


MEMORANDUM

TO: CHAIR EHRMANTRAUT **DATE:** FEBRUARY 13, 2024
FROM: RICHARD A. DAVIS III 
SUBJECT: AUTHORITY OF FIRE CHIEF TO HIRE FINANCE MANAGER ABOVE
BUDGETED AMOUNT

Chair Ehrmantraut,

You have asked for our advice on a question posed by Commissioner Gaylord.

I. ISSUES AND SHORT ANSWER

Issue: Whether the Fire Chief has authority (actual or ostensible) to hire for the Finance Manager open position at a salary level higher than the approved budget line item for that position?

Short Answer: No. The Commission approved a line item amount in the budget for the position of Finance Manager. Although the Fire Chief's employment contract allows her to hire and fire personnel, the Fire Chief has not been delegated the authority to hire a Finance Manager for a higher salary level than budgeted. Commission approval would be required. Similarly, the Fire Chief would not have the authority to hire the Finance Manager under any terms and conditions inconsistent with current District employment policies. Those powers are expressly reserved by statute to the Commission unless delegated to the Fire Chief.

II. ANALYSIS

The powers of a fire district are set forth in RCW 52.12.021 and .031. One of the powers that a fire district possesses is the power to employ employees. The *exercise* of this power—and other powers—is reserved by statute to the Board of Fire Commissioners as follows:

RCW 52.14.010

**Number—Qualifications—Insurance—Compensation and expenses—
Service as volunteer firefighter.**

(1) The affairs of the district shall be managed by a board of fire commissioners composed initially of three registered voters residing in the district"

Simply put, the authority to manage the affairs of the Fire District resides with the full Board of Fire Commissioners, which must act as a body in compliance with the Open Public Meetings Act to take final action.

Despite the fact that the Board of Fire Commissioners is entitled to exercise all powers possessed by the Fire District, practicalities dictate that the Board delegate certain authority to certain individuals to assure the day-to-day business of the fire district can be accomplished. Thus, the Board of Fire Commissioners frequently delegates certain authority to the Fire Chief, the Chair of the Board, the Secretary, and to others. When delegating administrative or ministerial duties that do not involve discretion, a motion or resolution is advisable. However, if the duties to be delegated involve discretion, the delegation should contain parameters and guidelines within which the discretion may be exercised; otherwise, the decision made by the officer may be void as a matter of law as an unlawful delegation. Such delegations of authority should be accomplished via a formal "Delegation of Authority" resolution so that there is a clear, written record of exactly what authority has been delegated and the limits thereof.

With respect to the budget, the Board of Fire Commissioners is responsible for holding a public hearing and for approving an annual budget. RCW 84.55.120; 52.16.030. The Board of Fire Commissioners did so here and established line items for various expenses. The line item for Finance Manager is Ninety-Seven Thousand Dollars (\$97,200.00).

Section 3 of Chief vanSchaick's employment contract provides that the Fire Chief has certain responsibilities, including the responsibility of hiring and firing personnel. However, those responsibilities are not without limits. Nothing in the Fire Chief's employment contract or applicable statute would allow the Fire Chief to employ any individual on terms and conditions that are outside the parameters of those established by the Board of Fire Commissioners. For example, the Fire Chief would have no authority to hire an employee on terms and conditions inconsistent with personnel policies approved by the Board of Fire Commissioners. Similarly, hiring a finance manager for a salary greater than that approved by the Board of Fire Commissioners in the budget is outside of the Fire Chief's authority.

If the Fire Chief did purport to hire a Finance Manager for more than the approved budgetary line-item amount, or on terms and conditions inconsistent with those previously approved by the Board of Fire Commissioners, the action would exceed the Fire Chief's authority and would be void under the ultra vires doctrine.

The Washington Court of Appeals addressed this ultra vires doctrine issue in *Adamson v. Port of Bellingham*, 192 Wn. App. 921 (2016). There, the court wrote:

When public officials enter into contracts that are outside the scope of their authority, the contracts are void and unenforceable under the ultra vires doctrine. An agreement may be ultra vires because the substance of the contract was outside of the agent's authority, or because the agent failed to follow statutorily required procedures for entering into the contract.

Adamson v. Port of Bellingham, 192 Wash. App. 921, 926, 374 P.3d 170, 173 (2016) (citations omitted).

Even though the contract would be void, the Finance Manger may be able to assert an equitable estoppel claim to enforce the higher salary. In particular, if the Fire Chief hired a Finance Manager for a salary higher than the budgeted amount, the agreement would likely be

procedurally ultra vires, not substantively ultra vires. When an action is procedurally ultra vires, equitable estoppel can be asserted as explained by the *Adamson* court:

"The State does not 'act' and will not be held estopped based on the ultra vires acts of its officers." "[E]stoppel may not be asserted to enforce the promise of one who had no authority to enter into that undertaking on behalf of the state."

*But courts draw a line between acts that are substantively ultra vires and those that are procedurally ultra vires. Acts are procedurally ultra vires when the agents acted within their powers but exercised those powers "in an irregular manner or through unauthorized procedural means." Courts may apply the doctrine of equitable estoppel to procedurally ultra vires acts. "The distinction between procedural irregularity and a substantive lack of authority is justified by the fact that in the latter case, the agency lacks the power to do the act in **any** manner."*

An act may be procedurally ultra vires when an agency has the authority to commit the act but ignores a required procedure. In *Noel*, the Department of Natural Resources (DNR) agreed to sell timber without conducting an environmental impact study. DNR unquestionably had the authority to contract to sell timber, but the act was procedurally ultra vires because state law required DNR to prepare an environmental impact statement first.

Here, AMHS lacked the substantive authority to subject Alaska to suit for this type of claim. There was not any manner in which AMHS was authorized to withdraw Alaska's sovereign immunity. Therefore, Alaska is not estopped from withdrawing from a commitment that purports to do so.

Id. at 929 (citations omitted) (emphasis added).

Here, the Fire District would certainly have the authority to hire a Finance Manager for a salary higher than the budgeted amount, but the procedurally correct means would be for the Board of Fire Commissioners to approve that act. If the Fire Chief hired the Finance Manager for that salary without obtaining Board approval, it would be a procedurally ultra vires act because the Fire District would not have taken the act in the procedurally correct manner.

III. CONCLUSION

To the extent that the Fire Chief intends to offer a candidate for Finance Manager more than the budgeted amount, it would be prudent to advise her that the Finance Manager's salary cannot exceed the budgeted amount without further action by the Board of Fire Commissioners. Should she proceed to do so without the Board of Fire Commissioners' authorization, that portion of the salary above the budgeted amount would be void; however, it would likely be upheld if the Finance Manager asserted that the Fire District was equitably estopped from paying a lower salary, and the Fire Chief's decision to proceed without Board approval would constitute a performance issue that the Commission would need to decide how to address.

Richard