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MEMORANDUM

To: Illinois City/County Management Association
From: Adam B. Simon
Robert K. Bush
Subject: *Manager Form of Government*
Date: February 14, 2007

Seventy-nine municipalities in Illinois operate under the statutory manager form of local government. Large and small, these municipalities have adopted this form by referendum because it promises a different, often more effective, way to administer the operations of government. A statutory manager form of government typically utilizes a trained, professional class of administrators that can deal with the increasing demands for technical, legal, operational, and administrative skill that part-time or even full-time elected officials may not possess. This form of government also drives a sharp distinction between the policy-making and the administrative functions of government. In those communities where policy sometimes becomes thoroughly enmeshed in politics, a statutory manager form of government may be seen as the way out of an impasse. By separating policy-making from the standard operations of the government, a statutory manager government allows elected leaders to concentrate on the big picture, the aims and goals of the community, without the distractions of day-to-day governmental operations.

Questions often arise about the roles of a manager, elected officials, appointed officials, and employees in this form of government, because it is not like the more common form of the mayor-council government. Often, mayors and council members may not recognize the full extent of the differences. A municipality adopting the manager form of government still retains

its general structure as a mayor-council or commission form; however, the roles, functions, and powers of the various players will change.

Under the manager form of government, the powers of the council become entirely legislative. 65 ILCS 5/5-3-6. The powers of the mayor are also substantially reduced. As such, their roles are principally policy-making and they are generally prohibited from getting involved in the administration of government or the implementation of policy. The manager, not the mayor, is the administrative head of the municipal government and, therefore, is responsible for the efficient administration of all departments and the effective implementation of the policies articulated by the council. 65 ILCS 5/5-3-7. The manager form of government is designed to establish the elected officials as policy-makers and to reserve the administration of local government and execution of its policies to a non-partisan, trained and competent manager. The separation of legislative and executive powers is more complete in a manager form than in any other form of government. McQuillin, *Municipal Corporations*, §9.21.

We should note that the manager form of government discussed in this memorandum is the “statutorily created” form. It is exercised only by municipalities in which the form has been adopted by referendum in accordance with 65 ILCS 5/5-1-4 through 5/5-1-11. Many municipalities employ a part- or full-time administrator to conduct the day-to-day operations of the municipality. Oftentimes, this administrator’s title is “manager” and his or her role may be similar to that of a statutory manager, which can create some confusion. However, unlike a statutory manager, the administrator is armed only with the powers granted from time to time by the corporate authorities (rather than by statute), the scope of his or her powers is continually subject to control and change, and the mayor or president remains both the chief administrative and chief executive officer of the municipality.

Please also note that certain terms should be read to include counterparts: when used alone, “City” refers to both City and Village, “Mayor” refers to both Mayor and President, “Aldermen” refers to both Aldermen and Trustees, and “Council” refers to both Council and Board and “ward” refers to both ward and district.

It is helpful, when the questions arise, to have a clear, comprehensive summary of the characteristics of a statutory manager government. We have tried to provide that explanation here.

HOW TO GET HIRED, HOW TO GET FIRED

A city or village manager first has to get the job. The Illinois Municipal Code says that “The council or board of trustees, as the case may be, shall appoint a municipal manager, who shall be the administrative head of the municipal government and who shall be responsible for the efficient administration of all departments.” 65 ILCS 5/5-3-7. The full council has the appointment power. Atypically, the mayor does not appoint with confirmation by the council. Rather, the whole council votes on the appointment, which is approved by a simple majority.

This is important because the power to appoint includes the power to fire. The Municipal Code says: “The manager may at any time be removed from office by a majority vote of the

members of the council or the board.” 65 ILCS 5/5-3-7. In a mayor-council government, the mayor has the power to remove officers, and a removal can be overridden by the council. 65 ILCS 5/3.1-35-10. That is not the case in a statutory manager government. In a village with six trustees and a mayor, four of those board members must vote to fire the manager. A majority vote of the council allows a manager to get the job and to lose it.

WHAT THE MANAGER CAN DO

A manager’s authority is expressly stated in section 5/5-3-7 of the Illinois Municipal Code, and this statute should be the first point of reference when any question comes up about what the manager may or may not do in relation both to the mayor and council and to the administration of the government.

1) **Enforcing laws and ordinances.** 65 ILCS 5/5-3-7(1). The enforcement of laws is a key component of the executive branch in any government based on the separation of powers. In a statutory manager government, the manager, not the mayor, has this power. The manager is therefore responsible for enforcing regulatory, nuisance, and traffic ordinances through the police department, enforcing building codes through the building and fire departments, and enforcing zoning and land use regulations through the zoning administrator and the zoning board of appeals or plan commission. The manager has overall responsibility for enforcement activity.

2) **Appointing and removing all departmental directors based upon merit and fitness.** 65 ILCS 5/5-3-7(2). A manager has the authority to appoint and remove all department heads. Effectively, this authority allows the manager to control the employees and staff of the municipality by having authority over the directors and “exercising control of all departments and divisions.” 65 ILCS 5/5-3.7(3).

This authority includes the power to appoint and remove the chiefs of the police and fire departments. If the municipality has adopted the Board of Fire and Police Commissioners Act, the council may choose to have the fire and police chiefs’ appointed by the manager rather than the Commissioners. These two important offices cannot be appointed by the mayor or council in a statutory manager government. The Municipal Code says: “In any municipality which adopts or has adopted [the Fire and Police Commission Act] and also adopts or has adopted [the statutory manager form of government], the chief of police and the chief of the fire department shall be appointed by the municipal manager, if it is provided by ordinance in such municipality that such chiefs, or either of them, shall not be appointed by the board of fire and police commissioners.” *See generally* 65 ILCS 5/10-2.1-1, *et seq.* If the council has adopted the Fire and Police Commission Act or the community has become subject to the Act by population, and has further provided that the Board of Fire and Police Commissioners does not appoint the fire and/or police chief, then the manager has that power. To remove a fire or police chief, the appointing authority, the manager, must file written reasons for the removal or discharge, which then must be confirmed by a majority vote of the council. 65 ILCS 5/5-3-7(2).

For all other department directors and appointees, there is no check on the manager’s discretion in hiring and firing. Just as the manager serves at the pleasure of the council, appointed department heads serve at the pleasure of the manager. Under the typical mayor-

council form, the mayor may appoint and remove officers, but appointment and removal can be overridden by the council. 65 ILCS 5/3.1-30-5, 5/3.1-35-10. That is not the case in a manager form government. Obviously, the manager may not discriminate illegally in hiring and firing decisions, but apart from that, the manager has great latitude in his or her decisions about personnel (subject to the terms of any collective bargaining agreements).

The statute goes on to say that appointments should be based on merit and fitness. The statute assumes, here and elsewhere, that policy and politics can be separated from professional administration in the sensitive area of appointments. The manager, therefore, may insist that appointments of key personnel should be free of interference by the mayor or council to the greatest extent possible. No doubt elected officials may lobby for this or that person to fill a job, but the manager's commitment is to appoint people with the necessary skills, not the right connections.

The manager's power of appointment does not extend to the board of local improvements, however, as such appointments are still made by the mayor with the advice and consent of the council. 65 ILCS 5/5-3-11. Further, it does not include the power to appoint members to boards and commissions that a municipality is authorized to establish pursuant to any statutory provision other than those in Articles 3.1 and 4 of the Code. 65 ILCS 5/5-3-1. For example, because a municipality is authorized to create a zoning board or plan commission pursuant to Article 11 of the Code (and not through Articles 3.1 or 4), appointments to a zoning board or plan commission must be made in accordance with that provision, which directs the mayor to appoint members with the consent of the council.

3) Controlling all municipal departments and divisions thereof. 65 ILCS 5/5-3-7(3). Along with appointment and removal power, the manager is explicitly given the right to "exercise control" over all departments. The council actually creates the departments and defines the scope of the departments and the duties of officers and employees within them, as these are policy-based legislative tasks. *See* 65 ILCS 5/5-3-8; 65 ILCS 5/5-3-10. However, the Code is clear that once the departments and policies are created, the manager has exclusive control over how municipal departments operate and implement policy.

4) Appointing and removing all appointive officers of a municipality formerly under the aldermanic form of government. 65 ILCS 5/5-3-7(4). This section of the statute deals with a municipality formerly under the typical mayor-council or president-trustees form of government. If the city was an aldermanic form of government under Article 3.1 of the Municipal Code, then when it becomes a manager form by referendum, the manager has the right to appoint and remove those officers who were formerly appointed under Article 3.1. Thus, for example, Article 3.1 does not require a treasurer or collector to be elected, and if these officers are appointed in a municipality formerly under the aldermanic form, the manager would inherit the power to appoint people to these offices, when the municipality switches to the manager form.

5) Exercising all powers otherwise granted to clerks and comptrollers in connection with the preparation of an annual report of estimated funds. 65 ILCS 5/5-3-7(5). In a typical mayor-council government, the clerk, or the comptroller, if the municipality provides for an elected or appointed comptroller, is given the task of preparing the annual budget report. 65

ILCS 5/3.1-35-115. The comptroller may require all departments to submit financial statements for the report.

In a manager form, the preparation of financial data is assigned to the manager. That, obviously, is a significant source of the manager's authority, because the manager provides all the financial information to the council for the legislative task of appropriations and levies. Control over financial reporting allows the manager to control, in most respects, the management and administration of the municipal departments, subject to the council's inquiry and the passage of an appropriation or budget ordinance.

6) Attending and participating in council or board meetings. 65 ILCS 5/5-3-7(6). No other individual in any governmental form has the right to take part in the discussions of the council. Residents have no such statutory right, police chiefs have no such right, the clerk has no such right, even the municipal attorney has no such automatic right. But the manager does. As a practical matter, most councils turn to their manager routinely for advice and comment on many legislative issues or enactments. But in cases of conflict or tension, the council, or some its members, may be inclined to ignore the manager or shut off the manager's arguments and comments. The manager may insist that his or her voice be heard, because the Municipal Code establishes a right for the manager to take part in discussions.

7) Recommending legislative action. 65 ILCS 5/5-3-7(7). Just as the manager has the right to participate in council discussions, the manager also has the right to recommend that the corporate authorities adopt certain measures or take certain actions that he or she deems appropriate and in the best interest of the municipality. There is no limitation on this right, which means that the manager may recommend policy to the council that would allow more efficient administration of the government. The council may or may not be willing to follow such recommendations, but the manager may bring such a recommendation to the council.

8) Performing and executing any other duties prescribed by the council or board. 65 ILCS 5/5-3-7(8). Ordinarily, the manager cannot create new offices or positions, incur any expenditures or enter into any contracts, as these are legislative and delegative functions left to the council or board. With the authorization of the council or board, however, the manager has such power. *See Bank of Pawnee v. Joslin*, 166 Ill.App.3d 927 (4th Dist. 1988) (cannot enter contracts without legislative authorization). Most councils do grant to the manager authority to expend funds or execute contracts up to a certain amount, simply for the sake of efficiency.

WHAT THE MAYOR CAN DO

Given the extensive administrative authority of a manager, one wonders what is left for the mayor to do in a statutory manager form of government. The mayor retains certain limited executive functions in the manager form. Normally, the mayor is the chief executive officer of the municipality, and therefore the executive and administrative superior of all officers and employees, other than the council members. *See* 65 ILCS 5/3.1-35-5. However, in the manager form, apart from the mayor's voting and veto powers (discussed more fully below), his or her administrative and executive role is largely captured by Section 5-3-1, which provides that "the mayor . . . shall be recognized as the official head of the city . . . by the courts for the purpose of

serving civil process and by the Governor for all legal purposes.” 65 ILCS 5/5-3-1. Also, as noted above, the mayor retains the appointment power over membership on certain boards and commissions, subject to advice and consent of the council. Thus, the mayor appoints, with the approval of the council, the members of the board of local improvements, the zoning board of appeals, and the plan commission. These can be influential appointments. Even in manager form municipalities, the mayor, who may be the only official elected at large in the community, generally has a strong role in establishing the policies adopted by the legislative body. The mayor still retains the right, at all times, to examine and inspect the books, records and papers of any agent, employee, or officer of the municipality. 65 ILCS 5/3.1-35-20. The mayor may from time to time and annually give the corporate authorities information concerning the affairs of the municipality and may recommend for their consideration measures the mayor believes expedient. 65 ILCS 5/3.1-35-5.

The mayor may or may not have the power of veto in a statutory manager government. The mayor’s role in the legislative process depends on the manner in which aldermen are elected. In a city in which aldermen are elected by wards, the mayor votes only in limited situations such as a tie or need for super-majority, but may veto any ordinance and any resolution or motion creating a liability, appropriating funds, or selling property. By contrast, in a village in which trustees are elected at large, the mayor may vote on all matters which may come before the council, but he or she does not have any veto power. 65 ILCS 5/5-3-1; 65 ILCS 5/5-3-5; 65 ILCS 5/5-3-6.

WHAT THE COUNCIL CAN DO

Under the manager form, the power of the council is entirely legislative. 65 ILCS 5/5-3-6. This is not to say that the manager possesses unbridled control over the administration, because the council does have the power to shape the way the manager manages. Under 65 ILCS 5/5-3-10, when the manager form is adopted by referendum, the council is charged with setting up an administrative mechanism for governance, defining the scope and composition of administrative departments, and structuring the duties of officers and employees. To ensure that the manager form is properly implemented, the law provides that at their first meeting, the corporate authorities must pass an ordinance that sets certain legislative parameters concerning execution of policies by the manager. The ordinance shall 1) amplify the powers and duties of the manager in accordance with Article 5 of the Code; 2) define the scope of each department and division thereunder; 3) define the duties and powers of officers and employees; 4) fix the salaries of officers and employees; and 5) provide for independent audits of the municipality, which audits are to be conducted independently of the manager. In addition, through this ordinance the council or board may 1) assign appointive officers and employees to one or more of the departments; 2) require an appointive officer or employee to perform duties in two or more departments; and 3) make other rules and regulations necessary for the efficient and economical conduct of the business of the municipality. 65 ILCS 5/5-3-10.

The council’s power to structure the municipal government is significant. But the council cannot change the manager’s powers and authority as outlined above. The statute says the council may amplify the powers and duties of the manager in accordance with Article 5 of the Code, but this organizational ordinance cannot, for example, reassign appointment and removal authority over department heads, because that authority is granted by section 5/5-3-

7(2). A council that attempts to reassign the statutory duties of a manager to some other official may be challenged on the basis that such a reassignment constitutes a change in the form of government, which can only be accomplished by referendum. Ill. Const., Art. VII, §7; *Pechous v. Slawko*, 64 Ill.2d 576, 586 (1976)

The council retains the power to approve payment of all municipal expenses and liabilities. 65 ILCS 5/5-3-6. Thus, a manager's projects are subject to the council's power over the purse. The council can also abolish offices. 65 ILCS 5/5-3-8.

Finally, the council has the power to remove the manager from office. The manager is to be appointed for an indefinite term, but may be removed at any time by a majority vote of the members of the council. 65 ILCS 5/5-3-7. Municipalities may contract with managers for terms exceeding one year, but the manager may be dismissed by a majority vote at any time. 65 ILCS 5/5-3-7; 65 ILCS 5/8-1-7. A wise manager will always be aware of how many votes are necessary to stay on the job.

WHAT THE COURTS HAVE SAID

While few cases have interpreted the roles of the differing players in a manager form of government, those courts that have examined the subject clearly focus on the distinctive separation of legislative and administrative powers.

In *Pechous v. Slawko*, 64 Ill.2d 576 (1976), the Illinois Supreme Court examined the allocation of legislative and administrative powers in a manager form of government. The issue in *Pechous* was whether the board of trustees could remove from the manager the power to appoint a Village attorney. The Court found that the ordinance conferring the power of appointment on the board was invalid. While an ordinance abolishing the office of Village attorney altogether was within the power of the board, "the ordinance also sought to take over the Village Manager's power of appointment, and to that extent was beyond the power of the Board." *Id.*, at 587. The court relied upon the distinctive separation of legislative and administrative powers in a manager form of government, finding that the statutory characteristics of the manager form are that the board exercises purely legislative powers as a policy-making body, while the manager is the chief administrator. *Id.* According to the Court, the corporate authorities "should not attempt to dictate or confirm appointments of city officials and employees, nor importune the Manager on appointments, or indeed any other administrative matter." *Id.* (emphasis added); *see also* 1997 Op.Atty.Gen No. 97-028 (A council or board may not, by ordinance, transfer to itself the executive power to make appointments to various boards and commissions).

The *Pechous* case clarifies that the manager's administrative and executive powers are non-negotiable. So long as the municipality operates under a manager form of government, the manager has these powers. This is unlike a government that has simply chosen to hire an administrator under specified powers. There, the council or board creates the powers and duties of the administrator and can add to or pull from the list at its discretion. An Article 5 manager, however, gets most if not all of his or her power from the statutes, and such powers cannot be taken away by the board, council, mayor or president. This rule applies in both home rule and non-home rule municipalities.

Similarly, in *Dunne v. County of Cook*, 123 Ill.App.3d 468, 472 (1st Dist. 1984), the court found that the significant characteristic of a manager form government is that the manager is the administrative head of the government, and that the council has only legislative powers and “no powers with respect to administration.” See also *Village of Westmont v. Lenihan*, 301 Ill.App.3d 1050 (2d Dist. 1999) (the Village would suffer irreparable injury if the trustees were permitted to usurp the statutory powers of the Village’s executive branch).

In *Gaiser v. Village of Skokie*, 271 Ill.App.3d 85 (3d Dist. 1995), the Village manager denied a police officer’s claim, upon investigation and recommendation from the police chief. When the decision was challenged for an improper exercise of authority, the Court held that emergency leave was an administrative decision and therefore within the discretion of the police chief, subject to review by the manager, who is charged with the duty to interpret, clarify and execute personnel policies of the Village. Because the action was administrative, it was improper for the trial court to substitute its judgment for the sound judgment of the individual responsible for Village administration.

The courts, then, have given some guidance to help distinguish between legislative and administrative functions, and have not hesitated to uphold a manager’s administrative prerogative. The appointment of a village attorney, and other appointments, is an administrative matter, and a council cannot infringe on the manager’s authority in this area. Personnel matters are administrative, and the council cannot second-guess the manager here either. The courts will rely on the statutes explained above to make these determinations.

Nevertheless, any manager can tell us that many local governmental decisions have implications for both legislative and administrative arenas. An effective manager really has to negotiate this divide with the mayor and council many times and many ways in the ordinary course of governmental affairs. At the same time, a manager may rely on the statutory authority provided by the Municipal Code to preserve his or her own effectiveness.

A HYPOTHETICAL CASE

Suppose a village trustee is particularly irked by his neighbor, who has not painted his house in the last 20 years, who piles up lumber, old siding, and paint cans out by the back fence, whose car sits in the driveway up on concrete blocks, and who generally gives the trustee a lot of grief about village government. The trustee manages to persuade three other trustees that this is an intolerable situation and something ought to be done about it. What can the board of trustees do?

The board cannot pass a motion ordering the police and building code departments to issue citations for ordinance violations to the neighbor, because that motion would infringe on the manager’s authority to enforce the laws and to control departments. The board cannot pass a motion instructing the manager to fire the building code enforcement officer, because such a motion infringes on the manager’s appointment and removal power. The board cannot pass an ordinance appointing a retired police officer, who happens to have an interest in such things, as the building department enforcement officer, again because such a move infringes on the

manager's appointment power. The board cannot pass an ordinance eliminating the position of village manager, for failure to enforce ordinances, because such an ordinance would be an unconstitutional change in the form of government.

The board can, however, pass an ordinance eliminating the building code enforcement office altogether and assigning its enforcement functions to the police department. The board does have general power to create or alter the structure of the administrative departments of the government. The board can pass a resolution declaring that the legislative policy of the village is to strictly enforce its building code ordinances, and the board would be within its prerogatives to look to the manager to carry out such a policy. The board can choose, in its annual appropriation ordinance, to increase the funding for the building code enforcement department, in order to deal with problems like this. The manager does have a right to argue, at a village board meeting, that increasing the funding for the building department would mean one less police officer, but the board can choose to enact the appropriation anyway. With four votes, the board, ultimately, can terminate the manager who does not see that ordinances are enforced and find someone who will.

No court has ever ruled on a case like the example above, so it is not possible to predict definitively how the court would interpret the statutory powers of the manager in this situation or the legality of the board's action. Our prediction relies on the statutory list of the manager's powers, which is the starting point for defining the relationship between the administrative authority of the manager and the legislative power of the council.

CONCLUSION

The Municipal Code repeatedly stresses the distinction between policy and administration in a manager form of government. The manager "shall be the administrative head of the municipal government and ... shall be responsible for the efficient administration of all departments." The manager is given substantial authority to control administration through the power to hire and fire and authority over the documents that will lead to a budget or appropriation ordinance. The Municipal Code also stresses the non-partisan nature of the manager's role: "He shall be appointed without regard to his political beliefs." The emphasis is consistently on the professional skill and managerial competence of the manager. Policy and politics are the province of the council, not the manager. If the manager and the council understand and respect these guiding principles and the statutory division of power, the manager form of government can be a highly efficient and productive structure for a municipality. It has so proven itself in dozens of Illinois municipalities.