



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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ATTORNEY GENERAL

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OAG—2—09

Mr. Frank Volpintesta
Corporation Counsel
Kenosha County
912 - 56th Street
Kenosha, WI 53140-3747

Dear Mr. Volpintesta:

¶ 1. You indicate that in the past the Kenosha County Board has, by resolution, appointed a person nominated by the Kenosha County Land Conservation Committee to be Kenosha County's representative on the Powers Lake Inland Lake Protection and Rehabilitation District Board ("Board"). On March 19, 2009, your office issued a legal opinion to the Kenosha County Executive advising him that he possesses the authority to appoint Kenosha County's representative to the Board. You advise that the chairperson of the Kenosha County Board subsequently requested that you obtain a legal opinion from this office as to whether the power of appointment rests with the county executive or with the county board.

QUESTION PRESENTED AND BRIEF ANSWER

¶ 2. You ask whether the county board in a county with a county executive possesses the power to appoint the county representative to a public inland lake and rehabilitation district protection board under Wis. Stat. § 33.28(2)(a).

¶ 3. In my opinion, in a county with a county executive the county executive possesses the power of appointment, which is subject to confirmation by the county board.

ANALYSIS

¶ 4. County appointments to public inland lake and rehabilitation district boards are made pursuant to Wis. Stat. § 33.28(2), which provides in part that the "board of commissioners" is to include "(a) One person appointed by the county board who is a member of the county land conservation committee or is nominated by the county land conservation committee and appointed by the county board[.]" Wisconsin Stat. § 59.17(2)(c) provides that the county executive "[a]ppoint[s] the members of all boards and commissions . . . where the statutes provide that the appointments are made by the county board"

¶ 5. The phrase "boards and commissions" in Wis. Stat. § 59.17(2)(c) is not limited to boards and commissions that are internal to the county. "[A]ppointments to a regional plan

commission on behalf of a county . . . must be made by the county board, unless the county has a county executive or a county administrator” in which case “such appointments are made by that county officer[.]” *See* 62 Op. Att’y Gen. 197, 200 (1973). The management of a public inland lake and rehabilitation district is vested in a “board of commissioners.” Wis. Stat. § 33.28(1). The board of commissioners is a board or a commission in contradistinction to a committee. *See* 76 Op. Att’y Gen. 173, 175 (1987) (citing 61 Op. Att’y Gen. 116, 119-20 (1972), for the proposition “that the Legislature used the words ‘boards and commissions’ [in what is now Wis. Stat. § 59.17(2)(c)] advisedly to the exclusion of ‘committees,’ whether such ‘committees’ were created under section 59.06 or some other statutory authority”).

¶ 6. Wisconsin Stat. § 33.28(2)(a) provides that the county representative upon a public inland lake protection and rehabilitation board is to be a “person appointed by the county board[.]” By operation of Wis. Stat. § 59.17(2)(c), the power of appointing the county representative to a public inland lake protection and rehabilitation district is therefore transferred from the county board to the county executive once the office of county executive is created.

¶ 7. The county executive’s appointee must be a person “who is a member of the county land conservation committee or is nominated by the county land conservation committee[.]” Wis. Stat. § 33.28(2)(a). Consequently, if the land conservation committee does not nominate anyone outside the committee, the county executive’s appointee must be a member of the committee.

¶ 8. Wisconsin Stat. § 59.17(2)(c) provides that “[a]ll appointments to boards and commissions by the county executive are subject to confirmation by the county board.” While the power of appointing the county representative to a public inland lake rehabilitation and protection board is vested in the county executive by operation of Wis. Stat. § 59.17(2)(c), the county board possesses the power to confirm the county executive’s appointment.

CONCLUSION

¶ 9. I therefore conclude that in a county with a county executive, the county executive possesses the power to appoint the county representative to a public inland lake and rehabilitation district protection board under Wis. Stat. § 33.28(2)(a) and that the county executive’s appointment is subject to confirmation by the county board.

Sincerely,

J.B. Van Hollen
Attorney General

Mr. Frank Volpintesta
Page 3