Kenosha County Corporation Counsel's Newsletter

Feburary, 2008

Attorney General Opinions

Recent Opinions of the Attorney General

The Publication of Legal Notices

On February 14, 2008 the Wisconsin Attorney General's Office issued an opinion to the Kenosha Corporation Counsel's Office that confirms prior opinions of this office that Kenosha County does not have to designate an "official newspaper" and furthermore does not have to seek bids for publication of legal notices. That opinion also opined that the County does not have to contract out publications of County Board proceedings in book form and may print these proceedings "in-house" or in the alternative post them on its web site.

While that opinion disagreed with the Corporation Counsel's Office on the ability of the County to "publish" all of its legal notices on its web site in lieu of publishing in a hard copy or sheet publication, the opinion does confirm the ability of the County to "post" its legal notices in three public places — plus its web site — in lieu of a hard copy or sheet publication as long as its web site is not considered as one of the "three public places."

Kenosha County has in recent years spent in excess of $70,000 a year on such

publications. It is now in the process of formatting its web site to accommodate such notices in years to come. Web postings are better suited to giving better notice to more people.

The United States Census Bureau Special Study on Computer and Internet Use in the United States: 2003 reports that approximately 62% to 67% of Wisconsin households have a computer and approximately 55% to 60% of all Wisconsin households have internet access. On a national scale, that report indicates that over 40% used the internet for news in 2003 and that almost 33% used the internet for information on government services. Almost 30% of individuals age 65 or older had access. The United States Department of Commerce for 2001 at www.ntia.doc.gov/ntiahome/dn/nationonline_020502.htm reported 50.2% of Wisconsin households had internet access. These surveys along with their degree of accuracy strongly evince a conclusion that more households and businesses in Kenosha County, which has a population of over 150,000, [and which is in the process of installing "broadband" throughout the entire county] have access ------in fact instant access to these legal notices posted on the internet than subscribe to either of the two Kenosha area newspapers certified to publish legal notices. The Kenosha News has a daily circulation of 28,683 and a Sunday circulation of 31, 587 and the Kenosha Labor Paper [which is published weekly and which has outbid the Kenosha News for publication of legal notices] has a circulation of 10,312. These figures are from June, 2006. Furthermore, internet access is available to those who do not have home access by going to the public library. The method of notification prescribed in *Wisconsin Statute § 985.02,* which is to publish in a *newspaper likely to give notice in the area or to the person affected*, we would submit, is best adhered to by internet posting. In fact, notice is given to the entire world! Since 1990 total morning and evening circulation has steadily declined [http://web.naa.org/info/facts04/circulation-daily.html] while, in 2004, more than 1,500 daily newspapers in North America had sites on the World Wide Web [http://web.naa.org/info/facts04/highlights.html]. In fact the Madison Capitol Times recently announced that it would only publish twice a week in a hard copy format and that for the remainder they would "publish" on-line.

Additional benefits of posting legal notices on the County's web site include instantaneous posting allowing for longer deadlines for the submission of notices, instantaneous corrections, 24 / 7 access, the ability to archive notices and perform cumulative searches, the ability to provide more information such as posting not only the text of a proposed zoning amendment but also a link to the actual zoning map and the posting of not only the heading of a resolution that will appear on an agenda but also the actual resolution in its entirety and the actual posting dates of

the first and last posting as well as an affidavit of posting utilizing a certified digital signature. The other obvious benefit is the savings to the taxpayer in publication costs.

Guidelines for Attorney General Opinion Requests

Unlike municipal attorneys for other units of government, County Corporation Counsels are authorized to request opinions from the Attorney General. The reason for this is that in the absence of a Corporation Counsel the District Attorney is authorized by law to act on behalf of the county in certain instances and District Attorneys are entitled to seek opinions from the Attorney General. Furthermore, unlike cities, towns and villages, counties are considered to be an arm of state government. In some states the District Attorney handles not only the criminal side of the aisle but also the civil. Specifically, Wisconsin Statutes § 59.42 (1) (c) states that "The corporation counsel may request the attorney general to consult and advise with the corporation counsel in the same manner as district attorneys as provided by s. 165.25 (3). Wisconsin Statutes § 165.25 (3) states that the Justice Department is to "consult and advise with the district attorneys when requested by them in all matters pertaining to the duties of their office."

May a Corporation Counsel Refuse to Request an Opinion of the Attorney General When So Ordered by the County Board?

To the best of our knowledge, the answer to this question is "Yes." In 1922, prior to the state legislature creating the office of Corporation Counsel, the Attorney General was asked by a District Attorney to respond to a request for an opinion that was being made on behalf of a County Board. His response was:

> . . . . That is very complimentary, but if all county boards and district attorneys favored this office in like manner we would be overwhelmed with kindness and hard work. . . .
>
> . . . . The fact that you wrote two letters on the same day at the behest of county authorities asking for opinions from the Attorney General is sufficient warrant, I think, for calling your attention to the fact that **the district attorney** [nowadays, the Corporation Counsel] **is the statutory legal adviser of county officers,** (Sec. 59.47, Stats.), and that **the attorney general is not authorized by statute to render opinions to county boards or other**

> **county officers except the district attorney** (sec. 14.53), and that as to district attorneys the authority and duty of this office is limited to advising and counseling with them. In counseling or advising with this office it is not fair on the part of the district attorney to throw all of the work of examining the statutes and searching for authorities upon the attorney general's office. Before submitting a question the district attorney ought to do some work on it. And when he takes counsel with this office he should give us the benefit of the study he has put upon the subject. **We think too that he should only seek counsel here when he feels the need of it, and should refuse to submit questions, and thereby take up the time of this office, merely because he is asked to submit those questions. If he is satisfied that he knows the answer to a question which arises in the administration of county affairs, he should refuse to put the question to this office, except in unusual cases** or where the circumstances rather compel such a course. *[XI Opinions of the Attorney General 243, March 21, 1922]*. [See also: *X Opinions of the Attorney General 1015, October 26, 1921*; *28 Opinions of the Attorney General, Forward, January 26, 1939*; and *30 Opinions of the Attorney General, Forward, February 15, 1941*] [Emphasis added]

In addition to requiring the Corporation Counsel or District Attorney to research the question submitted and to offer his or her conclusion, the Attorney General"s office has indicated in its February 15, 1941 Preface that opinion requests should not be submitted on an issue that is the subject of current or reasonably imminent litigation or on matters involving the exercise of legislative or executive judgment or discretion. Constitutional questions are furnished only to the Governor or either branch of the Legislature. In addition, the Attorney General has refused to render opinions on the intent and operation of municipal ordinances. Since the mid 1070s the Kenosha County Corporation Counsel"s Office has sought opinions from the Attorney General on approximately 20 occasions.

CASES OF INTEREST

Courthouse Closing Results in Overturned Conviction

In a recent decision the District Three Wisconsin Court of Appeals ruled that a defendant was entitled to a new trial because the trial went past the time that the Courthouse doors were normally closed. *In State of Wisconsin v Vanness, 2007 WI. App. 195, (July 3, 2007)*

the Defendant had a one day jury trial. The State completed its evidence at 4:24 p.m. Pursuant to the county's policy, the courthouse doors were locked at 4:30 p.m. From 5:04 p.m. to 6:15 p.m., the court was in session, and the jury heard defendant's defense and the State's rebuttal. Although the doors to the courtroom remained open, both parties agreed the doors of the courthouse were locked during the presentation of defendant's entire defense and the State's rebuttal. Defendant argued he was entitled to a new trial because his Sixth Amendment right to a public trial was violated when the courthouse doors were locked and the public was denied access to the courtroom while he presented his case and the State presented its rebuttal. The appellate court agreed. Although the courtroom doors remained unlocked, the fact that the doors to the courthouse were locked, without an alternative entry, in effect denied the public access to the trial. The closure was not a trivial violation. Defendant's response to the accusations against him and the State's rebuttal were critical proceedings in criminal trials.

The right to a public trial is a basic tenet of the judicial system, rooted in the principle that justice cannot survive behind walls of silence. The importance attached to a public trial is reflected both in its deep roots in the English common law and in its seemingly universal recognition in this country since the earliest times. Public trials help to prevent perjury, unjust condemnation, and keep the accused's triers keenly alive to a sense of their responsibility and to the importance of their functions. Public trials may also encourage unknown witnesses to come forward and further serve to preserve the integrity of the judicial system in the eyes of the public. In short, the public trial is the most effectual safeguard of testimony, and of the decisions depending on it; it is the soul of justice; it ought to be extended to every part of the procedure, and to all causes.

OUTCOME: The judgment and order were reversed and remanded for a new trial.

Local Laws Barring Illegal Aliens from Work or Housing Are Pre-empted by Immigration Reform and Control Act

In an 80 page decision issued last summer, the United States District Court for the Middle District of Pennsylvania ruled that local ordinances regulating illegal immigrants were unconstitutional and permanently enjoined the city from enforcing them. Plaintiffs sought to permanently enjoin the enforcement of defendant city's ordinances that regulated the presence and employment of illegal aliens. The ordinances at issue were the Illegal Immigration and Relief Act Ordinance, Hazleton, Pa., 2006-18, as amended by 2006-40 and 2006-6, and the Official English Ordinance, Hazleton, Pa., 2006-40 (collectively, IIRA); and the Tenant Registration Ordinance (RO), Hazleton, Pa., 2006-13.

The ordinances were aimed at what the city viewed as the problems created by the

presence of illegal aliens. They were unenforceable, though, because they conflicted with federal law and violated constitutional protections. Federal law preempted both ordinances because they disrupted the federal scheme for regulating the presence and employment of immigrants in the U.S. They violated the Supremacy Clause, U.S. Const. art. VI, cl. 2, and were unconstitutional. They also violated (1) the Fourteenth Amendment by penalizing landlords, tenants, employers, and employees without providing them federal procedural protections, and (2) 42 U.S.C.S. § 1981 by burdening illegal aliens' rights, as "persons," to contract. Neither ordinance facially discriminated on the basis of race, ethnicity, or national origin and did not violate equal protection or the Fair Housing Act, 42 U.S.C.S. § 3601 et seq. Their housing provisions provided renters the procedural protections of the Pennsylvania Landlord Tenant Act, 68 Pa. Stat. Ann. § 250.101 et seq. It was unclear whether the ordinances violated plaintiffs' privacy rights, but, by enacting unconstitutional ordinances, the city exceeded its police powers. *Lozano v City of Hazleton, 496 F. Supp. 2d 477, (July 26, 2007).*

Open Meetings and Public Records

Employee Personnel Records

There are three categories of employee-related records:

1. Those that are absolutely closed to the public unless authorized by either the employee or a collective bargaining agreement [these records include information on an employee's address, phone number, e-mail address, social security number, information on a current investigation of employee misconduct, examination information (except for an exam score unless otherwise prohibited), performance evaluations, letters of reference);

2. Those that can be released without notice or a judicial right of review after having applied the general "balancing test" (the "balancing test" does not apply in certain situations enumerated in Wis. Stats sec. 19.35 (1)(am) and includes information that may lead to an enforcement action, information that may endanger one's life or safety or identify a confidential informant, etc); and

3. Those that may be released after applying the "balancing test" and after providing notice of a pending release and an explanation of the right to judicial review. Where notice is required it must be given within three business days after the decision to permit access. The notice should reflect that the employee has five days after receipt of the notice to notify the employer in writing of a decision to object to the disclosure and then the employee has 10 business days after receipt of the notice to file the objection with the circuit court. If no objection is filed, the custodian must wait 12 business days before providing access. If an objection is filed the custodian must wait for the decision of the court and should notify the person making the request of the objection. The person making the request can then intervene in the court proceedings. Notice should be in writing and given either personally or by certified mail. Failure to follow the time lines can result in liability. We suggest the standard form printed in the State Bar handbook cited in this opinion and attached to this opinion be used by the County.

Unless the information sought is clearly exempt (for example, the employee's home address), the answers are not always clear cut. Each request is different and begins with the "balancing test." It is, however, always the employee's right to privacy v the public at large right to know - - - not an individual member of the public who has a private interest in the information sought, but rather the entire public community in general.

Because there are so many cases on this issue we recommend that county departments obtain a copy of the State Bar Handbook on this issue. For example, in the case of law enforcement records, in the case of Hempel v City of Baraboo, 284 Wis. 2d 162 (2003) the Wisconsin courts have ruled that law enforcement disciplinary records opened to public scrutiny could hamper the department's ability to investigate allegations of misconduct by inhibiting personnel from giving pertinent confidential statements. The harm to the public interest may outweigh the interest in disclosure. In that case the police officer was not charged with sexual harassment for lack of evidence and he wanted access to his file to see information pertaining to the complaint against him. This is not to suggest that all disciplinary actions of law enforcement personnel is exempt from disclosure. If, for example, an employee is fired for gross misconduct and the internal investigation and grievance procedure is completed, the case for non-disclosure is more difficult. But here again it depends upon the information being sought, whether it can be redacted and other such considerations

Parliamentary Pointers

http://www.rulesonline.com/start.html

How Motions Are Classified under Robert's Rules of Order

A Main or Principal Motion is a motion made to bring before the assembly, for its consideration, any particular subject. It cannot be made when any other question is before the assembly; and it yields to all Privileged, Incidental, and Subsidiary Motions -- that is, any of these motions can be made while a main motion is pending.

Subsidiary Motions are such as are applied to other motions for the purpose of most appropriately disposing of them. By means of them the original motion may be modified, or action postponed, or it may be referred to a committee to investigate and report, etc. They may be applied to any main motion, and when made they supersede the main motion and must be decided before the main motion can be acted upon. None of them, except the motion to amend and those that close or limit or extend the limits of debate, can be applied to a subsidiary, incidental (except an appeal in certain cases), or privileged motion. Subsidiary motions, except to lay on the table, the previous question, and postpone indefinitely, may be amended. The motions affecting the limits of debate may be applied to any debatable question regardless of its privilege, and require a two-thirds vote for their adoption. All those of lower rank than those affecting the limits of debate are debatable, the rest are not. The motion to amend anything that has already been adopted, as by-laws or minutes, is not a subsidiary motion but is a main motion and can be laid on the table or have applied to it any other subsidiary motion without affecting the by-laws or minutes, because the latter are not pending.

> In the following list the subsidiary motions are arranged in the order of their precedence, the first one having the highest rank. When one of them is the immediately pending question every motion above it is in order, and every one below it is out of order. They are as follows:
>
> Lay on the Table
> The Previous Question

Limit or Extend Limits of Debate
Postpone Definitely, or to a Certain Time
Commit or Refer, or Recommit
Amend
Postpone Indefinitely

Incidental Motions are such as arise out of another question which is pending, and therefore take precedence of and must be decided before the question out of which they rise; or, they are incidental to a question that has just been pending and should be decided before any other business is taken up. They yield to privileged motions, and generally to the motion to lay on the table. Generally, but with some exceptions, a subsidiary motion cannot be applied to an incidental motion.

The following list comprises most of those that may arise:

Questions of Order and Appeal
Suspension of the Rules
Objection to the Consideration of a Question
Division of a Question, and Consideration by Paragraph or Seriatim
Division of the Assembly, and Motions relating to Methods of Voting, or to Closing or to Reopening the Polls
Motions relating to Methods of Making, or to Closing or to Reopening Nominations
Requests growing out of Business Pending or that has just been pending; as, a Parliamentary Inquiry, a Request for Information, for Leave to Withdraw a Motion, to Read Papers, to be Excused from a Duty, or for any other Privilege

Privileged Motions are such as, while not relating to the pending question, are of so great importance as to require them to take precedence of all other questions, and, on account of this high privilege, they are undebatable. They cannot have any subsidiary motion applied to them, except the motions to fix the time to which to adjourn, and to take a recess, which may be amended. But after the assembly has actually taken up the orders of the day or a question of privilege, debate and amendment are permitted and the subsidiary motions may be applied the same as on any main motion. These motions are as follows, being arranged in order of precedence:

Fix the Time to which to Adjourn (if made while another question is pending)
Adjourn (if unqualified and if it has not the effect to dissolve the assembly)
Take a Recess (if made when another question is pending)
Raise a Question of Privilege

Call for Orders of the Day

Local County Board Rules

How do you determine if you have a 2/3 vote?

2/3 of 28 equals 18.666666. If the vote is 18 to 10 you DO NOT have the requisite 2/3 vote because it takes a 1/3 vote to defeat the question requiring a 2/3 vote. One third of 18 is 9.33333. On a vote of 18 to 10 the 1/3 minority has more than the 1/3 vote of 9.33333 that is needed and the side with the 18 votes is shy of the 18.66666 votes it needs. Always round off the vote that is needed to the next highest number.

Section 2.13 (8) of the Kenosha County Board Rules states:

(8) Unless otherwise specified, the majority vote shall consist of a simple majority of the votes cast and unless otherwise specified, a two-third vote shall consist of two-thirds of the members of the county board; that is, not less than eighteen votes of the 27 member Board. (11/15/88)

When dealing with a two-thirds vote it is also important to note whether the vote required is 2/3 of the entire board or 2/3 of those present [not present and voting]. A budget change, according to state statute Sec. 65.90, requires 2/3 of the entire board while a suspension of the rules requires 2/3 of those present. [MCKC Sec. 2.14]

Ethics

FAQs

Can a County Board Supervisor Be a County Employee?

No. Wisconsin Statutes § 59.10 (4) states:

(4) COMPATIBILITY.

No county officer or employee is eligible for election or appointment to the office of supervisor, but a supervisor may also be a member of a committee, board or commission appointed by the county executive or county administrator or appointed or created by the county board, a town board, a mosquito control district, the common council of his or her city, the board of trustees of his or her village or the board of trustees of a county institution appointed under s. 46.18

May a County Board Supervisor Intervene on behalf of a Constituent in a County Ordinance Citation Case, Child Support Proceeding, Contract Award?

Consider Wisconsin Statute § 946.12. Misconduct in public office.

Any public officer or public employee who does any of the following is guilty of a Class I felony:

(3) Whether by act of commission or omission, in the officers or employees capacity as such officer or employee exercises a discretionary power in a manner inconsistent with the duties of the officers or employees office or employment or the rights of others and with intent to obtain a dishonest advantage for the officer or employee or another; . . . .

May a County Board Supervisor Voice an Opinion on a County Board (Advisory) Referendum?

Yes, as long as no county resources are used?

Wisconsin's law accords governmental officials broad latitude to comment upon the role of government and matters of public policy; consequently, officials' comment on the wisdom and consequences of a referendum's passage is consistent with laws that the Ethics Board administers.

Actions independent of governmental resources:

When acting without reliance upon governmental resources, a state public official may advocate the passage or defeat of a referendum and may solicit money for a committee advocating the passage or defeat of a referendum as long as the official does not solicit money forth is purpose from a lobbyist, from a business or organization that employs a lobbyist, or formal business or organization regulated by or doing business with an official's governmental office or agency or legislative committee.2 §§13.625, 19.45 (3), Wisconsin Statutes]

Powers of the County Executive and the County Board

Power to Subpoena

The main function of the County Board is to make policy decisions. To do this it must be informed. To be informed it must educate itself and be informed. One way to be informed is to investigate; and one way to investigate is to hold hearings on the subject at hand. To effectively investigate, County Board Committee Chairpersons have the power to compel testimony before a committee. In most cases this is done voluntarily; but if need be, testimony — a sworn statement under oath — can be compelled by the issuance of a subpoena by the committee chair or by a committee member to a witness compelling them to appear before the committee and to bring with them documents or other material deemed relevant. The normal rules of privilege and confidentiality apply. If a subpoena is not complied with, it may be enforced by a court order, the disobedience of which is subject to contempt of court proceedings and penalties.

Specifically Wisconsin Statutes § 885.01 states:

885.01. Subpoenas, who may issue.

The subpoena need not be sealed, and may be signed and issued as follows:

(1) By any judge or clerk of a court or court commissioner or municipal judge, within the territory in which the officer or the court of which he or she is the officer has jurisdiction, to require the attendance of witnesses and their production of lawful instruments of evidence in any action, matter or proceeding pending or to be examined into before any court, magistrate, officer, arbitrator, board, committee or other person authorized to take testimony in the state.

(2) By the attorney general or any district attorney or person acting in his or her stead, to require the attendance of witnesses, in behalf of the state, in any court or before any magistrate and from any part of the state.

(3) By the chairperson of any committee of any county board, town board, common council or village board to investigate the affairs of the county, town, city or village, or the official conduct or affairs of any officer thereof.

(4) By any arbitrator, coroner, medical examiner, board, commission, commissioner, examiner, committee or other person authorized to take testimony, or by any member of a board, commission, authority or committee which is authorized to take testimony, within their jurisdictions, to require the attendance of witnesses, and their production of documentary evidence before them, respectively, in any matter, proceeding or examination authorized by law; and likewise by the secretary of revenue and by any agent of the department of agriculture, trade and consumer protection.

(5) By the department of workforce development or a county child support agency under s. 59.53 (5) in the administration of ss. 49.145, 49.19, 49.22, 49.46 and 49.47 and programs carrying out the purposes of 7 USC 2011 to 2029.

The “Frankenstein” Veto

The “Frankenstein veto” refers to the unique veto power of the Governor of the State of Wisconsin to veto letters, words, individual numbers and punctuation in legislation (including budget bills) that are presented to him or her for signature. For example, a line item appropriation in a budget might read $100,000 or the legislation might read “It shall be unlawful for a County Board Supervisor to seek campaign contributions from the Board floor.” Applying the “Frankenstein veto”

to these items could change them to read as follows: $100~~,000~~ and "It shall be ~~un~~lawful for a County Board Supervisor to seek campaign contributions from the Board floor." It has been argued that this allows the executive branch the opportunity to legislate and is a usurpation of the power of the legislative branch of government. Nevertheless, this veto has been upheld by the courts.

The Wisconsin Attorney General in 1988 opined that the veto power of the County Executive is similar to that of the Governor. In that opinion he stated:

> . . . . In counties with an elective executive, both the county board and the county executive jointly exercise broad authority to establish the county budget and approve appropriations for all county departments. See secs. 65.90, 59.031(5) and (6) and 59.84, Stats. In fact, the county executive's partial approval/partial veto authority with respect to appropriations carries with it a power, legislative in nature, similar to that exercised by the Governor in reference to acts of the Legislature, to change the policy of the law as originally envisaged by the county board. 74 Op. Att'y Gen. 73, 74 (1985); 73 Op. Att'y Gen. 92,93-94 (1984). [OAG 25-88, 1988 Wisc. AG LEXIS 25] .

In a 1985 opinion to this office [74 OAG 73] the Attorney General stated:

> The statutory counterpart as to veto power for counties of less than 500,000 is contained in section 59.032(6), Stats., and contains language substantially identical to the constitutional provision. In an opinion dated August 22, 1984,OAG 27-84, it was stated that the veto power of the county executive was similar to that of the Governor and extends to any part of a county board resolution or ordinance containing an appropriation and can effect a change in policy as well as amount if the net result of the partial veto is a complete, entire and workable ordinance or resolution which the county board could have passed in the first instance. See State [*4] ex rel. Sundby v. Adamany, 71 Wis. 2d 118,237 N.W.2d 910 (1976); State ex rel. Kleczka v. Conta, 82 Wis. 2d 679, 264 N.W.2d 539 (1978).

In that opinion, however, the Attorney General opined that where the County Executive vetoed an appropriation but left the levy unchanged the County

Executive overstepped his bounds and the levy would have to be adjusted accordingly.

Veto Override

The County Executive's veto may be overridden by a 2/3 vote of the members-elect. The County Executive must send it back to the Board at its first meeting occurring not less than six days [not including sundays] after it has been presented to him [section 59.032(6), Stats].

1. Does the county board have power to amend a resolution, ordinance or part of a resolution or ordinance containing an appropriation which the county executive has vetoed and returned to the board?

The answer is no. However, the county board does have the power to pass a separate substitute for submission to the executive. The power of the board on reconsideration is whether to override the veto. To promote orderly procedure, it is suggested that vetoed items be considered promptly and separately from legislative attempts to provide the executive with a proposal which might be approved. The board, of course, has the power to pass a new and separate resolution or ordinance to fill any void caused by the executive veto. The failure of the county board, upon reconsideration under sub. (6), to approve any appropriation vetoed by the county executive does not operate to appropriate the amount specified in the proposed budget submitted by the county executive.

2. Must the county board take action on a county executive's veto immediately upon its return or may it table the matter for consideration at a later time?

The board has a duty to promptly reconsider the matter at its first meeting following its return with objections. Neither the constitution nor statute establish a time within which the board must act. The open meetings law would require that rather specific notice of the reconsideration after veto be given. Sec. 19.84, Stats. A court might hold that failure to reconsider at the next meeting at which adequate notice could be given would make the returned ordinance, resolution or vetoed part thereof void. See 5McQuillin Municipal Corporations @ 16.46 (3rd Rev. Ed.). A contrary view is stated in 62 C.J.S. Municipal Corporations @ 424.Tabling could be construed to be rejection or failure to override.

Time constraints in the budget and tax levy process require prompt reconsideration or rejection where amounts appropriated are to be financed by tax levy. Budget hearings at the county level required by section 65.90((3) are usually held in late October or November, and the town, city or village clerk must deliver the tax roll to the respective municipal treasurer on or before the third Monday in December. Sec.70.68(2), Stats.

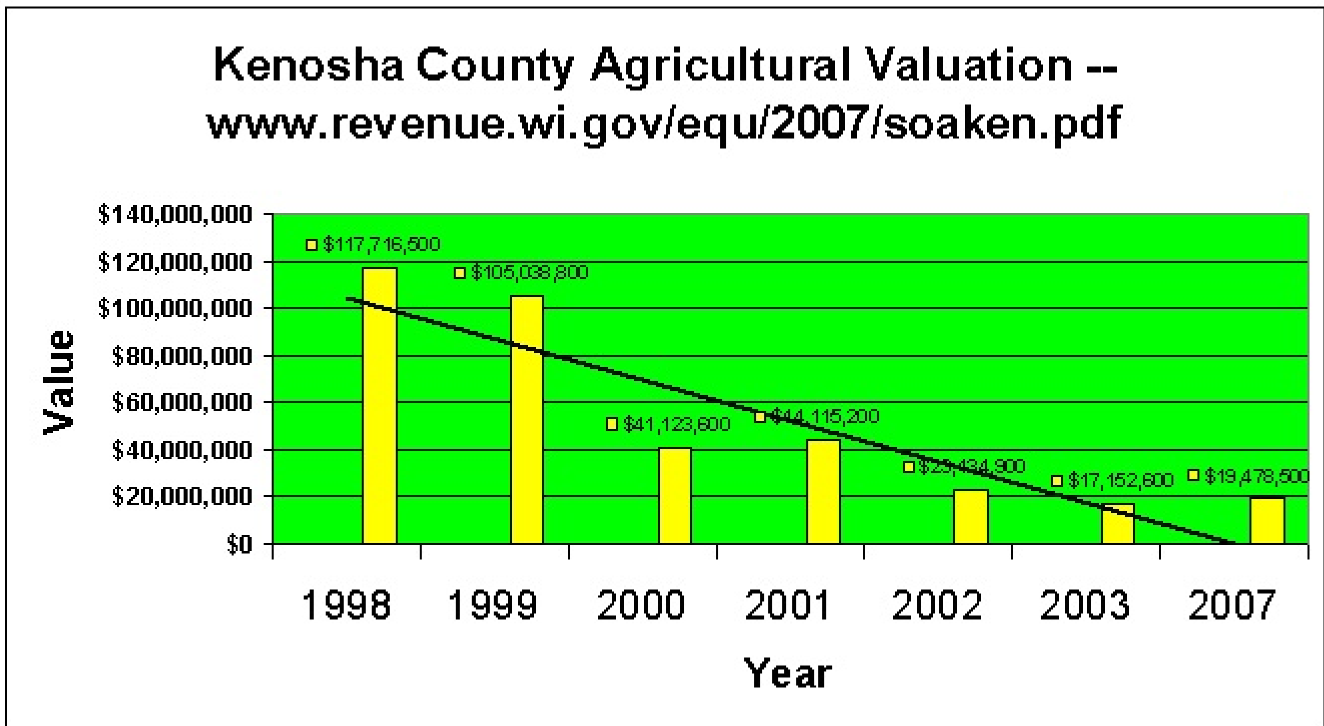
The Attorney General has opined that the board could consider all line vetoes in one motion. Section 990.001(1) is at least applicable to words in section 59.032(6), and the word "part" as used therein can be construed as parts since the singular includes the plural. In most cases, a county board would be well advised to consider each veto separately in order to seriously consider the objections which the county executive is required to set forth as to each part. In 70 Op. Att'y Gen. 189 (1981), it was stated that failure of the Governor to express objections which could be identified as to several possible vetoes made such possible vetoes ineffective. A county board and county executive have important legislative and administrative powers. There is some room for give and take, but efficient county government requires that they cooperate.

STATISTICS AND DATA OF INTEREST

The State of Wisconsin now utilizes the concept of "use assessments" in the valuation of farmland for property tax purposes. This was done in an effort to curb urban sprawl resulting from the sale of farmland due to the high taxes the farmer was paying due to the high development value of his land and results in farmland now being assessed on the basis of its use rather than on its value for development purposes. The end result is that instead of paying taxes on the

higher development value of the farmland the farm pays property tax based upon the lower agricultural value of the land. What the farm would have paid in higher taxes is then paid by other [usually residential] property owners. Ten years ago the tax base for farmland was $117 + million in 1998 dollars. Today it is valued at just under $20 million in 2007 dollars.

Property that is no longer used for agricultural purposes, that has benefitted from lower property taxes as a result of use-value assessment, may be subject to a penalty. This occurs when the use of the land is converted to a residential,



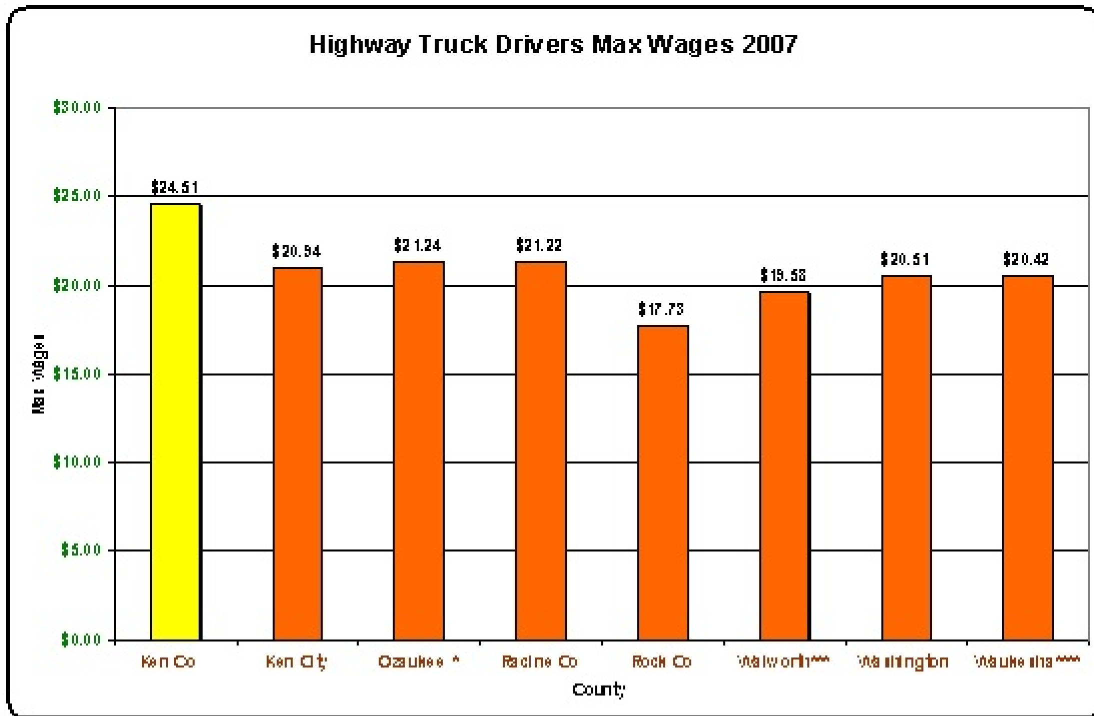
commercial, manufacturing use (or becomes exempt and converts to a use other than undeveloped, agricultural forest, forest or agricultural home site). The assessor makes the determination on the following year's assessment roll. The penalty varies by the number of acres converted. The more acres converted, the lower the penalty amount per acre.

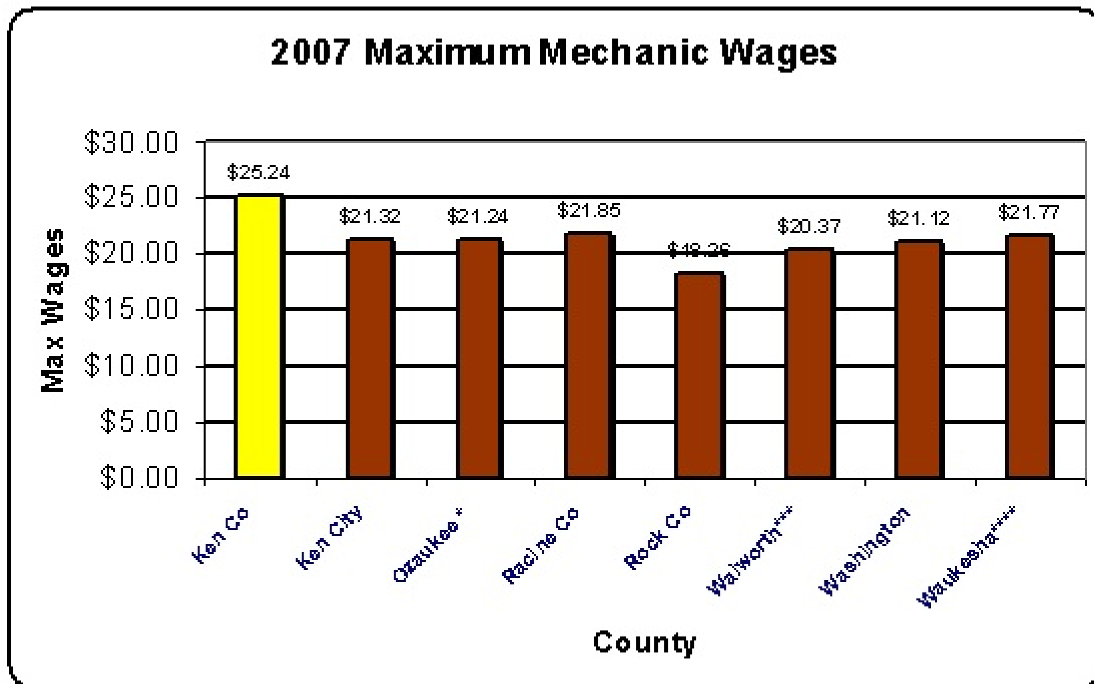
Grievances and Collective Bargaining Agreement Report

GRIEVANCE REPORT				
Union	**Grievance No.**	**Name**	**Description**	**Status**
990 Clerical	04-990C-010		Contract Employee doing bargaining unit work	
	-009		Office Asso. Coverage	re-filed
	-010		On-line access room	hearing set 4-1-08
	07-990C-007		Job Center Flex Hours	
	07-990C-005	Krahn	Hours of Work	hearing set 4-1-08
990 Pros	06-990P-004	Micklas		awaiting decision
	06-990P-005		Contracting Bargaining Unit Work	
		Juvenile Intake	Unit Clarification	positions accreted
	07-990P-001, 003, 004, 005	Fockler		awaiting arbitrator assignment
	07-990P-006	Victim Witness	Unit Clarification	

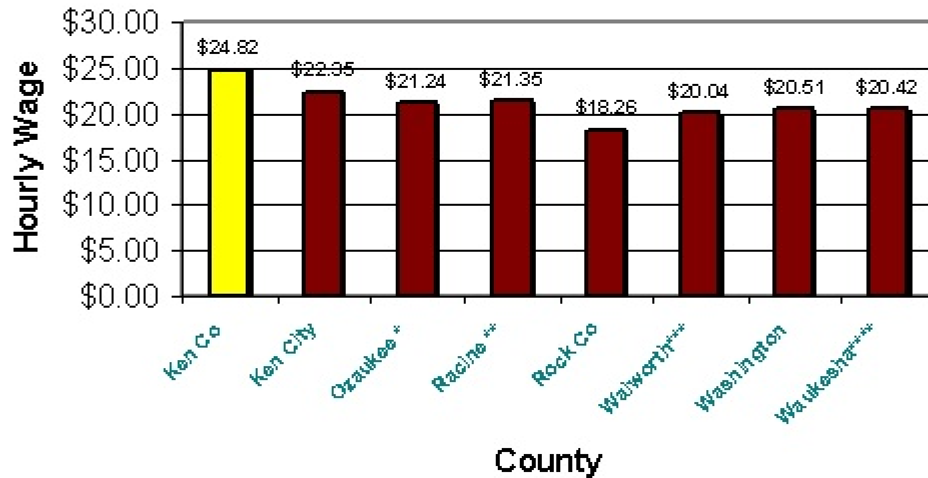
GRIEVANCE REPORT				
Union	**Grievance No.**	**Name**	**Description**	**Status**
	07-990P-007	Vollendorf		
990 Jail			Overtime Emergency	MOU signed
Deputies	05 DEP 012		Bargaining Unit Work Re: Courthouse Security	Brief due 3/31/08
Joint Services	06-2430-005		A&S w/o Dr's Statement	
	06-2430-008	Lovell	Dr. Statement	
		Aken		brief due 3/17/08

The County is currently negotiating with Highways and Parks and will open negotiations with the Sheriff Deputies, Nurses, Jailers and 990 Professionals in 2008. The following are a comparison of wages for highway and parks employees in the seven Southeastern Wisconsin Counties. This information is a rough draft based upon the most current information available and may reflect wages levels for years other than 2007 and may not reflect certain other factors that go into determining wages, such as longevity pay and appropriate job classification.

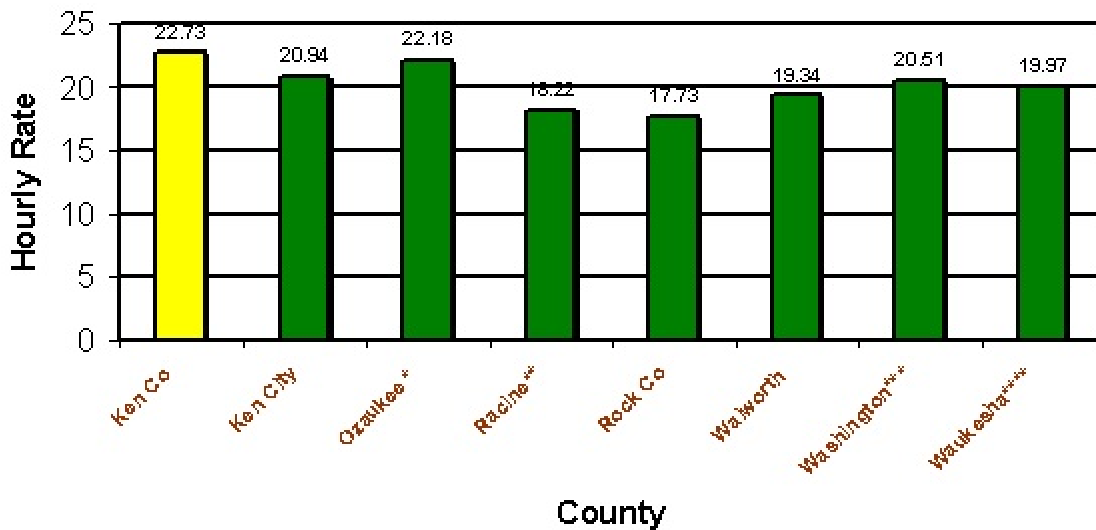

Highway Truck Drivers Max Wages 2007
$30.00
$25.00
$20.00
$15.00
$10.00
$5.00
$0.00
$24.51
$20.94
$21.24
$21.22
$17.73
$19.58
$20.51
$20.42
Ken Co
Ken City
Ozaukee *
Racine Co
Rock Co
Walworth***
Washington
Waukesha****
County


2007 Maximum Mechanic Wages
Max Wages
$30.00
$25.00
$20.00
$15.00
$10.00
$5.00
$0.00
$25.24
$21.32
$21.24
$21.85
$18.26
$20.37
$21.12
$21.77
Ken Co
Ken City
Ozaukee *
Racine Co
Rock Co
Walworth***
Washington
Waukesha****
County

Maximum 2007 Equip Operator Wage



Max 2007 Park Employee Wage



Office Report

CONFERENCE REPORT

The National College of District Attorney's conference on "Government Civil Practice" is held twice a year and is usually attended by a Corporation Counsel staff attorney. This year's conference added programs on "Legal Issues Surrounding Background Checks and Employee References" and the risks involved in remaining silent when a former problem employee seeks a reference vs the risk of a defamation claim; Ethics for Municipal Attorneys and conflicts of interests and confidentiality issues; The Attorney's Role in Emergency Government and the need for intergovernmental agreements; Police Pursuits and Government Liability and the necessity of having a written and viable 'hot pursuit' policy; and Jail Litigation and Defending Excessive Force Cases. The other usual topics on civil rights litigation, zoning, regulatory takings, employment law and evidence and procedural issues were also discussed and up-dated.

Chapter 51 Mental Commitment & Chapter 55 Protective Placement Case Report

	2006 Referrals	2007 Referrals
Chapter 51	738	708
Chapter 55	68	87

CONTRACT REPORTS

Public Safety Building Leases

The Joint Services Board and City leases for space at the Public Safety Building expired in April and are now on a year to year term.

Kenosha County built the PSB and paid for the entire construction through bonding. Not only did the County pay for construction but also for interest on the debt as well as for capital improvements and their financing over the years. The intent was to lease part of the building to the City which was in desperate need of a jail and to combine certain common services such as record keeping, dispatch, evidence technicians and fleet maintenance into the civilian agency we now call Joint Services which would be run by a 7 member board of city and county directors and one citizen appointee which would also lease space from the County. The square footage rent for the space leased to the City and to Joint Services is based on each party's share of the operating costs. At the time this was a pioneer effort to consolidate municipal services in the State of Wisconsin. 911 updates were paid by the County only.

Waste Management Siting Agreement

No meeting date has been set for the County to sit down with Waste Management to negotiate a contract covering the expansion of the Paris Landfill.