

BEIER HOWLETT

PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

200 EAST LONG LAKE ROAD, SUITE 110
BLOOMFIELD HILLS, MICHIGAN 48304-2361

TELEPHONE (248) 645-9400

jstaran@beierhowlett.com

DANIEL C. DEVINE, SR.
LAWRENCE R. TERNAN
STEPHEN W. JONES
FRANK S. GALGAN
KENNETH J. SORENSEN
JEFFREY K. HAYNES
MARK W. HAFELI
TIMOTHY J. CURRIER
MARY T. SCHMITT SMITH
THOMAS V. TRAINER
JOSEPH F. YAMIN
JOHN D. STARAN
LAURA M. HALLAHAN
PHYLLIS AIUTO ZIMMERMAN
P. DANIEL CHRIST
PATRICIA E. KEFALAS DUDEK
MICHAEL C. GIBBONS
MICHAEL P. SALHANEY
C. LYNN GATES
MARY M. KUCHAREK
L. RIDER BRICE, III
ELIZABETH LUCKENBACH BROWN
JEFFREY S. KRAGT
TIMOTHY P. BERGLUND
KEITH C. JABLONSKI
VICTOR A. VEPRausKAS, IV
ROXANNE J. CHANG

DEAN G. BEIER
(1917-2003)

OF COUNSEL

JAMES L. HOWLETT
ROBERT G. WADDELL
ROBERT R. SHUMAN
KATHERINE B. ALBRECHT

SPECIAL COUNSEL
DONALD H. GILLIS

PONTIAC TELEPHONE
(248) 338-9903

FACSIMILE
(248) 645-9344

beierhowlett.com

June 30, 2004

Mr. John Dalton, President
City Council
c/o Ms. Susan Galeczka
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, Michigan 48309-3033

Re: *Setting Department Director Salaries*

Dear Council President Dalton:

City Councilman Robbins has requested our legal opinion concerning the setting of salaries for the City Clerk, Treasurer and department directors. I understand that some discussion about this arose, at the last City Council meeting, after I left. However, at my request, the City Clerk's Office has provided me with the verbatim transcript of the discussion from the last City Council meeting. Specifically, Councilman Robbins has asked: "If the City Charter grants the City Council the power to appoint the City Clerk and the Treasurer, and the City Charter grants the authority to Council to set the pay for department directors, then under what legal basis has it been found that the Mayor is to determine if the Clerk and Treasurer are to receive pay increases or bonuses that have been approved by the Council?"

Questions about who has the authority to set department director salaries have arisen on previous occasions, and we have rendered several written opinions, which I believe are still correct and applicable. For your information, I am enclosing copies of our June 17, 2002, June 28, 2000 and August 25, 1987 letter opinions, which I refer you to. As is mentioned in my June 17, 2002 letter, the City's labor attorney, Thomas L. Boyer, wrote a June 15, 1995 opinion letter to then-Mayor Ireland that was generally consistent with Larry Ternan's 1987 letter.

In summary, it is our interpretation of the City Charter that Charter Section 8.8 vests the City Council with the authority to specify and fix the salaries of the Clerk, Treasurer and department directors. In lieu of specifically setting department director salaries, the City Council, for many years now, has adopted and followed a policy of approving a general adjustment to directors' base salaries and also a pool of money to be made available to the Mayor to provide discretionary bonuses to directors. As is stated in our previous opinions, we

Ms. John Dalton, President
City Council
City of Rochester Hills
June 30, 2004
Page 2

believe the City Council's directors salary policy is consistent with the City Charter and reflect deference on the City Council's part to the Mayor who is often in the best position to evaluate and know individual directors' performance and merit.

Again, to be clear, the City Charter empowers the City Council to set department director salaries. The City Council has elected, by policy, to delegate some discretionary authority to the Mayor in regard to performance bonuses. Because that is done by virtue of City Council policy, it is the City Council's prerogative to change or repeal that policy. City Council will want to thoughtfully consider that prior City Councils, for many years now, have seen fit to operate under similar director salary setting polices and have recognized that the Mayor works daily with the department directors and may be in a better position to evaluate them for performance bonus purposes.

Very truly yours,

BEIER HOWLETT, P.C.



John D. Staran

JDS/lh
Enclosures

cc: Mayor Pat Somerville (w/encs)
Thomas L. Boyer, Esq. (w/encs)

BEIER HOWLETT
PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
200 EAST LONG LAKE ROAD, SUITE 110
BLOOMFIELD HILLS, MICHIGAN 48304-2328

PONTIAC TELEPHONE
(248) 338-9903

(248) 645-9400
FACSIMILE (248) 645-9344

JOHN D. STARAN
jstaran@belerhowlett.com

June 17, 2002

City Council
c/o Ms. Susan Galeczka
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, Michigan 48309-3033

Re: *Setting Department Directors' Salaries*

Dear City Council Members:

At a recent City Council meeting, questions were raised concerning the procedure and authority to set department directors' salaries, including the salary of the assistant to the Mayor. As was correctly observed by Council Member Robbins that evening, this issue has been the subject of previous legal opinions issued by this office which, I believe, fully address and answer the question of who is responsible for setting department directors' salaries.

For the Council's information, I am enclosing copies of Lawrence R. Ternan's August 25, 1987 opinion letter and June 28, 2000 opinion letter affirming the conclusion reached in the 1987 letter. Rather than repeat their content, I refer you to those letters. My file also reflects that the City's labor attorney, Thomas L. Boyer, wrote an opinion letter, dated June 15, 1995, to Mayor Billie M. Ireland that is consistent with Larry Ternan's 1987 letter.

We believe the conclusions reached in Larry Ternan's 1987 and 2000 letters are still sound. Please let me know if Council would like to discuss this subject further or requires any additional legal opinion.

Very truly yours,

BEIER HOWLETT, P.C.

John D. Staran

JDS/ab
Enclosures

cc: Mayor Pat Somerville

DANIEL C. DEVINE, SR.
LAWRENCE R. TERNAN
STEPHEN W. JONES
FRANK S. GALGAN
KENNETH J. SORENSEN
MARK W. HAFELI
TIMOTHY J. CURRIER
MARY T. SCHMITT SMITH
JOSEPH F. YAMIN
JOHN D. STARAN
PHYLLIS AIUTO ZIMMERMAN
P. DANIEL CHRIST
LAUREN M. UNDERWOOD
MICHAEL P. SALHANEY
ELIZABETH BARRETT BONNER
C. LYNN GATES
MARY M. KUCHARAK
MICHAEL C. GIBBONS
JEFFREY S. KRAGT

BEIER HOWLETT
PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
200 EAST LONG LAKE ROAD, SUITE 110
BLOOMFIELD HILLS, MICHIGAN 48304-2361
TELEPHONE (248) 645-9400

June 28, 2000

OF COUNSEL
DEAN G. BEIER
JAMES L. HOWLETT
ROBERT G. WADDELL
THOMAS V. TRAINER
ROBERT R. SHUMAN

SPECIAL COUNSEL
DONALD H. GILLIS
PONTIAC TELEPHONE
(248) 338-9903

FACSIMILE
(248) 645-9344

beierhowlett.com

Via Facsimile & Mail

Mr. Marc Ott
City Administrator
City of Rochester Hills
1000 Rochester Hills Dr.
Rochester Hills, MI 48309

Re: Setting Department Directors' Salaries

Dear Mr. Ott:

In a letter dated August 25, 1987, I gave the legal opinion that under Section 8.8 of the City Charter, the City Council has primary responsibility for setting annual salary and fringe benefits for the Clerk, Treasurer and all department directors.

Section 8.8 of the Charter provides:

The annual salary and fringe benefits for the clerk, treasurer, and all department directors, and the rate of compensation for members of boards and commissions shall be set in the annual budget by resolution of the Council.

At this time, you have asked me to write a further letter expressing my opinion in regard to this issue. Recently there have been new questions pertaining to this and there has been a long passage of time since 1987.

We have reviewed this matter again and reached the same conclusion.

As a result of the 1987 letter, the City Council adopted a policy relating to salaries of department directors. That policy has been modified on two occasions and has been consistently followed since then.

Mr. Marc Ott
June 28, 2000
Page 2

We are of the opinion that the current policy for setting of Department Director's salaries is legally consistent with the intent of the Charter and, therefore, is not a violation of the Charter. As was stated in the 1987 letter, the City Council may adopt a policy with standards for the granting of merit raises by the Mayor. The policy resolution may provide for delegation of both equity and general raises from the pool of funds established by the Council.

In 1987, I noted that the Mayor is in the best position to know the work and merit of efforts of the department directors and delegation through a policy has advantage to the City. Further, having the City Council decide all salaries without the delegation to the Mayor of certain aspects of this, could create practical problems of administering the City.

If there are additional questions, both Mr. Staran and I stand ready to provide assistance.

Very truly yours,

BEIER HOWLETT



Lawrence R. Ternan
Direct: 248-646-6149

LRT/jmh

cc: Mayor Pat Somerville
Thomas Boyer, Esq.
John D. Staran, Esq.

LAW OFFICES OF
PATTERSON & PATTERSON, WHITFIELD, MANIKOFF, TERNAN AND WHITE, P.C.
TEN WEST SQUARE LAKE ROAD, SUITE 300
BLOOMFIELD HILLS, MICHIGAN 48013
(313) 333-7941

WILLIAM P. WHITFIELD
V. JOHN MANIKOFF
GERALD O. WHITE
ROBERT O. WADDELL
LAWRENCE R. TERNAN
RICHARD A. PATTERSON
DAVID W. MOORE
JOHN D. STARAN

THOMAS L. PATTERSON (1836-1923)
JOHN H. PATTERSON (1865-1941)
DONALD S. PATTERSON (1890-1953)
EDWARD P. BARRETT (1820-1867)
CLARENCE K. PATTERSON (1894-1923)

PONTIAC OFFICE
1112 PONTIAC STATE BANK BLDG
POST OFFICE BOX NO. 3383
PONTIAC, MICHIGAN 48050
(313) 333-7941

August 25, 1987

City Council
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, MI 48063

Attn: Mayor Billie M. Ireland

Re: Setting Department Directors' Salaries

Dear Mayor Ireland:

This letter is to provide my legal opinion on the question of whether the Mayor or the City Council has the authority to set salaries for the City department directors.

Section 8.8 of the Charter provides:

The annual salary and fringe benefits for the clerk, treasurer, and all department directors, and the rate of compensation for members of boards and commissions shall be set in the annual budget by resolution of the Council.

A question has been raised of whether the word "set" as contained in Section 8.8 means that the City Council should actually fix the amount of the salaries of department directors or does it mean the Mayor may fix the amount but that amount shall be set forth specifically in the annual budget.

It is my opinion the City Council has the final authority to fix the amount of the salaries of department directors for the following reasons:

1. A common definition of the word "set" is ". . . to fix the value of at a certain amount or rate". We must assume that the word set was intended to have its common meaning.
2. The City Council appoints and therefore would have the full authority to set the salary of the clerk, treasurer, and members of boards and commissions of the City. Since that is the case, note must be taken that there is no qualifying

City Council
August 25, 1987
Page Two

statement pertaining to setting the salaries of department directors. Since the same section pertains to the salaries of the clerk, treasurer and department directors and the rates of compensation of boards and commissions, without mention of authority for the Mayor to set any of those salaries, we must assume the City Council has the full authority.

3. While there may be good reason to place the responsibility for setting salaries with the Mayor, the plain reading of Section 8.8 requires the conclusion the City Council has the authority. It is a rule of law that a provision of a charter must be construed to mean what it says by the plain reading of the words used. Only when the words themselves or their operation create an ambiguity, may there be resort to other sources for meaning and intention, such as other sections of the charter, charter commission minutes, etc.
4. There appears to be an overall intent of the charter to place the control of the purse strings of the City in the City Council. While the Mayor should, because of closeness to the department directors on a day to day basis, make strong recommendations and attempt to carry out a program in the best interest of the City, including the compensation of department directors, in the end analysis the City Council has control of the budget.
5. While the Mayor has the authority to appoint and remove for cause department directors and to carry on the administrative functions of the City, the Mayor's powers as set forth in Section 8.3 of the charter do not include a grant of authority to set salaries.

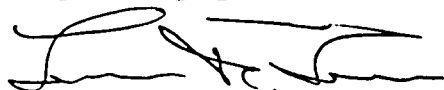
The Mayor is in the best position to know the department directors and therefore should make recommendations and advise the City Council of all relevant information. As a further power in the process of setting salaries, the Mayor has the veto power to curtail salaries that are not appropriate.

As the Mayor is in the best position to know the merits of department directors' performance, delegation by the City Council of authority to the Mayor of granting merit raises may be appropriate. It would not be inconsistent with the opinions herein, for the City Council to adopt a policy with standards for the granting of merit raises, to be granted by the Mayor.

City Council
August 25, 1987
Page Three

The fact the City Council has final authority to set salaries of the department directors should not diminish the responsibility and authority of the Mayor in carrying on the day to day administrative functions of the City.

Very truly yours,



Lawrence R. Ternan

LRT/gw
7900e