

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**August 16, 2001**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See Wis. Stat. § 808.10 and RULE 809.62.

**No. 00-3097**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

---

**IN THE MATTER OF THE REQUEST OF: FIREFIGHTER  
CHARLES T. WAGNER FOR CIRCUIT COURT REVIEW:**

**CHARLES T. WAGNER,**

**PLAINTIFF-APPELLANT,**

**v.**

**MADISON BOARD OF POLICE AND FIRE COMMISSIONERS,**

**DEFENDANT-RESPONDENT,**

**CHIEF DEBRA AMESQUA,**

**INTERESTED PERSON-(IN T.CT.).**

---

APPEAL from an order of the circuit court for Dane County:  
GERALD C. NICHOL, Judge. *Affirmed.*

Before Vergeront, P.J., Dykman and Roggensack, JJ.

¶1 ROGGENSACK, J. Charles T. Wagner appeals an order of the circuit court dismissing his petition for review of a decision of the Board of Police and Fire Commissioners for the City of Madison (PFC) because it concluded he did not properly commence circuit court review. The PFC argues that WIS. STAT. § 62.13(5)(i) (1999-2000)<sup>1</sup> deprives us of jurisdiction to consider Wagner’s appeal. Although we conclude that we have jurisdiction to review Wagner’s appeal because the circuit court’s decision was not on the merits of the PFC’s decision, we agree with the circuit court that Wagner did not follow the requirements of § 62.13(5)(i) necessary to commence circuit court review of the PFC’s decision. Therefore, we affirm the order of dismissal.

### **BACKGROUND**

¶2 The following facts are undisputed. City of Madison Fire Chief Debra Amesqua filed a complaint with the PFC against Wagner, a City of Madison firefighter. Following an evidentiary hearing, the PFC sustained some of the charges and ordered that Wagner be dismissed from employment. Wagner filed a document entitled “Notice of Request for Circuit Court Review” with the clerk of the circuit court and mailed copies to an assistant city attorney and counsel for the PFC. The circuit court concluded that Wagner had not complied with the requirements of WIS. STAT. § 62.13(5)(i), which establishes the procedures for appealing from the decision of a PFC board. As a result, the circuit court concluded that it lacked jurisdiction to hear Wagner’s appeal and entered an order dismissing it. Wagner appeals.

---

<sup>1</sup> All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

## DISCUSSION

### Standard of Review.

¶3 Interpretation of a statute is a question of law, which we review *de novo*. *Carroll v. Ansley*, 2001 WI App 120, ¶3, 244 Wis. 2d 280, \_\_\_, 628 N.W.2d 411, 412.

### Jurisdiction.

#### 1. Court of Appeals.

¶4 To determine whether we have jurisdiction in this case, we must interpret WIS. STAT. § 62.13(5)(i). When we review the application of statutes whose meanings are in dispute, our efforts are directed at determining the legislative intent underlying the statutes. *Truttschel v. Martin*, 208 Wis. 2d 361, 365, 560 N.W.2d 315, 317 (Ct. App. 1997). We begin with the plain meaning of the language chosen by the legislature. *Id.* If the language of the statute is clear and unambiguous, our inquiry ends, and we must apply that language to the facts of the case. *Id.*

¶5 A procedure for appealing the decision of a police and fire commission is established in WIS. STAT. § 62.13(5)(i), which provides in relevant part:

Any person ... removed by the board may appeal from the order of the board to the circuit court by serving written notice of the appeal on the secretary of the board within 10 days after the order is filed. Within 5 days after receiving written notice of the appeal, the board shall certify to the clerk of the circuit court the record of the proceedings, including all documents, testimony and minutes. ... The question to be determined by the court shall be: Upon the evidence is there just cause ... to sustain

the charges against the accused? .... If the order of the board is sustained it shall be final and conclusive.

¶6 Under the statute, we may not review a circuit court judgment affirming the merits of a police and fire commission because we lack jurisdiction to do so.<sup>2</sup> *Owens v. Board of Police & Fire Comm'rs of the City of Beloit*, 122 Wis. 2d 449, 451, 362 N.W.2d 171, 172-73 (Ct. App. 1984). The plain language of WIS. STAT. § 62.13(5)(i) precludes our review of a circuit court judgment that sustains an order of a police and fire commission. However, we have previously reviewed a circuit court order dismissing an appeal of a police and fire commission decision on procedural grounds. See *Truttschel*, 208 Wis. 2d at 363-69, 560 N.W.2d at 316-19.

¶7 Here, the circuit court order did not sustain an order of the PFC. Instead, the circuit court concluded that it lacked jurisdiction to review the PFC's order because the action was improperly commenced. Because it dismissed Wagner's appeal on procedural grounds, the court never addressed the merits of the PFC's decision. Therefore, we conclude that § 62.13(5)(i) provides no bar to our review of the circuit court's order dismissing Wagner's appeal.

---

<sup>2</sup> Review of determinations of the PFC also may be undertaken by writ of certiorari. *Owens v. Board of Police & Fire Comm'rs of the City of Beloit*, 122 Wis. 2d 449, 451, 362 N.W.2d 171, 172-73 (Ct. App. 1984) (citing *State ex rel. Smits v. City of De Pere*, 104 Wis. 2d 26, 31-32, 310 N.W.2d 607, 609 (1981)). Wagner requested certiorari review in the same document in which he attempted to commence a WIS. STAT. § 62.13(5)(i) review. However, his appeal does not argue that service was sufficient to commence a certiorari review. Therefore, we do not address it in this appeal. *Truttschel v. Martin*, 208 Wis. 2d 361, 369, 560 N.W.2d 315, 318-19 (Ct. App. 1997) (“[W]e do not decide issues that are not adequately developed by the parties in their briefs.”).

## 2. *Circuit Court.*

¶8 In order to confer jurisdiction on the circuit court to review the merits of the PFC's decision under WIS. STAT. § 62.13(5)(i), Wagner must strictly comply with the requirements of the statute. *Gibson v. City of Racine Police & Fire Comm'n*, 123 Wis. 2d 150, 152-53, 366 N.W.2d 144, 145-46 (Ct. App. 1985). Section 62.13(5)(i) requires that one seeking to obtain circuit court review must do so by serving written notice of the appeal on the secretary of the police and fire commission within ten days after its order is filed. Wagner did not strictly comply with the procedure required by the statute. Instead of serving written notice of the appeal on the secretary of the PFC, he filed a document entitled "Notice of Request for Circuit Court Review" directly with the circuit court and provided a copy to the PFC's counsel. Because he did not personally serve the PFC's secretary as the statute and case law require, we conclude that the appeal was not properly commenced and that the circuit court was without jurisdiction to reach the merits of his appeal.

¶9 Wagner also argues that the PFC should be estopped from moving to dismiss his request for circuit court review because he served the document on the PFC's authorized agent. However, as has been explained above, he is required to strictly comply with the statutory requirements for commencing an appeal of an administrative decision. *Gibson*, 123 Wis. 2d at 152-53, 366 N.W.2d at 145-46. Because he has not done so, we conclude that the PFC is not estopped from moving to dismiss his petition for circuit court review. Accordingly, we affirm the circuit court's order of dismissal.

## CONCLUSION

¶10 We conclude that we have jurisdiction to review Wagner's appeal because the circuit court's decision was not on the merits of the PFC's decision, and we agree with the circuit court that Wagner did not follow the requirements of WIS. STAT. § 62.13(5)(i) necessary to commence circuit court review of the PFC's decision. Therefore, we affirm the order of dismissal.

*By the Court.*—Order affirmed.

Not recommended for publication in the official reports.

