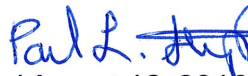




VILLAGE OF OAK PARK
LAW DEPARTMENT

MEMORANDUM

To: Honorable Mayor Anan Abu-Taleb and Board of Trustees
cc: Cara Pavlicek, Village Manager
From: Paul L. Stephanides, Village Attorney 
Date: Originally Issued on April 27, 2015 and August 19, 2016
Updated on April 3, 2017
Re: Mayor's Appointment Authority

INTRODUCTION

As part of the new Trustees orientation, this memorandum addresses the Mayor's appointment authority of members of Village boards and commissions and the role of the Citizen Involvement Commission ("CIC") in the process.

DISCUSSION

I. Mayor's Appointment Authority for Boards and Commissions

The Illinois Constitution requires that home rule municipalities such as the Village shall make appointments to board and commissions as "authorized by law." Ill. Const. 1970, art. VII, § 6(f) ("Section 6(f)"). Section 6(f) specifically provides as follows:

A home rule unit shall have the power subject to approval by referendum to adopt, alter or repeal a form of government provided by law, except that the form of government of Cook County shall be subject to the provisions of Section 3 of this Article. A home rule municipality shall have the power to provide for its officers, their manner of selection and terms of office only as approved by referendum or as otherwise authorized by law. A home rule county shall have the power to provide for its officers, their manner of selection and terms of office in the manner set forth in Section 4 of this Article.

State statute gives the Mayor the authority to appoint board or commission members and chairs of boards and commissions consistent with the Illinois Constitution. This statute provides as follows:

Sec. 3.1-30-5. Appointed officers in all municipalities.

(a) The mayor or president, as the case may be, by and with the advice and consent of the city council or the board of trustees, may appoint (1) a treasurer (if the treasurer is not an elected position in the municipality), (2) a collector, (3) a comptroller, (4) a marshal, (5) an attorney or a corporation counsel, (6) one or more purchasing agents and deputies, (7) the number of auxiliary police officers determined necessary by the corporate authorities, (8) police matrons, (9) a commissioner of public works, (10) a budget director or a budget officer, and (11) other officers necessary to carry into effect the powers conferred upon municipalities.

65 ILCS 5/3.1-30-5 (emphasis added). The Mayor's authority to appoint board and commission members cannot be altered or delegated unless provided by state statute. *Pechous v. Slawko*, 64 Ill.2d 576, 591-592 (1976); *People v. McCann*, 247 Ill. 130, 143 (1910). An example of such a delegation is where the mayor does not serve as the local liquor control commissioner due to the mayor's holding of a liquor license, which is the case in Oak Park. 235 ILCS 5/4-2. In such an instance, the applicable state statute provides for the board to appoint another person to serve in the role. *Id.* The Village maintains a Liquor Control Review Board ("LCRB") and the person who serves as the Local Liquor Control Commissioner appoints members to the LCRB with the advice and consent of the Board of Trustees. *Id.*; Oak Park Village Code at Sec. 3-2-2.

The Plan Commission is an example of where a state statute requires the Mayor to appoint its members. The applicable state statute provides in pertinent part:

Every municipality may create a plan commission or a planning department or both. A plan commission shall be appointed by a mayor of a city or president of a village board subject to confirmation by the corporate authorities.

65 ILCS 5/11-12-4. Similarly, the Village Code provides:

2-17-2: MEMBERSHIP:

Said Plan Commission shall consist of a chairperson and eight (8) members, citizens of the Village, appointed by the President on the basis of their particular fitness for their duty on said Plan Commission and subject to the approval of the Board of Trustees.

Unless a state statute provides otherwise, the Mayor must appoint the members of the Village's boards and commissions by law.

II. Role of the CIC

The CIC's primary responsibility is the recruitment of volunteers for Village boards and commissions. The Village Code also sets forth other specific duties and it provides as follows:

2-35-1: ESTABLISHMENT; DUTIES; STAFFING:

A. There is hereby established in and for the Village of Oak Park a Citizen Involvement Commission in order to foster citizen participation in the various boards, commissions and committees of the Village, and also to encourage volunteer participation in Village government and its activities. The duties of the Commission shall include the following: to be responsible for the recruitment of volunteers for the boards, commissions and committees of the Village, including holding prospects' meetings for said boards, commissions and committees in conjunction with the office of the Village Clerk; to act as liaisons to and provide support for said various boards, commissions and committees; and to provide education about and recognition for the activities of the Citizen Involvement Commission and said various boards, commissions and committees, including the sponsorship of the annual Volunteer Recognition Reception.

B. The Citizen Involvement Commission shall work closely with the office of the Village Clerk. The Village Clerk shall maintain all records and documentation pertaining to volunteer participation in Village government and its activities, including all records of the Citizen Involvement Commission, and shall maintain all records of the Commission's business, including all regular and special meetings.

The Mayor appoints the CIC's members and chair with the advice and consent of the Board of Trustees:

2-35-2: COMPOSITION:

The Citizen Involvement Commission shall consist of a chairperson and eight (8) members, including a chairperson to be appointed by the Village President, by and with the consent of the Village Board of Trustees. All terms shall be for a three (3) year period on a staggered basis, with the chairperson and four (4) members or five (5) members appointed each year.

Oak Park Village Code at Sec. 2-35-2. As shown above, this is consistent with state law.

III. Village Boards and Commissions do not have the Authority to Create Subcommittees

Village boards and commissions do not have the authority to create subcommittee. The creation of a subcommittee and the appointment of members to a subcommittee are in direct conflict with the state law cited above and the Village Code. Chapter 2 ("Administration") of the Village Code prescribes what boards and commissions currently are in existence, the number of members for each board and commission, the method of appointment for the members and the required qualifications for members. There is no provision in the Village Code that allows for the appointment of subcommittee members of these boards and commissions. Furthermore, the appointment of members to subcommittees by a Village board or commission is an unconstitutional change in the Village's form of government by transferring appointment authority from the Mayor to a Village board or commission. *Dunne v. County of Cook*, 108 Ill.2d 161 (1985); *Pechous v. Slawko*, 64 Ill.2d 576 (1976).

CONCLUSION

This memorandum is intended to provide an introduction into the duties and responsibilities of Trustees. If you have specific questions, please do not hesitate to contact me.