

Question on Board Appointments or Dismissal Confirmations for Certain Staff Positions (by Pat Hardy, MTAS, 12/13/13)

Introduction: MTAS General Management Consultant Pat Hardy was asked to address the question below and to provide recommendations, if any, in that regard.

Question: Should the Board of Mayor and Aldermen play an increased role (hiring or dismissal) in one or more staff positions in order to provide employee protection for “whistleblower” actions?

Discussion: This is a legitimate concern of the Board and one which every city faces. The concern is that if there are significant problems with the city manager, known to an employee of the city, to whom can the employee turn in order to make the Board aware of the problem? This problem exists in all forms of government, including the strong-mayor form. Under the strong-mayor form the problem is exacerbated because the CEO, the mayor, cannot himself be removed by the board, as is the case under the council/manger form. Under the council/manager for the CEO is held accountable in a number of ways, including dismissal, salary reductions, etc.

Under the council/manager form it is not unusual for the board to hire the city attorney, who many times serves in a part-time capacity. In those cities with a full-time attorney the position is normally hired and serves at the pleasure of the city manager. In some cases there are two attorneys, a staff attorney (hired by the city manager) and a city attorney (hired by the board).

It should also be noted that the situation under which a city manager violates a policy or statute in their city is extremely rare. A huge variety of ethics-related considerations undergird the city management profession, and these serve to inform and hold accountable most managers (more on this below).

Recommendations and Observations: The following are key observations and recommendations:

1. I have found that in a number of cities the city attorney is designated as “Ethics Officer.” Most, if not all, significant complaints regarding the city manager are likely to fall into an “ethics” category. This being the case employees are protected from retaliation by the city manager were they to bring accusations forward. If alterations to the city’s ethics policy are needed in order to reinforce this policy then those could be made.

The city management profession is extremely interested in maintaining the highest level of ethics among its members. The City should only hire a City Manager who is a member of either the State or International City Management associations, and thus who is bound by the ethics policies of these associations. Any person has the right to make an accusation against a member of these associations, and an independent inquiry will then be ordered. The results will be shared with the city and can result in expulsion of the member from the association(s).

2. I have not seen the City's *Personnel Policies and Procedures*, but many such policies contain "grievance" procedures which provide mechanisms for extending a working-conditions grievance against a supervisor, including the City Manager. This policy could be extended to provide for complaints against the City Manager, and identify the City Attorney as the source for such a grievance.
3. The State of Tennessee has a "Whistleblower" statute which provides for protection against an employee who makes a legitimate accusation against a public official, including the city manager, mayor, or member of the board. This statute is one of the strongest in the nation (see: <http://www.peer.org/assets/docs/wbp2/tn.pdf>). The whistleblower statute can be found at: http://www.tn.gov/labor-wfd/faq_laws.shtml#whistleblower. It is likely that this statute provides all necessary protections were an employee to bring a legitimate complaint against the city manager, mayor, or a member of the board.
4. I found one city in which the full-time city attorney is hired by the city manager and serves as "staff attorney." The position is also designated by the board as "city attorney", reporting as well to the board itself. Were accusations against the city manager made to the staff/city attorney, and the manager retaliate by dismissing the attorney, then the board would simply retain the position as "city attorney" reporting only to the board. Thus the position is designed to fill the dual role of both city and staff attorney. This structure would likely resolve concerns in your city.
5. I would not recommend having the board appoint or ratify dismissal of other positions such as the Chief of Police, Chief Financial Officer, etc. Having the manager appoint and dismiss these positions allows for the best coordination of the city team. Independent positions will almost certainly result in a "silo" affect, causing independence within certain departments. The hiring and dismissal of these positions by the CEO, the City Manager, is provided in all model charters for the council/manager form of government and seems to work best in the huge number of cities who operate with this form.
6. I would recommend that the City Attorney and City Manager also be asked to examine this issue and also make recommendations regarding its resolution.