



LAW DEPARTMENT

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**CONFIDENTIAL AND PRIVILEGED
MEMORANDUM**

TO: Honorable Board of Police Commissioners
Denise Starr, Director, Human Resources

CC: Melanie White, Board Secretary
John Tipton II, Talent Acquisition Specialist III

FROM: Conrad L. Mallet Jr., Corporation Counsel
Adam Saxby, Law Department

Date: September 23, 2022

RE: BOPC Hiring Practices

INTRODUCTION

On September 6, 2022, this Honorable Body has requested an opinion regarding whether the hiring process for Ms. Candace Hayes was conducted in accordance with the 2012 Detroit City Charter (Charter). In the interest of clarity, the Law Department is issuing this opinion to both the Board of Police Commissioners (Board) and the City of Detroit Human Resources Department (HR).

ANSWER

Generally speaking, the Board may delegate Ministerial acts¹, but not Discretionary acts². Accordingly, the Board may not delegate authority that removes the ultimate decision making power from it.³ Ms. Candace Hayes (Hayes) is considered “Other Staff,” pursuant to Section 7-804 of the 2012 Charter.⁴ The Charter requires the Board to hire “Other Staff” in accordance with

¹ *Hoffman v. Warden*, 184 Mich. App. 328, 331 (1990). (Ministerial acts are those which constitute “obedience to orders or the performances of a duty in which the individual has little choice.”)

² Discretionary acts include the act of hiring an individual

³ *Federated Publications Inc., v. Michigan State University. Bd Of Trustees*, 221 Mich App 103, 120, (1997) (rev'd on other grounds 460 Mich 75 (1999); see also *Attorney Gen. v. Guy*, 334 Mich 694, 1(1952) (a city council did not unlawfully delegate its authority when it sought a recommendation, but retained the authority to decide whether to act on a recommendation)

⁴ Section 7-804, Staff, of the 2012 Charter provides, in relevant part, the following:

3. Other Staff. The Board may hire, in accordance with Article 6, Chapter 4, such additional staff as is necessary to carry out its duties. All members of the staff are under the direction of the Board, and the Chief of Police has no authority over any member of the staff.



HR practices.⁵ While the Charter does not remove the ultimate hiring decision from the Board, it does permit the Board to operate its hiring of “Other Staff” within the bounds of the HR process.

While an October 23, 2019, opinion from previous Corporation Counsel states that “while administrative tasks such [as] publicizing openings and receiving applications may be handled by BOPC Staff, more substantive actions, such as creating minimum qualifications for positions and interviewing candidates should be conducted by the board itself,” the Charter allows the Board to defer and delegate some of this process to HR for the hiring of “Other Staff.” Therefore, in this instance, the Law Department gives deference to HR regarding the implementation of its own process.

Pursuant to the email communication from HR on September 9, 2022, the hiring process for Hayes was conducted pursuant to HR practices and resulted in the identification of Hayes as the most qualified applicant, for the position of Administrative Assistant. HR practices permit the Board to establish a designee to initiate and implement the hiring process. This designee has traditionally been the Board Secretary. Therefore, the Board may properly rely on the Board Secretary to initiate and implement the hiring process for Other Staff, so long as the Board has the final say in hiring decisions, not HR or the Board Secretary. During the Board meeting held on September 8, 2022, the Board was presented with an opportunity to exercise its ultimate decision making power by formally electing to hire Hayes. The Board declined to do so when a motion to hire Hayes was withdrawn and scheduled to be brought back on an unspecified date. Accordingly, in order make the hiring of Hayes official, the Board must exercise this power by passing a motion to hire Hayes. Should the Board wish to modify the process of hiring Other Staff for future instances, further discussion with HR and the Law Department is warranted.

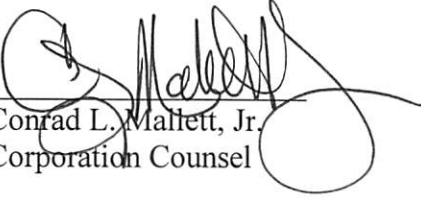
CONCLUSION

The Charter allows the Board to utilize HR practices for the hiring of “Other Staff,” including Hayes. HR states that the hiring of Hayes was consistent with HR practices. Furthermore, the Board currently has functional approval over Discretionary acts because the Board may ultimately elect not to hire a candidate. However, to mitigate future risk or confusion, it is advisable to alter the practices for hiring “Other Staff” to conform with the recommendations in the October 23, 2019, opinion. Finally, HR may wish to adjust its practice to delay the hiring of Other Staff until the Board exercises its ultimate decision-making power by passing a motion approving the hire.

⁵ Article 6, Chapter 4 of the 2012 Charter



Respectfully Submitted,



Conrad L. Mallett, Jr.
Corporation Counsel