



Kenosha County Corporation Counsel's Newsletter

July, 2007

STATE SUPREME COURT REVISITS THE POWERS OF THE SHERIFF

The State Supreme Court recently ruled that a County Sheriff does not have the right to unilaterally hire a private food service provider to prepare meals for jail inmates. The Court's ruling determines that the preparation of food for inmates is not within the Sheriff's constitutional powers and is subject to legislative limitations and collective bargaining agreements.

In *Kocken v Wisconsin Council 40 AFSCME*, the Court indicated that running the jail is an important and principal duty that characterizes the office of Sheriff just as is duty to attendance on the court.

Thus, the Court stated that just as the Legislature cannot by mandating collective bargaining deprive the Sheriff of his authority to select which of his deputies will act for him in attending to the county courts, so to it cannot deprive him of control of the jail.

That said, however, the Court ruled that the Legislature can regulate the executive and administrative duties of the Sheriff. Tasks that relate to the Sheriff's powers that are non-distinctive, "mundane and commonplace," internal management and administrative duties were found by the court to not take on constitutional dimensions.

The test is whether the power or authority gives character or distinction to the office. Thus appointing deputies and providing food service does not define what the Sheriff is responsible for as is the case with enforcing the law, attending to the courts etc. The Court stated that each task must be individually analyzed and assessed.

LEGISLATION OF INTEREST

According to the Wheeler Report, the proposed state budget now before the Legislature includes provisions for:

1. NEW KENOSHA COUNTY CIRCUIT COURT BRANCH

Senate: Create a new circuit court branch for Kenosha County. Provide 1.0 GPR circuit court judge position and 1.0 GPR court reporter position for Kenosha County. The initial election for the new circuit court branch would occur at the spring election of 2009 for a term commencing on August 1, 2009, and ending on July 31, 2015. Since the term would not begin until after the end of the 2008-09 fiscal year, costs associated with the positions would not occur until the 2009-11 biennium. Based on 2006-07 salary levels, total annual funding needed for the 2.0 positions would be \$230,500 GPR and \$3,900 PR.

Assembly: No change to Joint Finance.

2. MUNICIPAL EMPLOYEE RETIREMENT CONTRIBUTIONS

Senate: No change to Joint Finance.

Assembly: Include the provisions of 2007 Assembly Bill 449 and provide that a participating employer in the Wisconsin Retirement System (WRS) who is covered by the Municipal Employment Relations Act (MERA) may not pay, on behalf of any employee, the first General Government and Justice three percent of earnings that the participating employee is required to pay as employee required contributions under the WRS if that employee first becomes a participating employee in the WRS on or after the provision's effective date. Employers covered by MERA generally include any city, county, village, town, metropolitan sewerage district, school district, family care district, or any other political subdivision of the state, or instrumentality of one or more political subdivisions of the state. Under current law, required employer and employee contributions under the WRS and the earnings on these contributions, fund the cost of providing retirement annuities to public employees who are covered under the WRS. Current law permits the employer, on behalf of its employees, to pay all or part of the employee required contributions.

3. PROPOSED CHANGES TO THE MUNICIPAL EMPLOYEES RELATIONS ACT

Municipalities would be able to change health care providers without bargaining for the change if the benefits are substantially the same as current benefits and the providers are the same or cost savings will result. Furthermore, bargaining over the selection of a health care coverage plan would be prohibited if the employer offers to enroll its employees in a plan provided to local government employers by the Group Insurance Board, or in a plan that is substantially similar to the plan offered by the Group Insurance Board.

Include the provisions of 2007 Assembly Bill 448 and prohibit any final offer that is submitted to the Wisconsin Employment Relations Commission (WERC) for interest arbitration from requiring the annual expenditure for compensation and fringe benefits per employee to be more than the amount spent in the previous year, increased by the allowable percentage increase in available revenue, if the municipal employer is subject to limitations on available revenue under state law. If WERC determines that a final offer requires greater expenditure, WERC would be required to return the offer to the party and the party must revise it before submitting it again. If the last written position requires greater expenditure than permitted under this provision, WERC must consider that the party failed to submit an offer. Provide that this expenditure limit provision would be given greatest weight in arbitration decisions for affected municipalities.

State Budget Proposals - cont.

Include the provisions of 2007 Assembly Bill 447 and provide that a municipal employer may solicit bids to perform services that are currently performed by its employees if the municipal employer notifies the labor organization that represents the employees that it intends to solicit the bids and conducts an internal cost study to determine the total costs incurred by the municipal employer in having its employees perform the services.

4. POSTING OF LEGAL NOTICES

Senate: No change to Joint Finance.

Assembly: Include the provisions of Assembly Substitute Amendment 1 to Assembly Bill 170 which would specify that the internet may be included as a place in which a legal notice may be posted. Under current law, a municipality may give a legal notice by either: (a) publishing the legal notice in a local newspaper; or (b) posting the document in three public places that are likely to give notice to affected persons. This provision would allow a municipality to include the internet as one of the three allowable postings.

**ATTORNEY GENERAL BACKS RECENT CORP COUNSEL OPINION
REGARDING KEMPER BIDDING OF PUBLIC WORKS**

The State Attorney General recently concurred with the Corporation Counsel's opinion that Kemper Center is required to comply with the state's bidding procedure as it relates to improvements and repairs of public works. In his opinion of July 6, 2007, the Attorney General stated:

"Generally speaking . . . a public works project is one for the use of a public body." *Elliott*, 214 Wis. 2d at 263, quoting 64 Op. Att'y Gen. 100, 103 (1975). *Elliott*, 214 Wis. 2d at 265-66, sets out the following test for determining whether construction activity constitutes a public works project:

[I]n determining whether a project constitutes a public work, each project must be evaluated separately. The pertinent factors to consider include the nature and character of the project, the ownership, use and maintenance of the project, and whether the work is being done for the appropriate municipality.

Unlike the situation in *Elliott*, in the fact situation you present the property is owned by the county. The property is a county park. The property is not under private ownership. Although the non-profit corporation is responsible for the day-to-day upkeep and maintenance of the property, the property will revert to the county at the conclusion of the lease. It therefore appears that all of the risks of ownership remain with the county. Because of these differences between your fact situation and the one presented in *Elliott*, I agree with your conclusion that the non-profit lessee must comply with the competitive bidding requirements in Wis. Stat. §§ 59.52(29) and 66.0901."

OPEN MEETING / PUBLIC RECORDS — Update

The State Supreme Court Test to Determine if a Meeting Notice is Sufficient

The reasonableness standard for public meeting **notices** requires taking into account the circumstances of the case in determining whether **notice** is sufficient. This includes analyzing such factors as the burden of providing more detailed **notice**, whether the subject is of particular public interest, and whether it involves non-routine action that the public would be unlikely to anticipate. [*State of Wisconsin ex rel. Brian L. Buswell, v. Tomah Area School District, 2007 WI 71, June 13, 2007*]

Public Records Generated on Private / Personal Phones and Computers

The recent controversy over the firing of several U.S. Attorneys has generated a series of questions over access to documents stored on personal computers or generated as a result of the use of personal phones [for example, phone bills]. In the U.S. Attorney case private laptops were used by government personnel to generate e-mail from and to non - government e-mail addresses and were e-mails that pertained to government business, ie., the firing of the attorneys. CNN is said to have reported a larger question concerning the lost e-mails: "Whether White House officials such as political adviser Karl Rove are intentionally conducting sensitive official presidential business via non-governmental accounts to evade a law requiring preservation -- and eventual disclosure -- of "presidential records." A White House spokesman stated that some of the emails that had involved official correspondence relating to the firing of attorneys may have been lost because they were conducted on Republican party accounts and not stored properly. To find those e-mails one would have to search all of the private files of the government employee that were merged with the e-mails pertaining to government business. We are not aware of any cases on this issue at this time, but public officials and employees should be cautioned on discretion being the better part of valor. In other words, if you use personal phones and computers for government business, be aware that all of the files on your computer as well as your entire personal home or cell phone bill may be subject in the future to discovery.

ETHICS CONSIDERATIONS

Can a County Board Supervisor speak for or against a referendum on downsizing the County Board?

According to the State Ethics Board, 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. The Board's web site states that a state public official may rely on governmental resources, including the services of state employees, to identify and provide information about a referendum's subject and the likely consequences of a referendum's passage or defeat only to the extent to which the official is acting in furtherance of his or her governmental duties; otherwise, a state public official should not use the services of governmental employees and other resources not normally available to anyone to advocate the passage or defeat of a referendum. A state public official may not use state resources to raise money for a committee advocating the passage or defeat of a referendum. [§§11.24 (1) and 19.45 (5), Wisconsin Statutes]. The same ruling would apply to County Board Supervisors. See <http://ethics.state.wi.us/Forms-Publications/Guidelines/258-referenda.pdf>

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.

WasteManagement Siting Agreement

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

COLLECTIVE BARGAINING AND GRIEVANCE REPORT

A tentative agreement was reached on the Joint Services agreement. Negotiations have centered around a change in health insurance, hiring, training and retention of dispatchers, and wage consideration. Average annual cost without insurance was 3.5%.

The next round of negotiations which will open this year include collective bargaining with the highway and parks unions. The main focus of these negotiations will be to explore the possibility of these two units merging into one union.

Pending grievances of interest include a grievance by the Deputy Sheriff's Association pertaining to the ability of the County to contract out security for the Courthouse.

In addition a declaratory ruling is being sought from the Wisconsin Employment Relations Commission pertaining to the right of the Sheriff to declare an emergency in staffing at the jail and require a cancellation of certain benefit time.

See the following detailed listing of grievances.

Chapter 51 Mental Commitment & Chapter 55 Protective Placement Case Report

	2006 Referrals	2007 Referrals [to date]
Chapter 51	738	417
Chapter 55	68	52

2007 MAX Hr'ly Wage

County	Truck Driver	Park Maint.
Kenosha	\$ 24.51	\$ 22.73
Racine [2006]	\$ 21.35	\$ 18.22
Waukesha	\$ 20.42	\$ 19.97

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PENDING GRIEVANCES				
No.	Union	Name	Description	Disposition
05-990C 007	Clerical	Human Services	Reassignment of caseload while on A&S.	Award to County
04-990C 010	Clerical		Contract employee doing bargaining Unit work	
990C-009	Clerical	Human Services	Child Support Office Associate Coverage, withdrawn as part of Settlement	re-filed
990C-010	Clerical	Human Services	On-line access room	
06-990P-004	Professionals	Marc Micklas	Discipline	
06-990P-005	Professionals		Contracting bargaining unit work	
07-990P	Professionals	Juvenile Intake	Petition to Clarify Bargaining Unit	brief due 7-31-07
990S	Jail	Overtime Emergency	Declaratory Judgment re: Sheriff's Memo	
DSA- 05DEP- 012	Deputies	Bargaining unit work	Courthouse Security	7-17-07 mediation; Hearing 11-15-07
06-2430-005	Joint Ser.		A & S W/out Dr.'s statement	
06-2430-008	Joint Ser.		Jeff Lovell grievance re: MD statement.	

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RESOLVED GRIEVANCES				
No.	Union	Name	Description	Status
990C			Posting Vacancy- Office associate position	
990C	Human Services		Child Support Investigator- Reclass requests	Consent decree entered
990C		Teresa O'Brien	Office Associate duties	set for hearing 9- 12-05, postponed in lieu of room issue- no place acceptable to d e c i d e hearing.***RESO LVED***
9 9 0 C 005,006,008,009			Reassignment Grievances	RESOLVED
04-990C 015	Human Services	Sharon Davis	Coverage while employee on A&S	Award to County
03-990-.016&017			Office Reclass	Award to County
990C -013 & 1392			W F T R A Grievance	DROPPED
990J	Pre-trial	Desotell		Award to County
990J			P r o h i b i t e d Practices	
990S	KCDC & Pre-trial		Policy Overtime and vacation	50/50
06-990S 001	KCDC	Paul Van Duyn	Termination	Award to County
168	Highways	Prescott	T e m p o r a r y Position	hearing held 11- 15-05

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No.	Union	Name	Description	Status
G70	Highways	William Prescott	Reassignment / discipline	Award**Decision awards pay differential including mileage to Prescott, says we were right to discipline, no right to transfer
G70	Highways	Wayne Ball	Discipline	Award to County
1392	Brookside	Dallas	Dallas funeral leave - A & S abuse	Resolved 9-19-06
1392				WFTRA joined with 990C picking arbitrator - DROPPED
1392	Brookside	Nicole White	A & S abuse discipline	Resolved, discharged
1392	Brookside	Crystal Schaut	Discharge	Award to County
2430	Joint Services		OT pay for training	
05 DSA 004 & 005	Deputies	Alleged past practice	Country Thunder Grievances	Resolved at mediation
UNEMPLOYMENT COMPENSATION				
UIB Appeal		Marlene Frederick		
UIB appeal		Nelson		heard 11-28-05.
UIB		Virgili		Award to County
UIB		Dallas		
UIB		Shilhavy	appeal of denial of benefits after quit	Award to County
UIB		Nicole White	discharge - Default; appeals default	rehearing; appeals 7-26-07

PARLIAMENTARY POINTERS – Unfinished Business at the End of a Session

The question often comes up at the end of a term of a session of the Board in April or November. There are two sessions of the County Board each year: an organizational meeting each April and an annual budget meeting each November. Each county board meeting is merely a continuation of one of these two meetings. When the board ends the organizational session or the budget session or when members are up for election the question arises about what effect that has on unfinished business. The Robert's Rule web site offers this question and answer as follows:

Q. RONR (10th ed.), p. 229, l. 11-18, says that when an "adjournment closes a session in a body that will not have another regular session within a quarterly time interval (see p. 88), or closes a session that ends the term of all or some of the members (as may happen in an elected legislative assembly or in a board): The business that is unfinished at the time of adjournment falls to the ground. It can be introduced at the next session, however, the same as if it had never before been brought up." If a motion has been laid on the table and remains there at the time of adjournment, does it constitute "business that is unfinished" within the meaning of this rule?

A. Yes. The intent of RONR is to equate the effects of adjournment under circumstances where the adjournment either (a) closes a session in a body that will not have another regular session within a quarterly time interval, or (b) closes a session that ends the prescribed term of all or some of the members. Consequently, when an adjournment ends a session that ends the term of some or all of the body's members, any motion laid on the table and any motion to reconsider that has been moved but not called up falls to the ground. By the same principle, in such circumstances no motion may be postponed to the next session. Cf. RONR (10th ed.), p. 330, l. 1- 20

LIABILITY AND CLAIMS REPORT

The following table represent listing of claims which have been filed with the County Board in 2007 and their status and/or disposition. Worker's Compensation claims that follow are actual claims filed and not "incident reports."

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Claim Status Codes:

1. C = Closed

CP = Closed Pending

(used when claim has been closed but some fees (legal, adjusting, etc.) need to be resolved)

DC = Denied - Closed

DLC = Denied - Litigated - Closed

DLO = Denied - Litigated - Open

DO = Denied - Open

DPC = Denied/Partial - Closed

DPLC = Denied/Partial - Litigated - Closed

DPLO= Denied/Partial - Litigated - Open

DPO = Denied/Partial - Open

LI = Litigation

O = Open

OL = Open Litigated

OLC = Open, Litigated, Closed

OP = Open Potential (open, disallowed, but has potential to remain open and reach litigation)

PE = Pending

R = Reopened

RC = Reopened, Closed

RE = Restitution

RL = Reopened Litigated

RLC = Reopen, Litigated, Closed

SU = Subrogation

UI = Under Investigation

Kenosha County Liability Claims 01/01-07/25/07

Claim Number	Date of Claim	Claim Status Code	Claimant Full Name	Desc 1 Line
GCCCPDKC2007054969	06/28/2007	O	Cortes, Charlene Shirley	lost items in jail
GCCRBKIC2006053598	02/09/2007	OL	Cesar, Dulce	Alleges was not released from jail after withholdi
GCCRBKIC2007054693	06/13/2007	O	Tunis, Badiatu	Plaintiff states she's being detained unlawfully w
GCERBKIC2006054124	03/01/2007	OL	Woods, Rachel	Claimant alleges wrongful discharge and discrimina
GCGLBKIC2006054933	07/11/2007	O	Daymo, Margaret	Cimt was dropped while being transferred.
GCGLPDKC2007053710	02/13/2007	OP	Santelli, Kenneth	Shoe caught on weather strip and caused damage
GCGLPDKC2007054229	03/05/2007	C	Kivisto, Richard	Cimt vehicle hit a large pile of salt.
GCGLPDKC2007054893	07/09/2007	OP	Linyard, Esther	claimant vehicle hit pot hole on Interstate I-94
GCGLPDKC2007054974	06/28/2007	O	Knapp, Sue	rock thrown by mower cracked claimant's windshield
GCPPBKIC2006053753	02/17/2007	O	Cortes, Charlene Shirley	Alleges Correctional Officer pulled of underwear a
VAALBKIC2007054617	06/05/2007	R	Williams, Thomas	Hwy dept truck pulled out from construction zone i
VAALPDKC2006053365	01/24/2007	OP	Butts, James	Snow was pushed up against fence and fence in lean
VAALPDKC2007053972	02/08/2007	C	Thayer, Richard	Snow plow hit mailbox
VAALPDKC2007054058	02/14/2007	C	Scott, Lavon	Plow hit mail box
VAALPDKC2007054450	05/17/2007	OP	Wiik, Cathlyn	IV spun out due to icy road conditions. IV spun co
VAALPDKC2007054646	05/29/2007	C	Waldron, Richard	claimant states plow pushed snow over bridge onto
VAALPDKC2007054649	05/30/2007	CP	Grissmeyer, Elizabeth	CV stuck in snow on side of road when county plow
VAALPDKC2007054970	06/28/2007	C	We Energies, .	County plow damaged utility pole owned and maintai

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Kenosha County Work Comp Claims 01/01/-07/25/2007

Claim Number	Date of Claim	Claim Status Code	Claimant Department/Division	Desc 1 Line
WCMOKC2007053228	01/02/2007	C	Sheriff/Detention	while pushing dough through bread roller, fingers
WCMOKC2007053481	01/03/2007	C	Public Works/Highways	sore left foot from kicking equipment trying to ho
WCMOKC2007053480	01/06/2007	O	Sheriff/Detention	numbness and tingling in hands
WCMOKC2007053676	01/08/2007	C	Sheriff/Patrol	right hand had unknown substance on it after handl
WCLTKC2007053502	01/29/2007	O	Public Works/Highways	suffered a broken ankle after slipping on ice
WCMOKC2007053677	01/30/2007	C	Public Works/Highways	slipped on ice and twisted back
WCMOKC2007053996	02/07/2007	C	Sheriff/Patrol	strained right knee while taking suspect to the gr
WCMOKC2007054148	02/11/2007	O	Public Works/Highways	strained back and neck from repetitive motion of j
WCMOKC2007053982	02/12/2007	C	Public Works/Highways	slipped and fell on some oil, spraining right ankl
WCMOKC2007053993	02/12/2007	C	Sheriff/Deputy	eye irritation after coming in contact with "crack
WCMOKC2007053981	02/14/2007	C	Sheriff/Corrections	while attempting to avoid getting hit by a snow pl
WCMOKC2007053987	02/24/2007	O	Public Works/Highways	while driving plow, vehicle lost control and hit p
WCMOKC2007054143	02/26/2007	C	Public Works/Highways	struck in face with pry bar after trying to pry of
WCMOKC2007053983	03/03/2007	C	Public Works/Highways	strained neck and shoulder after slipping and fall
WCMOKC2007054145	03/07/2007	O	Human Services/Children & Family Services	slipped on ice while leaving building, straining r
WCMOKC2007054141	03/19/2007	C	Public Works/Highways	crushing injury to two middle fingers on right han
WCMOKC2007054140	03/23/2007	C	Sheriff/Administration	tripped and fell down some stairs while attempting
WCMOKC2007054256	03/24/2007	O	Human Services/Brookside	while reaching for resident across bed, strained r
WCMOKC2007054255	03/29/2007	C	Sheriff/Detention	while doing inmate training, trainee grabbed ee's
WCMOKC2007054580	03/30/2007	C	Public Works/Highways	Pulling marker posts/shoveling.
WCMOKC2007054827	04/08/2007	C	Sheriff/Detention	strained left leg from sitting too long and then s
WCMOKC2007054506	04/11/2007	O	Public Works/Highways	seat bottomed out, straining lower back
WCMOKC2007054507	04/18/2007	C	Public Works/Highways	strained right knee after stepped into a hole hidd

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Kenosha County Work Comp Claims 01/01/-07/25/2007

Claim Number	Date of Claim	Claim Status Code	Claimant: Department/Division	Desc 1 Line
WCMOKC2007054828	04/20/2007	C	Human Services/Brookside	contusion to right hand after getting it slammed i
WCMOKC2007054834	04/25/2007	O	Public Works/Highways	foreign body in left eye while working on truck
WCMOKC2007054833	05/01/2007	O	Public Works/Highways	strained lower back from riding on tractor
WCMOKC2007054719	05/03/2007	O	Circuit Court/Admin	strained back after tripping and falling over comp
WCMOKC2007054825	05/04/2007	O	Sheriff/Corrections	abrasions to right forearm and neck after dealing
WCMOKC2007054830	05/11/2007	O	Sheriff/Detention	contusion to head after being stuck by another off
WCLTKC2007054466	05/18/2007	O	Sheriff/Patrol	while conducting a traffic stop, ee was shot in th
WCMOKC2007054561	05/18/2007	UI	Human Services/Brookside	Achilles tendinitis.
WCMOKC2007054832	05/30/2007	O	Public Works/Highways	laceration to left index finger after getting it c
WCLTKC2007054820	06/06/2007	C	Sheriff/Deputy	exposure to pink eye
WCMOKC2007054821	06/06/2007	O	Sheriff/Corrections	exposure to pink eye
WCMOKC2007054822	06/06/2007	O	Sheriff/Corrections	exposure to pink eye
WCMOKC2007054824	06/06/2007	O	Sheriff/Patrol	abrasions to inside of right wrist after being bit
WCMOKC2007054829	06/19/2007	O	Sheriff/Detention	strained left wrist while trying to restrain inmat
WCMOKC2007054937	06/25/2007	O	Public Works/Highways	crushing injury to right thumb after getting it pi
WCMOKC2007054934	06/26/2007	O	Public Works/Highways	contact dermatitis after filling paint truck with

OFFICE REPORT

CONTRACTING POLICIES

An effort is being made to create a comprehensive purchasing and contracting policy for Kenosha County which will incorporate the current ordinances and executive orders pertaining to purchasing as well as new guidelines and administrative rules. One of the main issues to be developed deals with the authority to contract as well as which contracts need to be acted upon outside of the budget process.

THE DYNAMICS OF COLLECTIVE BARGAINING AND CHAPTER 51 AND CHAPTER 55 COMMITMENT CASES

An orientation for those who seek information on the Municipal Employees Relations Act or on mental illness and drug and alcohol dependency is now available on the Corporation Counsel's "PRESENTATIONS" web site at:

<http://www.co.kenosha.wi.us/corpc/presentations.html>

An additional PowerPoint presentation on Chapter 55 Protective Placements and the infirmities of aging is being prepared as well as a listing of the Corporation Counsel's index of opinions.

WEB SITE UPDATE

The Corporation Counsel's web site has been updated to include several new links to other legal and municipal sites of interest. See these new links at:

<http://www.co.kenosha.wi.us/corpc/links.html>

NEWSLETTER

This newsletter will be posted and saved on the office web site. It is not scheduled for a periodic release but rather will be an attempt to communicate with the County Board as time allows and as the need requires. This issue is merely an attempt to demonstrate the type of information that could be made available. Comments on continuing or discontinuing the newsletter and/or comments about its content should be directed to members of the Legislative Committee.