the President of the Equal Opportunities Commission and the City Attorney for investigation and recommendation of an equitable solution.
 2. ~~At the earliest possible date, the complaint shall be presented to the Common Council, if the City is the respondent. The Council shall then refer the complaint to a joint committee composed of the President of the Equal Opportunities Commission and the City Attorney for investigation and recommendation of an equitable solution.~~
 3. Within sixty (60) days from the date of such referral, the joint committee shall report its findings and recommendations to the Common Council.
 4. The Council shall approve or disapprove the recommendations of the joint committee in whole or in part and the complainant shall be served with a copy of the decision.
 5. The Equal Opportunities Commission shall monitor, if necessary, and in such manner as it shall deem appropriate, compliance with any remedy approved by the Common Council.
 6. No further action shall be taken on the complaint by the Equal Opportunities Commission. Any complainant may at any time in the above outlined process, pursue any other legal or equitable remedies.
 7. The procedures provided in Paragraphs 1. through 6. shall be followed by the Equal Opportunities Commission in acting on all complaints which have been filed with the Commission against the City of Madison, in which a written notice of hearing has not yet been issued as of the effective date of this ordinance.

(e) ^{Am. by} Executive Director of the Equal Opportunities Commission. There is hereby created the position of Executive Director of the Equal Opportunities Commission who shall be appointed by the Mayor upon recommendation of the Equal Opportunities Commission and approved by the Common Council and shall perform the directives of the Equal Opportunities Commission. The Executive Director of the Equal Opportunities Commission shall be an ex officio nonvoting member thereof.

Ord. 7795, 8-30-82

- (10) Title. This ordinance shall be known as the Equal Opportunities Ordinance.
- (11) Severability. The provisions of this ordinance shall be severable and if any of the provisions shall be held in contravention of the Constitution and Laws of the State of Wisconsin, or of the United States, the validity of the rest of the ordinance shall not be affected. It is hereby declared to be the intent of this ordinance that the same would have been adopted had such unconstitutional or unlawful provisions, if any, not been included herein.

ORDINANCE NO 7795
FILE NO. 1955-82
SPONSOR(S): Common Council (Request of Equal Opportunities Commission and City Attorney)
The Common Council of the City of Madison do ordain as follows:
Subdivision (d) of Subsection (9) entitled "Equal Opportunities Commission" of Section 3.23 entitled "Equal Opportunities Ordinance" of the Madison General Ordinances is amended to read as follows:
(d) The Equal Opportunities Commission shall use the following procedures in acting on complaints of discrimination filed against the City of Madison.

1. Upon the receipt of a written, verified complaint naming the City of Madison as a respondent, a copy of such complaint shall be served on the City Attorney, the Mayor, and the City Clerk.
2. If the Equal Opportunities Commission has jurisdiction over the complaint, the Equal Opportunities Commission shall take no action, but shall refer the complaint to the Equal Rights Division for appropriate action as provided by law. If the U.S. Equal Employment Opportunity Commission has jurisdiction, a copy of the complaint shall be forwarded to that agency. The complainant shall be informed of all such referrals.
3. If the Equal Rights Division is without jurisdiction, the Equal Opportunities Commission shall follow the procedure provided in Sec. 3.23(9)(c) of this ordinance.
PUB. WIS.; July 30, 1972

Rev. 11/15/81
8-15-82

- (d) The Equal Opportunities Commission shall use the following procedures in acting on complaints of discrimination filed against the City of Madison.
1. Upon the receipt of a written, verified complaint naming the City of Madison as a respondent, a copy of such complaint shall be served on the City Attorney, the Mayor, and the City Clerk.
 2. If the Equal Rights Division of the Wisconsin Department of Industry, Labor and Human Relations has jurisdiction over the complaint, the Equal Opportunities Commission shall take no action, but shall refer the complaint to the Equal Rights Division for appropriate action as provided by law. If the U.S. Equal Employment Opportunity Commission has jurisdiction, a copy of the complaint shall be forwarded to that agency. The complainant shall be informed of all such referrals.
 3. If the Equal Rights Division is without jurisdiction, the Equal Opportunities Commission shall follow the procedure provided in Sec. 3.23(9)(c) of this ordinance.
(Am. by Ord. 7795, 7-30-82)
- (e) Executive Director of the Equal Opportunities Commission. There is hereby created the position of Executive Director of the Equal Opportunities Commission who shall be appointed by the Mayor upon recommendation of the Equal Opportunities Commission and approved by the Common Council and shall perform the directives of the Equal Opportunities Commission. The Executive Director of the Equal Opportunities Commission shall be an ex officio nonvoting member thereof.
- (10) Title. This ordinance shall be known as the Equal Opportunities Ordinance.
- (11) Severability. The provisions of this ordinance shall be severable and if any of the provisions shall be held in contravention of the Constitution and Laws of the State of Wisconsin, or of the United States, the validity of the rest of the ordinance shall not be affected. It is hereby declared to be the intent of this ordinance that the same would have been adopted had such unconstitutional or unlawful provisions, if any, not been included herein.