

CITY OF DETROIT

OFFICE OF INSPECTOR GENERAL

REQUEST TO CLOSE INVESTIGATION MEMORANDUM

DATE:

8/14/2015

TO: James W. Heath Approved _____
Inspector General

FROM: Jennifer Bentley
File Manager

CASE NAME: Intentional Violation of the City of Detroit Charter/ Oath of Office
OIG # 2015-0044

COMPLAINANT INFORMATION: Ricardo Moore

I. Recommendation

I recommend closing this case. Michigan Public Act 436 of 2012 gives the Emergency Manager broad authority to act for and in place of local government.

On September 29, 2015, the Detroit City Council voted to restore full powers to the Board of Police Commissioners (BOPC) that were stripped away while the city was under emergency management. The BOPC will be back at full strength on December 10, giving them final say on employee discipline and a role in shaping the department's budget and policies.

II. Basic Facts

The complainant is alleging political corruption by the mayor and city council. He stated that the Detroit City Council had a closed door session with Mayor Duggan and agreed to ignore the Detroit City Charter and continue operating under the "Emergency Manager philosophy."

The complainant stated that Mayor Duggan and the Detroit City Council cannot knowingly enter into and/or enforce an illegal agreement. He alleges that Kevyn Orr's Emergency Manager Order 42 (Order 42) takes away the authority from the BOPC. He also claims that Order 42 ignores the Detroit City Charter and utilizes Emergency Manager Order 11 (Order 11) as the foundation for the Detroit Police Department.

III. Discussion

Order 42, which has a section dedicated to the BOPC, reinstates some, but not all duties outlined in the charter. The duties outlined in Order 42 for the BOPC are listed as follows:

- a. The power to consult with the Chief of Police, and with the approval of the Mayor, establish policies, rules and regulations;
- b. The power to review the departmental budget prior to its submission to the Mayor and **to make recommendations to the Mayor regarding such budget;**
- c. The power to receive, investigate (including the power to subpoena witnesses, administer oaths, take testimony and require the production of evidence, and to apply to the appropriate court for enforcement of same, and to continue its current investigative staffing levels for this purpose), and **recommend resolution of complaints to the Mayor concerning the operation of the Police Department;**
- d. **The power to forward all allegations of criminality to the appropriate internal or external law enforcement agency for further investigation;** and
- e. The power to make an annual report the Mayor, the Council and the public of the handling of such complaints ¹

The above highlighted duties are changes made by Order 42. Prior of the order, the BOPC was permitted to make changes without consulting the mayor. Order 42 also stated that all powers granted to the Chief of Police by way of Order 11 were to continue and that the Mayor was to have “authority to negotiate and execute a contract that extends the current Chief of Police’s service to the City.”²

Section 10(1) of P.A. 436 grants the Emergency Manager the authority to issue orders. P.A. 436 states that an Emergency Manager can “exercise any power over any board, whether elected or appointed, relating to the operation of local government.”³ Additionally, §12(n) states that the Emergency Manager may “transfer functions from one department or another at his or her discretion.” Therefore, the Emergency Manager was within his power to transfer control of the BOPC’s oversight of the police department to the chief of police and mayor.

There is nothing in the statute or legislative history that states that an Emergency Manager has to give the board or government officials any rationale on why the Emergency Manager deemed it necessary to transfer control. Although the BOPC’s ability to exert control over the Detroit Police Department is granted in the charter, the Emergency Manager’s authority

¹ Emergency Manager Order 42 at 7 (2014). But See §§ 7-803, 7-805, 7-807, 7-808, 7-809, 7-814 of City of Detroit Charter (2012).

² Emergency Manager Order 42 at 7 (2014).

³ § 12(ee) of P.A. 436.

supersedes this charter language. Despite the conflict between the charter and Order 42, Emergency Manager orders are binding to whomever the order is issued, which includes the BOPC.⁴

Section 21(2) of P.A. 436 states that the governing body of the local government, “shall not revise any order implemented by the Emergency Manager during his term prior to 1 year after the termination of the financial emergency status.” The Emergency Manager’s term ended on December 10, 2014 when the Governor officially placed the local government back in charge of city operations. Therefore, December 10, 2015 is the earliest possible date changes to any order may occur.

However, there is nothing in the statute or legislative history that indicates the local government must restore all charter given powers and duties changed by the Emergency Manager. If the local government decides to leave Order 42 in place after one year, it is likely the BOPC would have to pursue various legal options, potentially including litigation, to restore its power. There is no precedent or legal guidance to indicate what should occur in such instances.

On February 24, 2015, the City of Detroit Law Department issued a legal opinion on this matter. Our investigation and research led us to the same conclusions outlined in the law department’s opinion.

IV. Conclusion

I recommend closing this case. There is no evidence of waste, abuse, fraud, or corruption. The Emergency Manager, mayor, and city council acted within the confines of P.A. 436.

⁴ § 10(1) of P.A. 436.