



INFORMATION MEMO

Role with It: Individual versus Council Authority

Learn common ways councilmembers may overstep their proper role and the personal liability that may ensue. Understand actions you may take in your role as an individual councilmember versus your role as part of the entire city council.

RELEVANT LINKS:

See sections *Role of the Individual Councilmember* and the *Council's Authority* in [Handbook, Chapter 6](#).

I. Role of an individual council member

Councilmembers' statutory duties are to be performed, almost without exception, by the council as a whole. For example, it is the council and not individual councilmembers that must supervise administrative officers, formulate policies, and exercise city powers.

The most important single responsibility of a councilmember is participation at council meetings. In statutory cities, each councilmember, including the mayor, has full authority to make and second motions, participate in discussions, and vote on every matter before the council.

II. Councilmembers and city employees

Relationships between the council and city employees can create situations where councilmembers may overstep their proper role, causing potential liability for the councilmember and the city. Use of an employment scenario may be helpful in understanding an individual councilmember's role in dealing with employee discipline and termination.

Here is a scenario. The council has ongoing concerns with the municipal liquor store manager. Citizens complain the store is closed when it should be open. There are even reports the staff drinks on the premises. One councilmember decides to address the situation herself. She continuously stops by the store and even drives by the manager's house to make sure he is not home when he should be working. During one visit to the store, the councilmember finds the staff, including the manager, drinking in the back of the store. Knowing the council will agree, she terminates the manager on the spot. To make this situation easier, she also negotiates a severance package with him. The councilmember then relates the incident to several friends, making some exaggerated descriptions of what happened.

Obviously, the liquor store manager's actions raise many liability concerns for the city. However, the councilmember's actions are also problematic because she acted beyond the scope of her authority.

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

RELEVANT LINKS:

[Minn. Stat. § 412.221](#), listing powers of the council.

[Minn. Stat. § 412.201](#), requiring council approval of contracts for Standard Plan and Plan A cities.

[Minn. Stat. § 410.16](#).

[Johnson v. State](#), 553 N.W.2d 40 (Minn. 1996), defining powers involving exercise of judgment.

[Minn. R. 1250.0400, subp. 2.](#)

A. Investigating and terminating employees

In this scenario did the councilmember have authority to investigate or terminate the store manager? No.

In Minnesota, a council's powers are derived from state statutes or city charters. In statutory Standard Plan and Plan A cities, the statutes give the entire council control over city matters, including the power to control city finances, to make contracts, to enact ordinances, and to oversee city personnel. The statutes do not allow an individual councilmember to investigate employees or terminate employment.

In charter cities, the charter dictates a councilmember's role. State law allows charter cities to adopt any form of government as long as it is not inconsistent with state statutes or the state constitution. In almost all cities, charters give authority to the council rather than to individual councilmembers. However, councilmembers from charter cities should consult their charters to determine their proper roles.

B. Delegating authority to investigate or terminate employees

Could the councilmember in our scenario delegate the authority to investigate or terminate the store manager? Yes and no.

Individual councilmembers can perform any duty the council legally assigns to them. However, a statutory city council cannot delegate any discretionary powers, defined by case law as powers involving the exercise of judgment. In this scenario a statutory city council could authorize the councilmember to investigate the liquor store manager, but not to terminate him. Charter cities cannot delegate any discretionary authority unless the charter specifically allows delegation.

Councilmembers should be careful even when performing duties legally assigned to them. In our scenario the councilmember's actions may have crossed the line into harassment. The councilmember could safely view the employee's time cards, respond to citizen complaints, and probably even stop by the store occasionally. She should not drive by the employee's house.

On a related matter, the League often receives calls about whether an individual councilmember can review an employee's private personnel documents. Individuals whose job duties reasonably require access to private data may view the data. Since individual councilmembers do not have authority over city personnel, they cannot access this private information. The council could authorize an individual councilmember to view the data.

RELEVANT LINKS:

See Section III, Mayor, in
[Handbook, Chapter 6.](#)

[Minn. Stat. § 412.201.](#)

Jewell v. Bertha, 97 N.W.
424 (Minn. 1903).

C. Mayor's power to investigate or terminate employees

In most cities a mayor may not investigate or terminate an employee. A frequent misconception is that mayors have more power than other councilmembers. The mayor is the official head of the city, and he or she speaks for the city government and presides over council meetings. The mayor also breaks a tie vote when filling council vacancies, and can make some other appointments such as park board members subject to council approval. The mayor has no individual authority over city staff.

Truthfully, mayors of statutory cities have very limited additional powers. Outside of a few exceptions, the mayor cannot act without council approval.

A majority of charter cities have a weak-mayor form of government, in which the mayor's powers are generally no greater than those of other councilmembers. A few charter cities give the mayor limited additional powers such as control over the police department. Three charter cities—St. Paul, Duluth, and St. Cloud—follow a strong-mayor format where the mayor has administrative authority over city matters, including city personnel. Mayors of these cities would probably be able to investigate and remove employees without council approval. Mayors in charter cities should review their charters to determine the extent of their authority over employees.

D. Negotiating employee severance packages

In our scenario the councilmember may not negotiate a severance package with the liquor store manager either. State law provides the “council” must authorize contracts. Minnesota case law holds this power cannot be delegated and also that a city is not bound by a contract made by an individual councilmember. Councilmembers from charter cities should consult their charters, but most charters probably would not authorize an individual councilmember to execute contracts.

The full council could later ratify the contract. If the council does not ratify the contract, the individual councilmember could potentially be liable for claims such as detrimental reliance or promissory estoppel. Accordingly, all councilmembers should be clear when speaking with individuals interested in contracting with the city that only the full council can enter into a contract.

RELEVANT LINKS:

[Minn. Stat. §§ 412.601 - .751.](#)

[Handbook, Chapter 8.](#)

[Minn. Stat. § 466.07.](#)

See Section II-E on Official Immunity in [Handbook, Chapter 18.](#)

See Section III-B on Protection from Defamation, in [Handbook, Chapter 18.](#)

LMC information memo, [LMCIT Property, Crime, Bond, and Petrofund Coverage](#), Section VI-A, Bond coverage.

III. Councilmembers and employees in Plan B cities

Plan B cities have a council-manager form of government. A number of charter cities also use this structure. Like Standard Plan and Plan A cities, the council exercises policy-making and legislative authority. But in Plan B cities, the council delegates administrative control to the city manager, who then implements the council's directives. For example, the council appoints the manager who, in turn, appoints and supervises the city staff. A city manager is the city's purchasing agent for contracts under \$20,000, unless the city council provides for a lower limit. Therefore, in a Plan B city, the city manager, rather than the council or an individual councilmember, would be the proper person to investigate the liquor store manager and terminate his employment.

City managers should not be confused with city administrators. The city administrator position is a position created by council ordinance or resolution, not by statute. The duties of the administrator will vary from city to city, with some administrators also serving as city clerk. A statutory city council cannot delegate any discretionary authority to a city administrator. A charter city council may do so only if the charter allows delegation.

IV. Potential personal liability for councilmembers

State law requires cities to defend and indemnify councilmembers for any suit arising from their official duties.

The doctrine of official immunity protects public officials from suits based upon discretionary actions taken in the course of their official duties. For example, a councilmember could not be held liable over the question of calling for special assessments. Neither official immunity nor the statute applies when a councilmember acts with malice or in bad faith.

These doctrines may not protect the councilmember in the above scenario because she was acting outside the scope of her duties.

Of particular concern for the councilmember in this situation is a defamation claim. A defamatory statement is one that is false, made to a third party, and harms the reputation of the subject. A councilmember is protected if the statement is made in good faith during a proper occasion and is based on probable cause. The proper place to make even true statements would be at a council meeting.

RELEVANT LINKS:

Research@lmc.org
651.281.1200 or
800.925.1122

V. For further assistance

If you have questions about the role of an individual councilmember or the city council as a whole, you should discuss the matter with your city attorney. In addition, the League's Research and Information Services Department can answer questions about the role of council members in different types of cities.