

**CITY OF MADISON
CITY ATTORNEY'S OFFICE
Room 401, CCB
266-4511**

December 7, 1999

OPINION 99-013

TO: Common Council Organizational Committee

FROM: Eunice Gibson, City Attorney

SUBJECT: **Evaluations of Department and Division Heads by Common Council Members**

You have asked my opinion as to whether there is any legal prohibition or obstacle to prevent members of the Common Council from evaluating, in writing, the performance of Department and Division heads. I do not believe there is any such obstacle or prohibition. To avoid imposition of liability on the City, it is important that any such evaluation be job-related.

The Common Council Organizational Committee has before it a management evaluation tool suggested by Alderman Bruer in April, 1997. The document is entitled "Bi-Annual Review/Feedback" and consists of two (2) pages. There are a number of areas for evaluation by means of a numerical scale, and there are open-ended questions with space for written answers. I understand that the Committee inquires as to whether it would be legal for Common Council members to make use of this form to furnish the Mayor with their evaluations of the performance of department and division heads.

Common Council members, like any other person, have the right to communicate to the Mayor their opinions about the performance of department heads and any other City employees. They may do this verbally, in writing, or by the use of a form. They may do this at any time they choose to do it.

There is a strong likelihood that such a public document would be open to public inspection and copying under the open records law. Sec. 19.31, Wis. Stats., provides:

“...ss. 19.32 to 19.37 [the open records statute] shall be construed in every instance with a presumption of complete public access, consistent with the conduct of governmental business. The denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied.”

Finally, if a document affects the employment or re-employment, or the terms and conditions

Page 2
December 7, 1999

of employment of an individual, the document should not include issues that are not job-related, or that could appear to interfere with the right of the individual to speak on matters of public concern.

With those cautions in mind, there is no legal reason why a Council member may not convey to the Mayor her/his impressions and opinions about the performance of a department or division head, or any other City employee, verbally or in writing, as may seem best to them.

Eunice Gibson
City Attorney

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cc: Mayor
City Clerk

CAPTION: Members of the Common Council may inform the Mayor, either verbally or in writing, of their opinions about the performance of department and division heads.