

CONFIDENTIAL MEMORANDUM

ATTORNEY-CLIENT PRIVILEGED

TO: The Executive Committee of the Marathon County Board

FROM: Andrew T. Phillips
von Briesen & Roper, s.c.

RE: Questions Surrounding Marathon County Board's Authority to Suspend or Otherwise Discipline County Administrator

DATE: August 3, 2016

It is our understanding that questions or concerns have arisen surrounding the County Board's legal authority to discipline the County Administrator. This memorandum is intended to address those questions or concerns.

APPLICABLE STATUTES

Section 59.18(7) of the Wisconsin Statutes expressly states that "a county board may remove a county administrator at any time that the county administrator's conduct of the county administration becomes unsatisfactory." Similarly, section 59.22(2)(c)1.c. of the Wisconsin Statutes explicitly provides that in situations not involving removal, a county board may "[e]stablish regulations of employment for any person paid from the county treasury." Finally, the Attorney General has confirmed a county board's authority under Wis. Stat. § 17.10(6) to suspend, demote, or discharge employees appointed by the Board. OAG-06-13, ¶ 14.

The County Administrator is paid from the County treasury; therefore, Wis. Stat. § 59.22(2)(c)1.c. allows the Board to establish regulations of employment for the Administrator.¹ Additionally, because Wis. Stat. § 59.18 and Section 5.01 of the Marathon County Code of Ordinances establish that the Administrator is not subject to a civil service ordinance, the Board may suspend, demote, or discharge the Administrator unless the Ordinances provide for a different procedure or process. Accordingly, the Board's process for imposing discipline upon the Administrator is governed by the Ordinances and accompanying regulations promulgated by Marathon County.

¹ It should be noted that the Wisconsin Statutes do not address a significant portion of the Administrator's terms and conditions of employment with the County, such as paid time off, sick leave, etc. Nonetheless, it is well-established that the Board has the authority to determine these terms and conditions of the Administrator's employment.

THE ORDINANCES

The Ordinances do not preclude the Board from imposing any sort of discipline upon the Administrator. In fact, section 1.11(1) of the Ordinances establishes the existence and surrounding duties of the Administrator's position, specifically stating that the Administrator is to serve as an agent of the Board. Section 1.11(1) also mandates that the Board conduct a review of the Administrator's activities on at least an annual basis in accordance with sections 2.01(21)(a)-(d) of the Ordinances.

Sections 4.01 – 4.08 of the Ordinances establish that a unified set of personnel policies and procedures for non-union employees are to be promulgated by the Administrator. This set of personnel policies is entitled the "Marathon County Personnel Policies & Procedures Manual." Chapter 1, section 8 of the Marathon County Personnel Policies & Procedures Manual ("Manual") provides as follows:

This manual shall govern personnel administration of all employees of the County except the following:

- A. Members of the Marathon County Board of Supervisors.
- B. Elected department heads (e.g. Sheriff, Register of Deeds, Clerk of Courts, Treasurer, County Clerk).
- C. Members of Boards, Commissions and Committees who are not County employees.
- D. Employees of the North Central Health Care Center.
- E. Employees of the City-County Information Technology Commission.
- F. Employees of the Department of Special Education.
- G. Persons employed by contract to perform special services for the County.
- H. Employees covered by a collective bargaining agreement in areas of wages, hours, and conditions of employment which are specifically addressed in their labor agreement.
- I. Employees covered by the Sheriff's Department Lieutenant ordinance in areas of wages, hours, and conditions of employment which are specifically addressed in that ordinance.

The Administrator position is not covered by any of the aforementioned exceptions. Therefore, while we do not conclude that the Personnel Manual necessarily applies to the Administrator's position, the Board's actions are consistent with Chapter 1, section 10(D) of the Manual, which establishes that, as an employer, the County has the right and responsibility "[t]o suspend, demote, discharge and take other disciplinary action against employees."

Based on the information and analysis above, it is clear that the Board has the authority, under statute and the Ordinances, to suspend or otherwise discipline the Administrator.

If you have any questions regarding this memorandum, please let us know.