

Office of the County Attorney
Montgomery County, Maryland

MEMORANDUM

January 24, 1999

None
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[Signature]

TO: Bruce Romer
Chief Administrative Officer

FROM: Charles W. Thompson, Jr. [Signature]
County Attorney

RE: Director, Division of Animal Control Vacancy

I write to confirm oral advice that I previously provided regarding whether there is a requirement that you fill a vacancy in a position that is within the Department of Police and that is non-merit. As I advised you, it is my opinion that the position need not be filled and that the Chief of Police is thereby responsible for the operations of that division of the department, just as the chief has responsibility for the remainder of the department.

The Division of Animal Control and Humane Treatment (DACHT) is a part of the Department of Police¹. The position of director of DACHT is a non-merit position². The director of DACHT is the county's "animal control officer" and acts under the immediate direction of the chief of police³. Section 1A-104 directs the Chief Administrative Officer to supervise each agency of county government. Section 35-3, authorizes and directs the chief to supervise the Department of Police and to administer and be responsible for that department. The authority granted by that section gives the chief the power to "direct such assignments to duty" as may be necessary in the public interest.

¹Section 2-43.

²Id.

³Section 5-1. This section provides that the "animal control officer is the "Director of the Division or *designee* acting under the immediate direction of the Director of the Department of Police." (Emphasis supplied.)

The position of director of DACHT is vacant. A vacant non-merit position may be filled in either of two ways; a person may be named to fill it, or a person may be named to the position in an "acting" capacity. When a vacancy in a non-merit position is filled by a person in an "acting" capacity, Section 1A-105 describes the method. For a position such as the director of DACHT, the law provides that the Executive may name a person to fill the position in an "acting" capacity.

In the case of the director of a department or principal office, the CAO is responsible for supervising the agency⁴ when a vacancy continues over a period of time. Because other positions that are non-merit involve positions are under the supervision of others, the law seems to recognize that the general authority of a department director is sufficient to ensure that the mission of the agency is fulfilled. For example, a non-merit deputy director position does not require any statement concerning who supervises the agency because the director always has that responsibility. Similarly, the chief of police cannot escape responsibility for the management of DACHT simply because there is a non-merit director of the division⁵. Thus, the chief, having full responsibility for the direction of the department and all of its divisions, must be held to be responsible for carrying out the mission of the agency when there is no one filling the vacancy in the position of director of the division.

As DACHT is a division within the police department and not designated as either a department or principal office, its director is under the immediate supervision of the chief of police⁶. Thus, where in §5-1, the Code authorizes a designee to act on behalf of the Animal Control Officer, clearly that designee may be named by either the Animal Control Officer, the police chief, or the CAO. To read that provision more narrowly misinterprets the supervisor authority of both the CAO and the police chief. Therefore, the division and its employees are likewise subject to the immediate supervision of the chief⁷.

⁴Section 1A-105(e)(4).

⁵ The chief is responsible "for the proper and efficient conduct, control and discipline of the department of police." Section 35-3(a). *Also see*: Section 1A-202(a) which provides that each department is under the immediate supervision of its department director.

⁶Section 1A-202(a). Section 1A-203(c) provides that Article 1A of the Code does not apply to other offices within a department or principal office and may prove to be authority for a determination that the provisions of Article 1A were not intended to apply to DACHT. If that were the case, our conclusion would not be different.

⁷Section 5-1(a) "animal control officer".