

# Memo

**To:** Al Hulick  
**From:** MAS  
**Date:** July 13, 2015  
**Re:** Milton Township Fire Department

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Pursuant to your request I have reviewed the Milton\Milton Township Fire Department Fire EMS Services Analysis prepared by RW Management Group, Inc. My comments focus on those portions of the report involving the legal aspects of the formation and operation of the entity providing fire protection services for the City and the Town which is named the Milton and Milton Township Fire Department (Department).

On page 2.1 under the heading "Findings", it states that the bylaws for the Department are the Chapter 181 corporate bylaws for the Milton Area Emergency Services Association, Inc. That statement is not accurate, but I understand, after speaking with you, that the author of the report had not been provided with a copy of the Bylaws of the Milton and Milton Township Joint Fire Commission. A copy of the bylaws was forwarded to your attention by my office on July 10.

Also on page 2.1, the author expresses concerns that the Police and Fire Commission (PFC) does not have the optional powers granted by electors. I believe that he is referring to the optional powers of a board of police and fire commissioners as set forth in section 62.13 (6) Wis. Stats. I would note at the outset that the Department is not governed by a police and fire commission but is, instead, governed by the Milton and Milton Township Fire Commission. Secondly, I believe that the author's concerns arise because of his understanding that the Department was created pursuant to the provisions of section 62.13 (2m) Wis. Stats. In that statute it notes that a joint board of commissioners created "... under this paragraph..." is subject to certain other provisions in section 62.13 Wis. Stats. The Department, however, was instead created pursuant to the authority contained in section 66.0301 Wis. Stats., as referenced in paragraph I of the fire protection agreement. That statute authorizes intergovernmental agreements between entities such as the City and the Town to provide for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law. Under subpart (3) of that statute, intergovernmental contracts may provide for the proration of expenses, the deposit and disbursement of funds appropriated, submission and

approval of budgets, the creation of a commission and the selection and removal of commissioners. The above was addressed in the fire protection agreement creating the Department.

Even if, however, section 62.13 (2m) was found to apply to the Department, it states in subpart (2m) (b) that a joint board of commissioners created under that paragraph to govern a joint fire department is subject to the provisions of subparts (8) to (12) of the statute. That does not include the provision concerning optional powers of a board addressed in subpart (6) of the statute. Under subpart (8) of that statute, it provides in subpart (b) that the city may enter into a contract for fire protective services with a town. It further provides that a city, such as Milton, that contracts for all of its fire protective services but not for all of its police protective services shall have a board of police and fire commissioners but the board may address only issues related to the police department.

On page 2.2 of the document, it repeats the understanding that the Milton Area Emergency Services Association bylaws govern the commission which, as noted above, is not accurate.

On page 2.5 of the document it states that "A determination needs to be made on whether the town, city or commission have responsibility to determine departmental organizational structure and reporting responsibility. These relationships should be clarified in the respective municipal codes." It currently provides in the intergovernmental agreement establishing the Department that the operation of that entity is to be administered by a board of commissioners. Pursuant to paragraph IV of the agreement, the commission establishes the bylaws of the entity. Although the city ordinances cannot control the operation of the Department, the provisions of section 2-681 and Section 2-683 Code of Ordinances are consistent with the intergovernmental agreement.

As a final comment, on page 2.5 of the report it states that after the budget for the Department is approved by the joint commission, the budget goes to the Town Board and City Council for adoption and placement on the tax levy. In paragraph V. B. of the intergovernmental agreement, it provides that the budget for the Department is to be approved by the joint commission. In checking with Al Hulick, he confirmed that the City does not take action to adopt that budget. The City does place in its budget an amount sufficient to pay its one half share of the budget of the entity.

I realize that the author of the report encountered difficulty in obtaining the information necessary to complete the report. The purpose of my memorandum is to provide everyone with the additional information necessary to conduct a fully informed review of the operations of the Milton and Milton Township Fire Department.