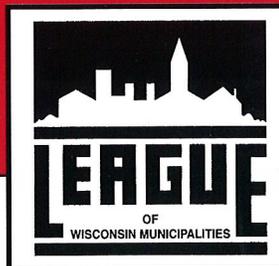


A
**LEAGUE
MANUAL**

HANDBOOK FOR WISCONSIN POLICE AND FIRE COMMISSIONERS



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*League of Wisconsin Municipalities
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PREFACE

Police and fire commissions date back to a time, a century ago, when the Wisconsin Legislature enacted a measure establishing such commissions as municipal bodies. Recognizing the critical role of police officers and fire fighters in assuring the public's safety, the Legislature believed that by creating an independent body, one that no political party could come to dominate, the selection and removal of police officers and fire fighters would be insulated from the vagaries of partisan politics.

Although the number of commissions serving Wisconsin communities (approximately 150 cities, villages and towns have commissions) and the complexity of problems commissions deal with have changed, the purpose, role and responsibilities of police and fire commissions are essentially unchanged from the 1890's.

This handbook is a revised edition of one published by the League of Wisconsin Municipalities in March, 1993. It reflects important changes affecting disciplinary actions and the role of the courts in reviewing commission decisions in such matters; these changes became effective after the enactment of Act 53 by the 1993 Wisconsin Legislature.

The text also now cites the state statutes governing topics as they are presented in the handbook and the appendix contains two new additions. One offers all the pertinent passages in Chapters 60, 61 and 62, *Wisconsin Statutes*, related to police and fire commissions and joint commissions. The other addition is a sample form, along with instructions for its use, that commissions might consider using in filing complaints against a police officer or fire fighter.

Views expressed in this handbook are not necessarily those of, or endorsed by, the Wisconsin League of Municipalities. The author accepts responsibility for errors or omissions the handbook may contain.

The encouragement and contributions of Curtis Witynski, legal counsel to the League, are deeply appreciated; Curt reviewed the text, offered valuable suggestions for additions and changes, and provided useful resource materials. Mary Martin again patiently edited the text in various stages of its development.

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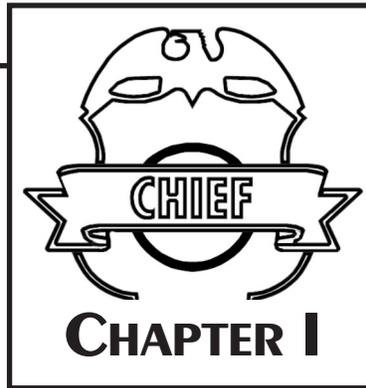
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ABOUT COMMISSIONS IN GENERAL

WHEN COMMISSIONS MUST BE CREATED

Under Wisconsin law, cities with a population of 4,000 or more must create police and fire commissions. Cities with a population of under 4,000 may, by ordinance, create a police and fire commission, but are not required to do so. (Section 62.13(2), *Wisconsin Statutes*.) Villages are treated differently under state law and in a manner that is sometimes confusing.

Villages with a population of 5,000 or more, but less than 5,500, must provide police protection by selecting from one of several options provided under state law. (Sec. 61.65(1)(a), Stats.) If a village chooses to create its own police department, it may either appoint a police commission or designate a committee to govern the department. However, once the same village reaches a population of 5,500, a board of police commissioners must be created. (Sec. 61.65(1)(b)2, Stats.)

When a village reaches a population of 5,500 it must also provide fire protection services, again selecting from one of several options provided for under state law. (Sec. 61.65(2)(a), Stats.) If a village forms its own fire department, it must create a board of fire commissioners to govern the department. (Sec. 61.65(2)(b), Stats.)

A village that has both a board of police commissioners and a board of fire commissioners may consolidate the two into a single board of police and fire commissioners. (Sec. 61.65(3g)(a), Stats.)

Wisconsin towns, regardless of population, are not required to create police and fire commissions, but may choose to do so; the decision to create a commission is made by the town board of supervisors. (Sec. 60.57(1), Stats.)

If two or more municipalities decide to form a joint police department or a joint fire department, then a joint commission must be created. (Secs. 61.65(1)(b)1.b., 61.65(2)(b)2. and 62.13(am)(b), Stats.)

NUMBER OF COMMISSIONERS

Except for commissions created when a joint police or joint fire department is formed, all commissions must have five members. (Sec. 62.13(1), Stats.) When forming a joint police or fire department, the municipalities involved in the venture decide how many members will be appointed to the joint commission. (Secs. 62.13(2m)(b) and 61.65(3g)(d), Stats.)

APPOINTMENT OF COMMISSIONERS

A mayor, village president or town chairperson appoints the members of a police and fire commission. In a city or village operating under the manager form of government, the manager appoints commission members. Appointments are announced between the last Monday in April and the first Monday in May. (Sec. 62.13(1), Stats.)

A commissioner's term of office is five years. (Sec. 62.13(1), Stats.) Appointees filling vacancies created by the resignation, removal or death of a commissioner serve out the term of their predecessor. Mayoral appointments to a police and fire commission are subject to confirmation by the common council; appointments made by a village president or town chairman are not subject to confirmation unless required by local ordinance.

Unless residency is required by ordinance, commissioners need not be residents of the municipality they serve. Nor are members of a common council, village or town board barred from serving on a police and fire commission, providing no added compensation is received for services as a commission member. (Sec. 66.11(2), Stats.)

Copies of appointments to a police and fire commission must be filed with the commission secretary. (Sec. 62.13(1), Stats.) Each commissioner must take the official oath of office and file a copy with the municipal clerk.

Appointments to a joint police or a joint fire commission are made the same way, except that the municipalities forming a joint commission determine the number of commissioners and the term of office each will serve. (Sec. 61.65(3g)(d) and 62.13(am)(b), Stats.)

Although state law does not set a date on which a commissioner's term of office begins, the first Monday in May seems a reasonable date, unless council or board confirmation is required and time is needed to let the confirmation process run its course. (The term of office for members of the Milwaukee Fire and Police Commission begins the second Monday in July, a date set by state law.)

An archaic provision in state law bars more than three members of a police and fire commission from belonging to the same political party. (Sec. 62.13(1), Stats.) This prohibition is a carry-over from an era when partisan politics was more evident in efforts to control municipal affairs and the state legislature was concerned a single political party might come to control appointments to police and fire departments. Determining if an individual is a bona fide member of one political party or another has become more difficult in Wisconsin and this long-standing statutory prohibition is rarely regarded as an important matter today.

REMOVAL OF COMMISSIONERS

While a police and fire commission is an independent body, its members are not immune from removal. Sections 17.12 and 17.16, Wisconsin Statutes, establish procedures for the removal of certain elected and appointed officials. In cities, and in villages requiring that the Board of trustees confirm appointments, a commission member can be removed for "cause," but only after a hearing is conducted by the governing body and a sufficient number of its members agree the facts presented warrant removal. In cities, that number is three-fourths of the council; in villages, a majority of the board must vote for removal. "Cause" is defined

as “inefficiency, neglect of duty, official misconduct or malfeasance in office.” (Sec. 17.16(2), Stats.) In towns and villages not requiring confirmation of appointments, a commission member can be removed by the governing body without a hearing.

COMMISSION OFFICERS

Police and fire commissions commonly elect a president, a vice president and a secretary. The election of officers may be an annual event and involve the use of secret ballots. (Sec. 19.88(1), Stats.) Each officer’s duties and responsibilities should be explained as part of the rules adopted by the commission. The adoption of such rules helps eliminate uncertainty about who has authority to call a meeting, who is responsible for giving notice of commission meetings, who sets the agenda for meetings, and who presides when the president is absent.

COMPENSATION FOR COMMISSIONERS

Although not required by state law, a municipality’s governing body may appropriate funds to support a commission in the discharge of its duties. The appropriation may provide compensation for commission members; this may take the form of a fixed annual salary, per diem payments for each day or part of a day the commission meets, or a combination of the two. The governing body also may provide for the reimbursement of expenses incurred by commission members in the performance of official duties.

FREQUENCY OF COMMISSION MEETINGS

State law does not specify how often a commission must meet; the frequency of meetings is usually determined by a commission’s need to discharge its duties. A commission might adopt rules calling for monthly meetings, plus additional meetings at the call of the president. An organizational meeting, at which officers are elected, is usually held after the appointment of new commissioners each year. Commission meetings are subject to the Wisconsin Open Meetings Law.

COMMISSION POLICIES AND RULES

Two key areas of concern need to be considered by a commission in establishing policies and rules. one is the adoption of rules related to the commission’s statutory duties and responsibilities in appointing personnel to a police or fire department; these should include rules governing the:

- ◆ Examination of the physical and educational qualifications of individuals seeking appointment.
- ◆ Use of competitive examinations for appointment to the police or fire department.
- ◆ Approval by the commission, of personnel appointed to the police or fire department.

A second area of concern involves the adoption of rules governing how a commission conducts its business, including:

- ◆ Basic organizational rules. These may be thought of as bylaws governing a commission's organization and how it conducts its business. Rules adopted by a commission must not conflict with state law.
- ◆ Rules governing disciplinary actions that may be initiated or reviewed by a commission. Care must be taken that rules and procedures adopted conform with accepted practices in treating disciplinary matters and will withstand scrutiny in the event a court is asked to review a commission's actions.

A police and fire commission might adopt rules and procedures for special situations. For example, commissions exercising optional powers may adopt rules and procedures governing how a police or fire department will be organized and managed.

The Milwaukee Fire and Police Commission has statutory authority to adopt or approve rules governing actual operations of the fire and police departments; in other municipalities operational rules are normally established by the chief of a department.

COMMISSION RECORDS

A police and fire commission must keep a record of its proceedings. (Sec. 62.13(1), Stats.) Other records also may be created or come into the commission's possession; for example, applications for appointment to the police and fire departments. Commission records are subject to the Wisconsin Public Records Law. The president of a commission is the legal custodian of these records unless another individual, such as the commission's secretary or a municipal employee, is designated to serve as custodian.