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MUNICIPAL CORPORATIONS — STATUS OF A CITY MANAGER — ARE HIS FUNCTIONS PRIMARILY EXECUTIVE OR LEGISLATIVE? — When defendant city adopted the city-manager form of municipal government, it duly abolished by ordinance the board of police and fire commissioners and expressly assigned the board's powers and duties to the city manager. Among such powers was that of recommending salary decreases for firemen and policemen, without which recommendation a decrease by action of the council was invalid. After the abolition of the board of police and fire commissioners, the council decreased the salary of plaintiff policeman without previous recommendation by the city manager. Plaintiff claimed that such action was invalid, and sued to recover the amount of the salary decrease. *Held*, that prior recommendation by the city manager was not necessary, since the power to recommend decreases was legislative and being such could not be assigned to the city manager, it being the intent of the legislature to make the city manager an administrative officer. *Webb v. City of Beloit*, 229 Wis. 51, 281 N. W. 662 (1938).

The doctrine of separation of powers was applied to early American municipalities, executive power being vested in a mayor and legislative power in a council.¹ To eliminate the resulting friction, the city-manager scheme has been devised.² The essential features of the plan are an elective council or commission and a city manager appointed by, and responsible to, the elective council or commission.³ The aims of the plan are to eliminate state and national politics from the municipal field and to concentrate responsibility for municipal administration in an expert, the city manager.⁴ An analogy is drawn between the city and the ordinary business corporation, the city manager being likened to the executive head of the private corporation.⁵ As such he is primarily an administrative officer.⁶ Statutes in twenty states providing for the city-manager form of government declare variously that the city manager is to be "the administrative head of the municipal government," "the chief executive officer of the

¹ "American students of political science are today united in their conviction that this fatuous adoption of Montesquieu's dictum [separation of powers], so far as the groundwork of municipal government is concerned, was unwise in its day and unfortunate in its consequences. Whatever may be urged in favor of the principle of separating legislative and executive powers in the national or state governments, that doctrine has no proper place in the government of municipalities." Munro, "Recent Municipal Experiments in the United States—The Government of Cities by Commissioners and by City Managers," 17 J. Soc. COMP. LEG. (N. S.) 82 at 84 (1917).

² An intermediate development is the commission form of city government, in which all power is vested in an elective body known as commissioners. Among the defects of this form are lack of centralized responsibility and administration by non-expert commissioners. The city-manager plan aims to eliminate these defects. See Munro, "Recent Municipal Experiments in the United States—The Government of Cities by Commissions and by City Manager," 17 J. Soc. COMP. LEG. 82 (1917).

³ Dodds, "City Manager Government in American Municipalities," 6 J. Soc. COMP. LEG. (3d ser.) 183 (1924).

⁴ *Ibid.*

⁵ Toulmin, "The City Manager," 23 CASE AND COMMENT 365 (1916).

⁶ He is so considered in the "City Manager's Code of Ethics" adopted by the International City Managers' Association. See 27 NAT. MUN. REV. 546 (1938).

city," "the chief administrative officer."⁷ But the city manager is not limited to administrative duties only. Generally the statutes provide that the city manager is to propose measures to the council which he deems to be expedient.⁸ While it may not be wise for a city manager to take an active part in municipal politics,⁹ it seems that the council should have the benefit of his advice on matters of policy.¹⁰ To that extent, at least, the city manager is a legislative officer, merging legislative power with his duties as administrative head of the city.¹¹ There can be no quarrel with the holding in the principal case that the power to recommend salary decreases was legislative, as such recommendation was a condition precedent to legislation. In the ordinary case where the city manager has power to recommend measures deemed expedient, it is arguable that the power to recommend salary decreases could properly be exercised by him in his legislative capacity. However, the Wisconsin statute does not delegate to a city manager the duty of proposing measures deemed to be expedient. In the interpretation of the legislative intent as evidenced by the statute in question, the decision in the principal case is probably sound.¹²

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⁷ Ark. Stat. Dig. (1937), § 10100; Idaho Code Ann. (1932), § 49-3709; Ill. Ann. Stat. (Smith-Hurd, 1934), c. 24, § 346; Iowa Code (1935), § 6665; Kan. Gen. Stat. Ann. (1935), § 12-1011; Ky. Stat. (Carroll, Supp. 1933), § 3235dd32; La. Gen. Stat. (Dart, 1939), § 5554; Mass. Gen. Laws (1932), c. 43, § 89; Mont. Rev. Code Ann. (1935), § 5455; Neb. Comp. Stat. (1929), § 19-646; N. J. Rev. Stat. (1937), § 40:82-4; N. M. Stat. Ann. (1929), § 90-3922; N. C. Code Ann. (1935), § 2896; N. D. Comp. Laws Ann. (Supp. 1913-1925), § 3770b3; Ohio Gen. Code Ann. (Page, 1938), § 3515-19; S. D. Comp. Laws (1929), § 6231A; Tenn. Code Ann. (Michie, 1938), § 3559; Vt. Pub. Laws (1933), § 3594; Va. Code Ann. (1930), § 2943; Wis. Stat. (1937), § 64.11 (1).

⁸ "The manager's duties generally include the following: (1) To see that all laws and ordinances are enforced. (2) To exercise control over all departments and appoint, supervise, and remove department heads and subordinate employees of the city. (3) To make such recommendations to the council concerning the affairs of the city as may seem to him desirable." Committee of the National Municipal League, "Suggested Procedure for Selecting a City Manager," 22 NAT. MUN. REV. 629 (1933).

⁹ A city manager should not identify himself with the council, because if he does the prestige of his office rises and falls with the political situation. See editorial comment in 17 NAT. MUN. REV. 4 (1928).

¹⁰ "The manager plan is designed to apply a combination of lay judgment in deciding policies and technical advice in their formulation and application. The council in the last analysis is responsible for what is done and how it is done and therefore must make the decisions on policy, but the manager's judgment and recommendations should be part of the process of arriving at decisions of policy." Mandel and Cotton, "Dayton's Sixteen Years of City Manager Government," 19 NAT. MUN. REV. 497 at 512-513 (1930).

¹¹ "No clear-cut or hard and fast lines can be drawn between policy making in government and the carrying out of policies through administrative techniques. The dividing line between these two functions is often very narrow." Rawlings v. City of Newport, 275 Ky. 183, 121 S. W. (2d) 10 at 15 (1938).

¹² "The council shall possess and exercise all legislative and general ordinance powers imposed and conferred by general law or special charter upon the mayor and

common council and the various boards and commissions not inconsistent with this chapter, and in force in such city at the time of its reorganization and such additional powers as are hereinafter imposed and conferred, but such council shall not have the power to enact special executive or administrative orders, it being the intent of this chapter to separate the legislative and executive powers of city government." Wis. Stat. (1937), § 64.07 (1).