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June 8, 2023

Both the County Executive and the County Council have requested an opinion regarding the procedure for confirmation of the appointment of the Assistant Director of Administration under Charter Section 315(A), which reads as follows:

Section 315 Confirmation of appointments.

[Amended 8-2-2016 by Res. No. 101-2016]

A. Director of Administration, Assistant Director of Administration, department heads and the initial appointment of deputy directors. Appointment by the County Executive of the Director of Administration, the Assistant Director of Administration, department heads or the initial appointment of a deputy director of a department in the executive branch of the county government shall be subject to confirmation by the County Council. If the Council fails to act to confirm or reject any appointment within 45 days of its submission to the County Council, at its legislative session, by the County Executive, the appointment shall stand approved.

[Amended 7-3-2018 by Res. No. 65-2018]

This Charter Section provides for the initial appointment of the Director of Administration, Assistant Director of Administration, Department Heads and initial appointments of Deputy Directors of each department, and requires a two-step process:

1. The County Executive must submit the name of an appointee to the County Council.
2. The County Council can either act to confirm or reject any appointment at its legislative session within forty-five (45) days of its submission to the County Council or if the Council fails to act to confirm or reject at its legislative session, the appointment shall stand approved.

The threshold question is when did the Executive make a submission of the Assistant Director of Administration appointment to the County Council. According to *Black's Law Dictionary*, to submit is "to

commit to the discretion of another” or “to present for determination.” The facts I reviewed to make a determination about “submission” are as follows:

1. On April 4, 2023, the Director of Administration requested, on behalf of the County Executive, a Closed Session to discuss a personnel matter (Exhibit 1). The memorandum contained a job description for the Assistant Director of Administration, a resume and references.
2. The County Council Agenda for the April 18, 2023, Work Session, included a Closed Work Session for “Personnel matter – Appointment of an Assistant Director of Administration” (Exhibit 2).
3. At the Closed Work Session on April 18, 2023, County Executive Giordano, Director of Administration Luffman, and the appointee for confirmation, Mr. Leitzel, met with the County Council. County Executive Giordano presented her appointee for the Assistant Director of Administration position to the County Council for a confirmation interview.
4. After the confirmation interview, the Council reached a consensus to not move forward with Mr. Leitzel for the Assistant Director of Administration position, as stated in Ms. Hurley’s April 18, 2023, email to Mr. Luffman attached hereto (Exhibit 3).
5. Forty-Five (45) days from the April 4, 2023, submission memorandum is May 19, 2023.
6. On June 22, 2023, the County Executive sent a letter to the County Council stating that the Assistant Director of Administration appointment was approved under the forty-five (45) day rule (Exhibit 4).

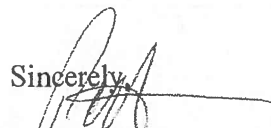
The first question is whether the County Executive submitted the appointment to the County Council. The facts set forth above show that the County Executive submitted the Assistant Director of Administration appointment to the Council by Memorandum on April 4, 2023 (Exhibit 1).

The second question is whether the County Council acted to confirm or reject the appointment in legislative session within forty-five (45) days of its submission. The April 18, 2023, email communication from the Council Administrator stated "there was not a consensus by Council to move forward with Captain Leitzel for the position." This statement from the Council is a Closed Session consensus, but was not a vote in legislative session to confirm or reject the appointment within forty-five (45) days of its submission. Since the forty-five (45) day expired on May 19, 2023, the appointment of the Assistant Director of Administration stands approved pursuant to Charter Section 315(A).

My recommendation for future appointments is that the Executive and Council agree on a step by step procedure. PDW

PDW/mam  
Enclosures

Sincerely,

  
Paul D. Wilber