

ROGER BRESKE

STATE SENATOR

12th District

Capitol Address:
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P.O. Box 7882
Madison, WI 53707-7882
(608) 266-2509

Legislative Hotline:
1 (800) 362-9472

Home Address:
8800 Hwy. 29
Eland, WI 54427
(715) 454-6575



MEMORANDUM

February 15, 1999

TO: Members of the Senate Committee on Insurance,
Tourism, Transportation & Corrections
FR: Senator Roger Breske, Chair *R.B.*
RE: Rhinelander Hearing – March 25th

I write to inform you that I have tentatively scheduled a committee hearing for March 25th in Rhinelander, Wisconsin. The hearing is scheduled to take place from 1PM to 5PM. While it is possible that we will consider other matters, the primary focus of the hearing will be Senate Bill 13, legislation creating a uniform start date for public K-12 schools in Wisconsin.

While Senate Organization approval is still pending for the hearing, I thought that you would appreciate advance notice to accommodate your schedules. If you are interested in securing hotel accommodations for Thursday evening, or if you have any other concerns about the hearing, please contact Vaughn in my office at 6-2509.

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February 15, 1999

The Honorable Chuck Chvala, Chair
Senate Committee on Organization
The State Capitol
Room No. 211 South
VIA INTER-DEPARTMENTAL MAIL

Dear Chuck:

I am writing to request approval for a public hearing of the Senate Committee on Insurance, Tourism, Transportation and Corrections in Rhinelander, Wisconsin. The hearing is tentatively scheduled for Thursday, March 25th from 1:00PM to 5:00PM. The agenda for this hearing includes issues important to northern Wisconsin.

This hearing will require Senate reimbursement for all necessary and actual expenses of committee members, legislative counsel and essential staff. I am also requesting that staff from the Senate Sergeant-At-Arms Office be assigned to help facilitate the hearing.

Thank you for your consideration of this request. If you have any questions regarding this request, please feel free to give me a call.

Sincerely,

A handwritten signature in cursive script that reads 'Roger'.

ROGER BRESKE

State Senator

RB/vlv

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February 15, 1999

Deborah J. Breivogel
Rhineland City Clerk/Treasurer
Rhineland City Hall
Post Office Box 658
Rhineland, Wisconsin 54501

RE: City Council Chambers - March 25th

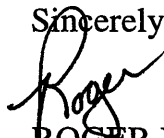
Dear Deborah:

I write to follow up the recent conversation that you had with a member of my staff regarding my request to reserve the City Council Chambers for an official meeting of the Senate Committee on Insurance, Tourism, Transportation and Corrections. This meeting is scheduled for Thursday, March 25, 1999 from 1PM to 5PM. I appreciate your willingness to accommodate this request.

As details for the hearing are finalized, I will be sure to keep you apprised. In the meantime, if you have any questions or concerns, please feel free to give me a call at 1/800-334-8773. If I am not available, please ask to speak with Vaughn, a member of my staff.

Once again, thank you for your assistance with this matter.

Sincerely yours,


ROGER BRESKE
State Senator

RB/vlv



State Senator
Chuck Chvala
SENATE MAJORITY LEADER

March 1, 1999

The Honorable Roger Breske
Wisconsin State Senator
Rm. No. 18 South, Capitol
Madison, WI 53706

Dear Senator Breske:

The Senate Committee on Organization has approved your request for the Members of the Senate Committee on Insurance, Tourism, Transportation and Corrections to travel to Rhinelander, Wisconsin on March 25, 1999 to discuss issues of importance to Northern Wisconsin.

It is the Committee's understanding that you are seeking reimbursement for all actual and necessary expenses associated with the committee members' attendance at this hearing. It is further understood that you are seeking approval for additional staff support from the Senate Sergeant-at-Arms, if required.

Your request has been approved contingent upon the Senate not being in session. Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Chuck Chvala".

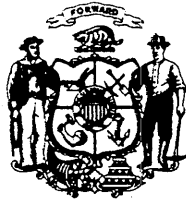
CHUCK CHVALA
Chairman
Senate Committee on Organization

ROGER BRESKE

STATE SENATOR

12th District

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Legislative Hotline:
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March 11, 1999

The Honorable Charles Chvala, Chair
Senate Committee on Organization
The State Capitol
Room No. 211 South
VIA INTER-DEPARTMENTAL MAIL

Dear Senator Chvala:

I write to request Senate Committee on Organization approval to hold an out-state hearing of the Senate Committee on Insurance, Tourism, Transportation and Corrections in Green Bay on Thursday, April 1, 1999. This hearing will address issues important to northern Wisconsin.

I am requesting reimbursement for all necessary and actual expenses for committee members and essential staff. This includes necessary overnight lodging. I am also seeking approval for members of the Senate Sergeant-at-Arms staff to help facilitate this public hearing.

Thank you for your consideration of this request.

Sincerely yours,

A handwritten signature in cursive script that reads "Roger".

ROGER BRESKE
State Senator

cc: Senator Grobschmidt
Senator Shibilski
Senator Baumgart
Senator Schultz
Senator A. Lasee
Senator Zien

ROGER BRESKE

STATE SENATOR

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March 22, 1999

The Honorable Chuck Chvala, Chair
Senate Committee on Organization
The State Capitol
Room No. 211 South
VIA INTER-DEPARTMENTAL MAIL

Dear Chuck:

I am writing to request approval for the Senate Committee on Insurance, Tourism, Transportation and Corrections to travel to Sayre, Oklahoma, for the purposes of conducting legislative oversight meetings with staff and inmates at the North Fork Correctional Facility. This trip is scheduled to take place between Wednesday, April 21, and Thursday, April 22, 1999.

I am requesting Senate reimbursement for all necessary and actual expenses of committee members and essential staff. This request also anticipates the reimbursement of related air and ground transportation as well as overnight accommodations. No staff from the Senate Sergeant-At-Arms Office will be required for this trip.

Thank you for your consideration of this request. If you have any questions regarding this request, please feel free to give me a call.

Sincerely,

A handwritten signature in cursive script that reads "Roger".

ROGER BRESKE
State Senator

RB/vlv



State Senator
Chuck Chvala
SENATE MAJORITY LEADER

March 22, 1999

The Honorable Roger Breske
Rm. No. 18 S., Capitol
Madison, WI . 53702

MAR 23 1998

Dear Senator Breske:

The Senate Committee on Organization has approved your request for the Members of the Senate Committee on Insurance, Tourism, Transportation, and Corrections for travel to Green Bay on Thursday April 1, 1999 for the purpose of holding a Public Hearing.

It is the Committee's understanding that you are seeking reimbursement for all actual and necessary expenses associated with the committee members' attendance at this hearing. It is further understood that you are seeking approval for additional staff support from the Senate Sergeant-at-Arms, if required.

Your request has been approved contingent upon the Senate not being in session. Please let me know if you have any questions.

Sincerely,

CHUCK CHVALA
Chairman
Senate Committee on Organization



Tommy G. Thompson
Governor

Jon E. Litscher
Secretary

State of Wisconsin
Department of Corrections

Mailing Address

149 East Wilson Street
Post Office Box 7925
Madison, WI 53707-7925
Telephone (608) 266-2471
Fax (608) 267-3661

May 25, 1999

Senator Roger Breske
State Capitol, Room 18 South
Madison, WI

Dear Senator Breske:

Thank you for the opportunity to appear before your committee on May 19th. This is a follow-up to some questions that I promised to get back to the committee on.

I was asked whether the prison population that is housed out-of-state is counted in that state's census or in Wisconsin. Wisconsin prisoners that are housed in other states are counted in the receiving state's population. It would take a change in federal law to allow them to be counted in Wisconsin's census.

The prison industries board is authorized under s. 15.145 (2) WI Stats. One member must be appointed to represent the Department of Corrections (DOC) and there is no requirement that this be the Secretary of DOC. I am attaching a current list of the board members.

Finally, it was asked what the daily rates are for our various in-state contracts. Attached is the per diem cost for all in-state and out-of-state contract facilities.

If you need any additional information, please let me know.

Sincerely,

Jon E. Litscher
Secretary

PRISON INDUSTRIES BOARD MEMBERS

JON E. LITSCHER
SECRETARY
P O BOX 7925
149 E. WILSON STREET
MADISON, WI 53707-7925
(608) 266-4548
FAX (608) 267-3661
REPRESENTING DEPT. CORRECTIONS
TERM EXPIRES MAY 1, 2000
E-MAIL ADDRESS -
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JANET HAMIK (DESIGNEE)
DEPARTMENT OF ADMINISTRATION
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MADISON, WI 53702
(608) 266-0974 (OFFICE)
REPRESENTING DOA
TERM EXPIRES MAY 1, 2003
E-MAIL ADDRESS -
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JOHN PHILLIPS
VICE-CHAIRMAN
990 ACORN DRIVE
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(414) 269-4543 (HOME)
235 N. NATIONAL AVENUE
FOND DU LAC, WI 54395-9009
DIRECT PHONE: (920) 924-3330
(920) 929-2115 (OFFICE)
FAX (920) 929-2478
REPRESENTING VTAE
TERM EXPIRES MAY 1, 1999
E-MAIL ADDRESS -
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CAROL VOLLMER POPE
SECRETARY - EXECUTIVE COMMITTEE
DATA DIRECT DISTRIBUTORS (PRESIDENT)
N35 W21140 CAPITOL DRIVE, STE. 7
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(414) 790-1188 (OFFICE)
(414) 784-7917 (HOME)
(414) 790-1195 (FAX)
REPRESENTING PRIVATE BUSINESS
TERM EXPIRES MAY 1, 2001
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LYLE A. BALISTRERI
MILWAUKEE BUILDING AND CONSTRUCTION
TRADES COUNCIL
5941 WEST BLUEMOUND ROAD
MILWAUKEE, WI 53213
(414) 475-5580 (WORK)
(414) 475-5590 (FAX)
3612 SOUTH 157TH STREET
NEW BERLIN, WI 53151
(414) 302-9834 (HOME)
(414) 510-2081 (MOBILE)
REPRESENTS PRIVATE LABOR
TERM EXPIRES MAY 1, 2001
E-MAIL ADDRESS - BLDGTRDS@EXECPC.COM

BILL GRONLEY (DESIGNEE)
E7194 EAGLE RIDGE COURT
REEDSBURG, WI 53959
(608) 524-2016 (OFFICE)
(608) 524-4058 (HOME)
LABOR REPRESENTATIVE
TERM EXPIRES MAY 1, 2001
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NATIONAL FEDERATION OF INDEPENDENT
BUSINESS
1 N. PINCKNEY STREET ROOM 201
MADISON, WI 53703
(608) 255-6083 (WORK)
(608) 831-6771 (HOME)
(608) 255-4909 (FAX)
REPRESENTING PRIVATE INDUSTRY
TERM EXPIRES MAY 1, 2000
E-MAIL ADDRESS - BILL.SMITH@NFIB.ORG

ROBERT C. BLESSINGTON
WISCONSIN STATE AFL-CIO
6333 W. BLUEMOUND ROAD
MILWAUKEE, WI 53215
(414) 771-0700 (WORK)
(414) 679-4817 (HOME)
(414) 771-1715 (FAX)
LABOR REPRESENTATIVE
TERM EXPIRES MAY 1, 2002
E-MAIL ADDRESS - RBLESS@EXECPC.COM

RONALD C. ENGELKE (DESIGNEE)
RCE MACHINE TOOLS, INC.
N59 W14272 BOBOLINK AVENUE
MENOMONEE FALLS, WI 53051
HOME ADDRESS: 1415 HWY 164
HUBERTUS, WI 53033
(414) 252-4280 (WORK)
(414) 628-4401 (HOME)
(414) 252-3722 (FAX)
REPRESENTS BUSINESS/INDUSTRY
TERM EXPIRES MAY 1, 2003

CONTRACT FACILITIES

As of 11-23-98

<u>FACILITY (16)</u>	<u>CAPACITY</u>	<u>PER DIEM (approx.)</u>
<u>I. TEXAS COUNTIES (8)</u>	<u>700 Total</u>	<u>\$40.00 (all)</u>
a. Comanche	25	
b. Van Zandt*	0	
c. Franklin	10	
d. Morris	18	
e. Titus	135	
f. Palo Pinto	60	
g. Red River	60	
h. Bowie	350	
* Inmates removed 9-15-98.		
<u>II. WISCONSIN COUNTIES (4)</u>	<u>335 Total</u>	<u>\$60.00 (all)</u>
a. Outagamie		
-Males	200	
-Females	20	
b. Manitowoc	50	
c. St. Croix	15	
d. Jefferson	50	
<u>III. FBOP - Duluth, MN</u>	<u>300</u>	<u>\$42.00</u>
<u>IV. FBOP - Oxford</u>	<u>30</u>	<u>42.00</u>
<u>V. FBOP- Alderson, WV (females)</u>	<u>200</u>	<u>\$59.00</u>
<u>VI. CCA- Whiteville, TN</u>	<u>1500</u>	<u>\$42.00</u>
<u>VII. CCA- Sayre, OK</u>	<u>700</u>	<u>\$42.00</u>



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Conte. Correspondence.

JAMES E. DOYLE
ATTORNEY GENERAL

Burneatta L. Bridge
Deputy Attorney General

May 28, 1999

114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857

OAG 2-99

The Honorable Chuck Chvala
Chairman
Senate Committee on Organization
119 Martin Luther King Jr. Blvd., Room 101
Madison, WI 53702

Dear Senator Chvala:

You have asked a series of questions regarding the construction and operation of private incarceration facilities in Wisconsin. For ease of analysis, I have organized your inquiry into four areas:

- (1) Can a private company build an incarceration facility in Wisconsin?
- (2) Can a privately built incarceration facility be sold or leased to the state?
- (3) Can out-of-state prisoners be housed in Wisconsin?
- (4) Can an incarceration facility in Wisconsin be operated by a private company?

As a starting point, the management of incarceration facilities is a core state function. Torcasio v. Murray, 57 F.3d 1340 (4th Cir. 1995). The U.S. Supreme Court has stated: "It is difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons." Preiser v. Rodriguez, 411 U.S. 475, 491-92 (1973). Other cases have noted that the maintenance of penal institutions is an "essential part" of one of government's "primary functions," which is the preservation of societal order through enforcement of criminal law. Procnunier v. Martinez, 416 U.S. 396, 412 (1974).

In a 1988 opinion regarding privatization of the jailer function by a county, Attorney General Hanaway articulated the underlying framework of the sovereign power of the state as follows:

As explained in State ex rel. Hammermill Paper Co. v. La Plante, 58 Wis. 2d 32, 80, 205 N.W.2d 784 (1973), a governmental subdivision "may, by contract, curtail its right to exercise functions of a business or proprietary nature, but, in the absence of express legislative authority, it cannot surrender or contract away its governmental functions and powers," not even partially. See also

Wausau Jt. Venture v. Redevelopment Authority, 118 Wis. 2d 50, 59, 347 N.W.2d 604 (Ct. App. 1984). Consistent with this basic proposition, it is said that such an entity may not contract for the performance of public duties which the law requires its public officers or employes to perform

. . . .

. . . The maintenance of law and order encompassed in the jailer function involves just such an exercise of the sovereign power of the state.

77 Op. Att'y Gen. 94, 95-96 (1988).

In 1996, in answer to a related question, I adopted this rationale:

This reasoning is applicable to all forms of incarceration for commitment of a crime In my opinion, with respect to matters exclusively or primarily of statewide concern, "if the legislature did not specifically confer a power, it is evidence of legislative intent not to permit the exercise of the power." See State ex rel. Harris v. Larson, 64 Wis. 2d 521, 527, 219 N.W.2d 335 (1974).

OAG 1-96 at 7.

With these basic principles in mind, your questions are specifically addressed:

1. Can a private company build an incarceration facility?

In OAG 1-96, I concluded that a private company could construct a facility which conceivably could be used as a county house of corrections. The same would be possible for any incarceration facility. The building would have to be constructed in compliance with all applicable state laws, rules, codes and regulations, and would be subject to the ordinances or regulations of the municipality in which construction takes place, the same as any building.

This answer is limited only to the bricks or mortar. The building's use as an incarceration facility, its purchase or lease by the state, whether it could be run by a private company or whether out-of-state prisoners could be housed there, are entirely separate questions. Merely constructing a building and calling it an incarceration facility does not in any way mean it can be operated as such.

2. Can a privately built incarceration facility be sold or leased to the state?

The acquisition of a privately built incarceration facility by the state would have to be within the state's long-range public building program as expressed in Wis. Stat. § 13.48,¹ and have the additional approval of the Joint Committee on Finance, which is required by Wis. Stat. § 301.18(4).

Wisconsin Stat. § 13.48(27) specifically allows the building commission to lease a correctional facility as part of the authorized state building program, with an option to purchase the facility by the state. Any lease must provide that the facility is in accordance with requirements and specifications approved by the Department of Administration. *Id.* Such a facility could also be purchased outright in lieu of state construction as long as the project were enumerated in the authorized state building program. Wis. Stat. § 13.48(19). Wisconsin Stat. § 301.18(4) additionally requires the approval of the Joint Committee on Finance for "[a]ny purchase, lease or construction of additional correctional facilities"

3. Can Out of State prisoners be housed in Wisconsin?

The brief answer is that out of state prisoners, like any other prisoner, may be housed in Wisconsin only as expressly authorized by the state. Incarceration is one of the state's sovereign powers. *See* 60 Am. Jur. 2d Penal and Correctional Institutions § 8 (1987). Sovereign powers belong exclusively to the state, and may be delegated only by express state action. *See* 81A C.J.S. States § 16 (1977) ("[T]he [sovereign] power of a state may be abridged only by its own action, which must be sanctioned by its statutes.") The State of Wisconsin has only authorized the incarceration of out of state prisoners as set forth in the Interstate Corrections Compact. *See* Wis. Stat. § 302.25. It follows that no other entity may house out of state prisoners in Wisconsin, be it local units of government, sister states or private organizations, absent express legislative authorization.²

Municipalities

Municipalities may not incarcerate out of state prisoners. Municipalities do not possess inherent sovereign powers. *See* Van Gilder v. Madison, 222 Wis. 58, 72-73, 267 N.W. 25 (1936). Municipalities are created by the state, and hold all powers and privileges subject to the state's sovereign will. *See id.* (citing City of Trenton v. State of New Jersey, 262 U.S. 182 (1923)). The state may grant powers to municipalities either through its state constitution or by legislation. *See id.* Limited only by the state constitution, the state may revoke or modify these

¹Unless otherwise noted, all statutory references are to the 1997-98 volume of the Wisconsin Statutes.

²The federal government, by virtue of the supremacy clause, is sovereign over Wisconsin. *See* U.S. Const. art. VI. Therefore, the federal government may house federal prisoners in Wisconsin, subject to federal law. *See* 18 U.S.C. §§ 4001, 4002, 4003, 4013(a)(3) and 4013(b)(2).

powers at its pleasure. See id. ("In the absence of state constitutional provisions safeguarding it to them, municipalities have no inherent right of self-government which is beyond the legislative control of the state.")

The Wisconsin Constitution grants municipalities broad power over local affairs. See Wis. Const. art. XI, § 3. This "home rule" provision of the constitution reads:

(1) Cities and villages organized pursuant to state law may determine their local affairs and government, subject only to this constitution and to such enactments of the legislature of statewide concern as with uniformity shall affect every city or every village. The method of such determination shall be prescribed by the legislature.

Id.

The Wisconsin Legislature has similarly made a statutory grant of power to municipalities. See Wis. Stat. § 62.11(5); but see Wis. Stat. § 62.03(1) (Wis. Stat. § 62.11(5) "does not apply to 1st class cities under special charter"). The power granted under the "home rule" statute is broader than the power granted under the constitution, by allowing a municipality to enact ordinances on matters of statewide concern. See Wis. Environmental Decade, Inc. v. DNR, 85 Wis. 2d 518, 533, 271 N.W.2d 69 (1978); see also Anchor Savings & Loan Ass'n v. Madison EOC, 120 Wis. 2d 391, 395, 355 N.W.2d 234 (1984) ("A city ordinance may be authorized by sec. 62.11(5), Stats., notwithstanding statewide concern in the matter it regulates.") However, municipalities' ability to regulate statewide matters is not unlimited. See DeRosso Landfill Co. v. City of Oak Creek, 200 Wis. 2d 642, 651, 547 N.W.2d 770 (1996). Wisconsin courts have long held that "municipalities may enact ordinances in the same field and on the same subject covered by state legislation where such ordinances do not conflict with . . . the state legislation." Id. (citing Fox v. Racine, 225 Wis. 542, 546, 275 N.W. 513 (1937)). As a result, municipalities may not make regulations that are inconsistent with those of the state. See DeRosso, 200 Wis. 2d at 651; see also Gloudeman v. City of St. Francis, 143 Wis. 2d 780, 789, 422 N.W.2d 864 (Ct. App. 1988) (when provisions of a statute are primarily of statewide concern, municipality may not under Wis. Stat. § 66.01(4) elect not to be bound by such statute).

Municipalities are pre-empted from regulating matters of statewide concern if any one of the four conditions set out by the Wisconsin Supreme Court in Anchor is met. See Anchor, 120 Wis. 2d at 397. The Anchor test is used whether the ordinance was enacted based on the home rule statute, see Local Union No. 487 v. Eau Claire, 147 Wis. 2d 519, 525, 433 N.W.2d 578 (1989), or based on the home rule amendment, see DeRosso, 200 Wis. 2d at 656-57. The Anchor test provides that the state has pre-empted municipal regulation if: "(1) the legislature has expressly withdrawn the power of municipalities to act; (2) the local regulation logically conflicts with state legislation; (3) the local regulation defeats the purpose of state legislation; or (4) the local regulation violates the spirit of state legislation." Id. at 657 (citing Anchor, 120

Wis. 2d at 397). It cannot be disputed that one area of statewide concern is the preservation of order. See Van Gilder, 222 Wis. at 76. Included in this is the power to incarcerate. See 60 Am. Jur. 2d Penal and Correctional Institutions § 8 (1987) (“[Penal] institutions are a public necessity and part of the police system for the preservation of order and the security of society. They are established by the state in the exercise of its sovereign powers.”). Therefore, a municipality may only regulate in the field of incarceration if state legislation has not pre-empted such regulation. Applying the Anchor test to the ability of municipalities to incarcerate out of state prisoners, it is apparent that state legislation pre-empts such a possibility. Not just one, but all four of the conditions would be met, precluding municipal regulation in this area.

Addressing the first test, the Legislature has expressly withdrawn the power of municipalities to act in the area of incarcerating out of state prisoners. The state has specifically defined “jail” to include “municipal prisons . . . by whatever name they are known.” Wis. Stat. § 302.30. The state has enumerated specific uses for which such facilities may be employed, which do not include the incarceration of out of state felons. See Wis. Stat. § 302.31. The state has therefore expressly limited the power of municipalities to use their prisons to incarcerate out of state prisoners.

Turning to the second test, local ordinances authorizing the incarceration of out of state felons would logically conflict with state legislation. Wisconsin has enacted the Interstate Corrections Compact, which gives a detailed description of how the state intends to treat incarceration of prisoners from other states. See Wis. Stat. § 302.25. Municipalities could not logically incarcerate out of state prisoners outside this statutory scheme. As to the third and fourth tests, the state legislature has enacted a comprehensive system of laws to regulate incarceration within the state. See Wis. Stat. chs. 301 and 302. Municipal ordinances regarding the statewide concern of incarceration of out of state felons would “defeat[] the purpose of state legislation and violate[] the spirit of the legislature’s ‘complex and comprehensive statutory structure.’” DeRosso, 200 Wis. 2d at 662 (citing Anchor, 120 Wis. 2d at 397).

Because municipal incarceration of out of state felons would logically conflict with and “violate[] the express letter, the purpose and the spirit of statutes addressing a matter of statewide concern,” state legislation has pre-empted municipalities from regulating in this area. DeRosso, 200 Wis. 2d at 664.

Counties

Counties may not incarcerate out of state prisoners. Counties are also creations of the state, with limited powers. In the 1988 opinion, Attorney General Hanaway stated: “It has been repeatedly held in Wisconsin that ‘a county board has only such powers as are expressly conferred upon it [by the legislature] or necessarily implied from the powers expressly given or from the nature of the grant of power.’” 77 Op. Att’y Gen. at 96 (citing State ex rel. Teunas v. Kenosha County, 142 Wis. 2d 498, 504, 418 N.W.2d 833 (1988)).

County powers conferred by the Legislature are addressed in the county “home rule” and “board powers” statutes. See Wis. Stat. §§ 59.03, 59.04 and 59.51. These powers are less expansive than the powers granted to municipalities. As I explained in the 1996 opinion, addressing the privatization of a county house of correction:

[T]he statutory language defining the substantive nature of the power granted [to counties] is modelled [sic] primarily upon language contained in article XI, section 3 of the Wisconsin Constitution rather than upon language contained in section 62.11(5)

. . . .

Unlike section 62.11(5), which contains a grant of substantive power for municipalities to act even in connection with matters primarily of statewide concern, county municipal home rule statutes “expand upon and ‘fill the gaps’ in the organizational and administrative structure which is already in place.”

OAG 1-96 at 4-5 (citations omitted). Because the grant to counties is so limited, “if the legislature did not specifically confer a power, it is evidence of legislative intent not to permit the exercise of the power.” *Id.* at 7 (citing State ex rel. Harris v. Larson, 64 Wis. 2d 521, 527, 219 N.W.2d 335 (1974)). The Legislature has made no express grant of power to counties to house out of state prisoners; therefore counties have no power to do so.

Sister States

Another state cannot lease or buy a correctional facility in Wisconsin and operate it according to its laws. Although states are sovereign within their territory, sovereignty ends at the border. See K-S Pharmacies v. American Home Products, 962 F.2d 728 (7th Cir. 1992) (states lack power to reach outside their borders, giving rise to strong presumption of exclusive domestic application of state statutes); see also World-Wide Volkswagen Corp v. Woodson, 444 U.S. 286, 294 (1980) (sovereignty of each state implies limitation on sovereignty of all its sister states). Even were one state to acquire property in another, it is “elementary law that . . . [the acquiring state] does not thereby project its sovereignty into the state where the property is situated.” State v. City of Hudson, 231 Minn. 127, 42 N.W.2d 546, 548 (1950). It is clear that state sovereignty does not permit one state to house prisoners in another state without that state’s express consent.

Because states have long recognized that they may house their prisoners in another state only by consent of that state, they have devised a contractual method to arrange such housing. The Interstate Corrections Compact is the means by which Wisconsin and other subscribers address the housing of out of state prisoners. See Wis. Stat. § 302.25. The compact is a detailed cooperative agreement whereby participating states may contractually provide for the confinement of prisoners of other states. See *id.* Providing housing for out of state prisoners is

voluntary, and occurs only after entering into a contract. See Wis. Stat. § 302.25(3)(a) (“Each party state may make one or more contracts . . . [with other party states].”). This is the only manner in which Wisconsin expressly provides for the housing of out of state prisoners.

Private Organizations

Because the power to incarcerate belongs exclusively to the state, incarceration may be performed only by those whom the state expressly authorizes. See 81A C.J.S. States § 16 (1977). Consequently, private organizations may not incarcerate any prisoners including out of state prisoners, as the state has made no provision, statutory or constitutional, for such incarceration. Indeed, the state has made no provisions for a private organization to operate an incarceration facility at all, which leads to your fourth question.

4. Can a Private company operate an incarceration facility in Wisconsin?

Private companies may not operate an incarceration facility of any sort. As discussed above, incarceration is a sovereign power of the state. See 60 Am. Jur. 2d Penal and Correctional Institutions § 8 (1987). From this it follows that “detention is a power reserved to the government, and is an exclusive prerogative of the state.” Medina v. O’Neill, 589 F. Supp 1028, 1038 (S.D. Tex. 1984), modified on other grounds, 838 F.2d 800 (5th Cir. 1988). Thus, incarceration of prisoners may only be performed by the state or under its express authority. Because Wisconsin has made no express authorization, private companies may not operate an incarceration facility of any sort.

Previous opinions of the Attorney General, concluding that county incarceration functions may not be performed by private companies, form the foundation for the conclusion. In 1988, Attorney General Hanaway addressed the narrower issue of whether the jailer function of a sheriff’s duties under Wis. Stat. § 59.23(1) could legally be “privatized” by contract with a private firm; he concluded that it could not. See 77 Op. Att’y Gen. 94 (1988). In a later opinion, I concluded that neither could a private firm operate a county house of correction. See OAG 1-96. One factor leading to the result in both of these situations is that “the privatization of law and order functions relating to the incarceration of prisoners involves a matter exclusively or primarily of statewide concern.” Id. at 6. As I explained:

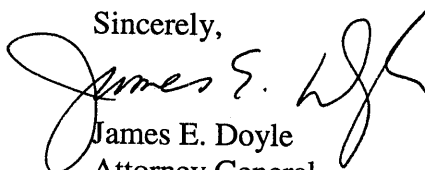
This reasoning is applicable to all forms of incarceration for commitment of a crime and is not limited to functions performed under the auspices of the sheriff as a constitutional officer. In my opinion, with respect to matters exclusively or primarily of statewide concern, “if the legislature did not

specifically confer a power, it is evidence of legislative intent not to permit the exercise of the power.”

Id. at 7 (citation omitted). While this opinion was limited to the privatization of county incarceration functions, the reasoning is applicable to all forms of incarceration, whether at statewide or local levels. Because incarceration is a sovereign power and incarceration functions involve matters of statewide concern, specific legislation would be needed in order to permit private companies to perform such functions.

I, therefore, conclude that under existing statutes, while a private company could conceivably build an incarceration facility, and sell or lease it to the state, private companies may not operate incarceration facilities in Wisconsin, nor may out of state prisoners be housed within Wisconsin except as provided in the Interstate Corrections Compact.

Sincerely,



James E. Doyle
Attorney General

JED:SJN:jlw

CAPTION:

While a private company may conceivably build an incarceration facility in Wisconsin, without enabling legislation it cannot be operated by a private company. The purchase or lease of a privately built incarceration facility by the state must be within the state's long range building program as expressed in Wis. Stat. § 13.48. A purchase must also be approved by the Joint Finance Committee. Out of state prisoners may be housed in Wisconsin by the state, a county or a municipality, only as expressly authorized by state statute. Currently that authorization is limited to the Interstate Corrections Compact (Wis. Stat. § 302.25).



Wisconsin Department of Transportation

www.dot.state.wi.us

Tommy G. Thompson
Governor

Charles H. Thompson
Secretary

June 2, 1999

FAX

Office of General Counsel
4802 Sheboygan Ave., Rm. 1158
P.O. Box 7910
Madison, WI 53707-7910

Telephone: 608-266-8810
FAX: 608-267-6734
E-Mail: ogc.exec@dot.state.wi.us

TO: Senator Chvala 266-5087
Senator Breske 267-0309
Senator Ellis 267-6798

FROM: Jim Thiel, General Counsel
608 266 8928
FAX 608 267 6734

Eight (8) Pages, including cover.

RE: Ethics Board - Secretary Charles H. Thompson

MESSAGE:

Attached is the Ethics Board June 2, 1999 determination in a letter to Secretary Thompson that he and his family have not violated applicable statutes and rules regarding WISDOT use of the Wintergreen Resort and Conference Center in the Wisconsin Dells. I am informed Chairman Jim Morgan will be available to the media tomorrow at 10 regarding this Ethics Board ruling.

As General Counsel of WISDOT, my client is the public agency itself and the public, not an individual officer or employee if conflict arises.

In this capacity, on February 26, 1999, I investigated and responded to media allegations of misconduct and provided detailed information and supporting documents to the Ethics Board regarding this matter. I concluded from a review of the records of WISDOT and discussions with WISDOT officers and employees that the applicable statutes had been and were being fully honored and met.

After further investigation and interviews, I also reported on May 17, 1999 that a fair consideration of the interactions between WISDOT and businesses in which the Secretary or his family have had a financial interest demonstrated that the public and the State of Wisconsin received a very favorable rate for the quality services and facilities offered. In fact, the \$32 a night charge was much less than the standard \$52 state rate paid by unrelated state agencies and employees that made greater use of the facility. I would be pleased to provide copies of my letters or further details if you desire.

WI ETHICS BOARD

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ID:6082649309

JUN 02 '99 10:04 No. 001 P. 001



STATE OF WISCONSIN
ETHICS BOARD

James R. Morgan
Chairman
Paul M. Holzem
David L. McRoberts
Robert G. Borgwardt
Joanne R. Orr
Dorothy C. Johnson

On the capitol square at:
44 EAST MIFFLIN STREET, STE 601
MADISON, WISCONSIN 53703-2200
phone: 608/266-8123
fax: 608/264-9300
ethics@ethics.state.wi.us

Roth Jurd
Director

June 2, 1999

Mr. Charles H. Thompson, Secretary
Department of Transportation,
4802 Shoboygan Ave., Rm. 120B
Madison WI INTER-D

Dear Secretary Thompson:

The State of Wisconsin Ethics Board has reviewed allegations that you violated §19.45(6) of the *Wisconsin Statutes* reprinted below.

19.45(6) No state public official, member of a state public official's immediate family, nor any organization with which the state public official or a member of the official's immediate family owns or controls at least 10% of the outstanding equity, voting rights, or outstanding indebtedness may enter into any contract or lease involving a payment or payments of more than \$3,000 within a 12-month period, in whole or in part derived from state funds unless the state public official has first made written disclosure of the nature and extent of such relationship or interest to the Board and to the department acting for the state in regard to such contract or lease. Any contract or lease entered into in violation of this subsection may be voided by the state in an action commenced within 3 years of the date on which the Ethics Board, or the department or officer acting for the state in regard to the allocation of state funds from which such payment is derived, knew or should have known that a violation of this subsection had occurred. This subsection does not affect the application of s. 946.13.

Secretary Charles H. Thompson
June 2, 1999
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The Statute

This statutory language requires a public official to make written disclosure before the official or a member of his immediate family enters into a contract of \$3,000 or more within a 12-month period derived from state funds. The disclosure is to be made to the Ethics Board and to the department acting for the state. Disclosure is also required for similar contracts if a public official or member of the official's immediate family has a 10% interest in a business doing business with a state agency.

Allegation

The allegation was that you violated the law because the Department of Transportation (DOT), of which you are Secretary, entered into contracts exceeding \$3,000 in a single year with the Wintergreen Resort and Conference Center, Wisconsin Dells, in which you had an ownership interest of at least 10%.

To resolve this issue, the Ethics Board at its meeting on March 23, 1999, authorized a review of the matter. Subsequently, Stephen P. Hurley of the law firm of Hurley, Burish, and Milliken S.C., Madison, Wisconsin, was engaged as a special assistant to determine the facts.

Nature of Inquiry

The Ethics Board special assistant interviewed 14 individuals, including employees of the Wintergreen Resort and Conference Center and employees of the Department of Transportation and other state agencies. He reviewed numerous documents, including purchase orders and correspondence of the DOT, and the Wintergreen Resort and Conference Center for the years in question. He submitted to the Ethics Board a written report accompanied by more than 100 pages of supporting documents.

Facts

The report indicated that you had reported on your Statements of Economic Interest filed with the Ethics Board that you owned a 10% or greater interest in the Wintergreen Resort and Conference Center. During the period from 1996 through 1998, the Bureau of Field Services, Division of Motor Vehicles, Department of Transportation, scheduled many meetings at the hotel, as did several other state agencies.

Secretary Charles H. Thompson
June 2, 1999
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Central Location

Interviews with several employees of the Bureau of Field Services indicated that in 1993 it was decided to choose a central location for their meetings in order to minimize cost. The then deputy director of the bureau chose the Wisconsin Dells area because of its central location and accessibility to the interstate highway. You played no role in that decision.

Choosing Hotel

The bureau deputy director decided that rather than paying the official state rate for hotel rooms, the bureau would solicit information from at least three hotels in the area for the meetings of bureau personnel for the next year and try to obtain a lower rate. The primary consideration was the rate, but the quality of facilities was also a factor.

The procedure was to ask several hotels to provide bids. This was under a simplified bidding process, which allows oral quotes and a written confirmation by the hotel. Three bureau staff members evaluated the locations before one was chosen. Under this simplified process, the chosen hotel agreed to provide rooms and meals for the estimated number of personnel and number of meetings at the special rate for the year. The rate was generally \$32 per night. The DOT agreed to notify the hotel about 30 days in advance of the number of attendees, and DOT could change the number of attendees or cancel any meeting at no cost.

The first year the Holiday Inn was chosen and provided a rate lower than the state rate. In 1995 the sales manager of the Holiday Inn became the sales manager for Wintergreen Resort and Conference Center and solicited business from the state agencies that previously used the Holiday Inn. One of the offices contacted was DOT's Bureau of Field Services. Wintergreen Resort and Conference Center was chosen for 1996, 1997, and 1998.

Based on the interviews with the bureau personnel involved in choosing a hotel for the year, there was never pressure from anyone in the department to choose a particular site.

Contract Procedure

Until 1999, the procedure was to choose the hotel for that year as previously described. There was no written agreement or oral guarantee to rent rooms at the hotel. DOT did not obligate public funds and made no payment in advance of services. Cancellations occurred on several occasions because of

Secretary Charles H. Thompson

June 2, 1999

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scheduling difficulties or because the facility did not have rooms available. Both parties could make changes during the year. There was no contract on an annual basis. A contractual relationship existed only when the Bureau of Field Services paid for a conference.

The following question arises: Did any of the contracts exceed the \$3,000 limit? During the period from 1996 to 1998, on only one occasion was the amount greater than \$3,000. In that instance, the estimated amount was \$2990.40 but the actual payment was \$3083.15 because an additional employee had unexpectedly attended the meeting. Therefore, in DOT's dealings with Wintergreen Resort and Conference Center, on only one occasion did the reporting requirement of §19.45(6) come into play and then by only \$83.

Your Interest in Wintergreen Resort and Conference Center.

The employees involved in making meeting arrangements knew of your interest in Wintergreen Resort and Conference Center. They also stated there was no pressure from anyone to do business with Wintergreen Resort and Conference Center.

You also stated that at no time did you suggest the use of your hotel but at some point you knew it was doing business with state agencies. You indicated that when the hotel expanded its facilities in 1993, told your daughter that if state business was solicited, she should contact the State Ethics Board as to the procedure to follow. She did contact the Board in 1993 and was told that you had an obligation to notify both the Department of Transportation and the Ethics Board of your interest in any contract between the department and a business in which you had a 10% or greater interest if the contract exceeded \$3,000. We have no indication that information about rentals to other state agencies was discussed.

Application of the Law

Section 19.45(6), Wisconsin Statutes, states that notice is required before a state public official enters into a contract exceeding \$3,000 derived from state funds. We are satisfied that as Secretary of Transportation you personally did not enter into a contract with Wintergreen Resort and Conference Center. Because written notice is also required prior to the entrance into a contract financed by state funds of an organization in which an official has a 10% interest, Wintergreen Resort and Conference Center should not have entered into the contract with the Bureau of Field Service for \$3,083.15 without your

Secretary Charles H. Thompson

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prior written report of your interest in Wintergreen Resort and Conference Center to DOT and the Ethics Board.

We did not attempt to document Wintergreen Resort and Conference Center's contracts with state agencies other than the Department of Transportation.

Conclusion

The Ethics Board has determined that a contract existed only for each individual meeting, and the contract between Wintergreen Resort and Conference Center and the Bureau of Field Services that exceeded \$3,000 by \$83 is too insignificant to require any action by the Board.

The purpose of §19.45(6) is to alert the contracting agency and the public to a public official's interest in a private business seeking to do business with the state prior to the state agency's awarding a contract to the official's business. To a large degree the Statements of Economic Interest that public officials file annually with the Ethics Board accomplish notice to the public. Your statements have always shown your interest in the Wintergreen Resort and Conference Center (or under its earlier name Kennel Club Inn) for the pertinent years.

That a public official must also report the official's ownership interest in a business to a state agency with which the business proposes to enter into a contract involving payment of more than \$3,000 of state funds is likely not well known. Upon being appointed or elected, a public official receives a brochure explaining this obligation, but the provision about notification of contracts in which an official has an interest may not be consistently or uniformly recalled by officials of state government.

In regard to the notification of interest in an organization in which you have at least a 10% interest, the Ethics Board and presumably the public are aware of this interest because you have reported that on your Statement of Economic Interests filed with the Ethics Board. In the future, if any business in which you or your immediate family has a 10% or greater interest intends to enter into a contract exceeding \$3,000 with a state agency, you should provide written notice to the agency of your interest in the business prior to the execution of the agreement. At the same time, direct a copy of that notice to the Ethics Board. No special form is required for this notice, but we have enclosed a model you may use.

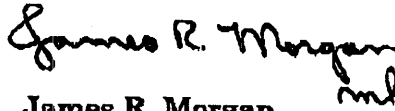
Secretary Charles H. Thompson

June 2, 1999

Page 6

For its part, the Ethics Board plans to add a specific alert or notice of the requirement of §19.45(6), *Wisconsin Statutes*, on the Statement of Economic Interests form or other communication directed to state government officials annually.

Sincerely,

Handwritten signature of James R. Morgan in cursive script.

James R. Morgan
Chairman

Enclosure

NOTICE OF POTENTIAL INTEREST IN STATE CONTRACT OR LEASE

State of Wisconsin

Ethics Board

Re: _____

Pursuant to sec. 19.45(6)* Wisconsin Statutes, I notify you that I or a member of my immediate family owns or controls at least 10% of the outstanding equity, voting rights, or outstanding indebtedness of the above-named business which may desire to enter into a contract or lease involving the payment of state funds during my tenure as a state public official.

(date)

(official's signature)

(Name of official; please print or type)

(office or position held)

cc: State of Wisconsin Ethics Board
44 E. Mifflin Street, Suite 601
Madison, WI 53703

* Sec. 19.45(6), Stats., provides:

19.45(6) No state public official, member of a state public official's immediate family nor any organization with which the state public official or a member of the official's immediate family owns or controls at least 10% of the outstanding equity, voting rights, or outstanding indebtedness may enter into any contract or lease involving a payment or payments of more than \$3,000 within a 12-month period, in whole or in part derived from state funds unless the state public official has first made written disclosure of the nature and extent of such relationship or interest to the board and to the department acting for the state in regard to such contract or lease. Any contract or lease entered into in violation of this subsection may be voided by the state in an action commenced within 3 years of the date on which the ethics board, or the department or officer acting for the state in regard to the allocation of state funds from which such payment is derived, knew or should have known that a violation of this subsection had occurred. This subsection does not affect the application of s. 946.13.

Thiel, Jim

From: Thiel, Jim
Sent: Monday, August 16, 1999 2:10 PM
To: Vance, Vaughn
Subject: RE: Trans 233

Hi, tried to reach you by phone today, Monday, when I got back in. My number is 266 8928. Probably would be best to discuss this issue. The rule applies to all land divisions, not just subdivisions. I think a representative of Sen. Breske's office was at a meeting with Rep. Brandemuehl in the last couple weeks where this was among things discussed, but, frankly, I'm drawing a blank on the name. The rule applies if the land being divided or owned or controlled by the same entity abuts a state trunk or connecting highway. Meanwhile, I'm sending you a few copies of a brochure on the subject that may be of some initial, general use and may help focus our discussion, along with a hard copy of this E-Mail. This is what we are doing to implement the rule and respond to concerns expressed:

Education, Training, Meetings. We will continue to meet and make presentations to organizations and other interested groups to explain Trans 233, listen and learn how to make it work together. Examples of recent efforts are our new informational brochure, and meetings with and presentations to the Wisconsin Builders Association, Wisconsin County Code Administrators, Municipal Attorneys, Town Attorneys, Wisconsin Realtors and Surveyors.

Specific Responses. We will continue to respond to specific questions. We have written extensive responses to specific questions from the Wisconsin Realtors and the City of Milwaukee.

Uniform Implementation. We will continue to provide internal training and guidance to our statewide staff on Trans 233. We have reserved some decisions to our central office staff, for example, granting variances, until we have developed sufficient experience to provide written guidance, blanket situation variances, and delegation of variance granting authority to our District Offices. Our target for this written guidance is October. It is our intent to share this guidance with interested organizations at an earlier date to make sure it is workable and understandable for all concerned.

Refine Rule As Necessary. Trans 233 has the full force and effect of law. The rule change process itself takes at least 6 months. When we identify specific parts of the rule that need to be revised or clarified with interested and affected groups, please be assured that we will initiate that process and make the changes. Right now, however, we'd prefer that we work our way through the other steps outlined above that are quicker and will allow all of us to make better choices for revising the rule as necessary together. So far, everyone we have spoken with is in agreement that this approach makes most sense...probably because the educational efforts have shown folks how this works to our mutual benefit, i.e. developers, land owners, WISDOT, and traveling public for preserving investment in highways and safety of entrance and exit.

Jim Thiel
General Counsel, WISDOT
jim.thiel@dot.state.wi.us

-----Original Message-----

From: Maassen, Joe
Sent: Friday, August 13, 1999 8:55 AM
To: Thiel, Jim
Subject: FW: Trans. 2.33

message from Senator Breske's Office!

-----Original Message-----

From: Vance, Vaughn
Sent: Thursday, August 12, 1999 2:04 PM
To: Maassen, Joe
Subject: Trans. 2.33

Joe:

We've been getting a lot of calls from other offices about the impact of Trans. 2.33 related to subdivisions/land use planning. In most cases, we are dealing with someone who has no interest in subdividing, but is selling off a few acres in the middle of nowhere. Trans. 2.33 apparently doesn't differentiate between these projects and the subdivision issue which was the basis for the rule. What have you guys been hearing? Is there any information that you could forward to me on this?

VAUGHN L. VANCE for
Senator Roger Breske



WISCONSIN DEPARTMENT OF TRANSPORTATION

JAMES S. THIEL
GENERAL COUNSEL

ROOM 115B
4802 SHEBOYGAN AVENUE
PO BOX 7910
MADISON, WI 53707-7910

(608) 266-8928 OFFICE
(608) 267-6734 FAX
jim.thiel@dot.state.wi.us

Who do I contact at the department

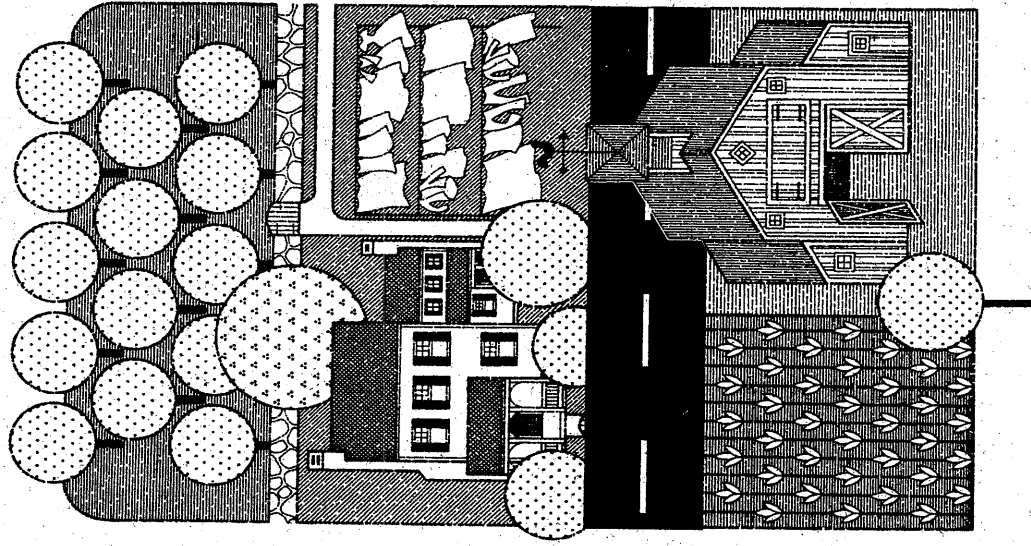
When creating a land division the contact person may vary. A district plat reviewer may provide you assistance in determining where to send the submittal. A subdivision plat must be reviewed by the Department of Administration. It routes to WisDOT all required information. County plats and condominium plats are sent to WisDOT. They are then sent to appropriate district offices for review with a formal response coming from the central office. Certified survey maps or other methods used to create minor land divisions should go directly to the district office for review. Included in this brochure is a map that indicates local district boundaries, names, addresses and phone numbers of district contact persons.

What happens if I don't have the WisDOT review my land division?

If a land division is not reviewed by WisDOT and recorded, you will not receive a driveway or any other permit relating to the highway. The land division and property must comply with the rule before a permit is issued. At the time of a highway improvement project, WisDOT and other units of government may determine if the land division occurred on or after 2/1/99. If it did not conform to the requirements of the rule, the owner will be ineligible for compensation for any structures or improvements located within the setback area and acquired by WisDOT. The amount of compensation for other property acquired may be lower than expected. The owner may be exposed to liability for drainage damage to the highway or damage to the owner's own property from unanticipated diversion or retention of surface water. There also can be other adverse consequences relating to financing, inadequate provisions for noise, the value of the property, the safety of entrance upon and departure from the highway, and the public interest and investment in the highway."

Land Divisions and the State Highway System

An overview of the impacts of Trans 233 on a land division you may be proposing



Land Divisions Along State Highways

Trans 233 is part of the Wisconsin Administrative Code requiring that all land divisions that abut a state highway meet certain requirements. If you intend to divide land that abuts a state highway you will need to be aware of these requirements.

What is Trans 233?

Trans 233 establishes requirements for land divisions occurring along a state highway and defines restrictions that must be followed when developing lands.

Who does it affect?

If you own land adjacent to a state highway and are considering dividing it, you will be affected by the rule. If the portion you are dividing is away from the highway and does not require access to a highway, you still need to follow the provisions of this rule. The rule impacts land divisions occurring on or after February 1, 1999. If your property was divided prior to this date provisions of this rule do not apply.

When do I have to contact the Department of Transportation (WisDOT)?

The rule has provisions for WisDOT to work with property owners as soon as they have an idea on how they want to divide their property. This is called a conceptual review. There is no charge for this review and only informal response is required by the district office. Conceptual review enables a developer to seek aid on how and where the safest location is for property to access a highway before expending funds for engineering. The final map will be used to create the new lots and is reviewed

for conformance by WisDOT. Any time WisDOT provides a formal review, a fee will be required. This is required for formal approval on a preliminary or a final map.

How long is the DOT review process?

WisDOT has 20 days to review a land division. The period begins when WisDOT receives a complete submittal. If the division conforms to Trans 233, WisDOT issues a letter of certification. If the map is a final, it will be given an approval number which is placed on the graphic sheet of the map. If the land division does not meet requirements of the rule, an objection letter is issued explaining what parts of the rule are not being met.

What are the major provisions of this rule?

The rule is designed to provide evaluation of a land division and its impacts upon a highway to protect the safety of the traveling public and its investment in the highway.

► **Review.** All land divisions must be reviewed by WisDOT for conformance including subdivision plats, county plats, condominium plats, certified survey maps, plats of survey or a plain legal description with no survey. Any methods used to divide land that is adjacent to a state highway must conform. A state highway is any numbered highway such as Interstate 90 or USH 51 or STH 73. The rule also includes connecting highways that are extensions of the rural highway through a village or city.

► **Access.** Direct access is generally not permitted from the newly created lots. The owner should determine alternative ways to provide access to the property. The preferred option is for the property to take access off of an alternative street. New public streets created by the land division are the second preferred alternative. Joint driveways may be allowed provided a

variance from the rule is requested and approved.

► **Drainage.** Drainage from the development to the highway is closely evaluated by WisDOT. This is to ensure storm drainage coming from the new development does not negatively impact the highway. To minimize work required, discuss this item with the district office before submitting the land division for review.

► **Setback.** A highway setback is required only along the frontage of the property that abuts the state highway. (It does not apply to county highways or town roads. You will need to contact those authorities for their restrictions.) The setback must be 110' from the centerline of the highway or 50' from the right-of-way line, which ever is greater. Within this setback, structures and improvements are prohibited. These items include parking lots, septic systems, buildings, wells, retaining walls and detention ponds. The setback enables WisDOT to improve facilities in the current highway corridor without having to relocate the highway elsewhere or disrupt businesses and residences.

► Items that may be allowed in the setback are landscaping, fences, noise berms and movable items. Structures or improvements lawfully located in the setback area prior to the land being divided may remain if shown on the land division map.

► **Noise.** WisDOT will not provide noise mitigation for developments choosing to locate next to a busy highway.

► **Vision Corners.** Vision corners may be needed at street and driveway intersections in order to provide a clear view of oncoming traffic. If so, the land divider will be expected to dedicate land for them.

► **Fee.** The final major provision of the rule is the fee the department will charge for formal reviews. It is \$110.

WisDOT District Land Division Reviewers

DISTRICT 8

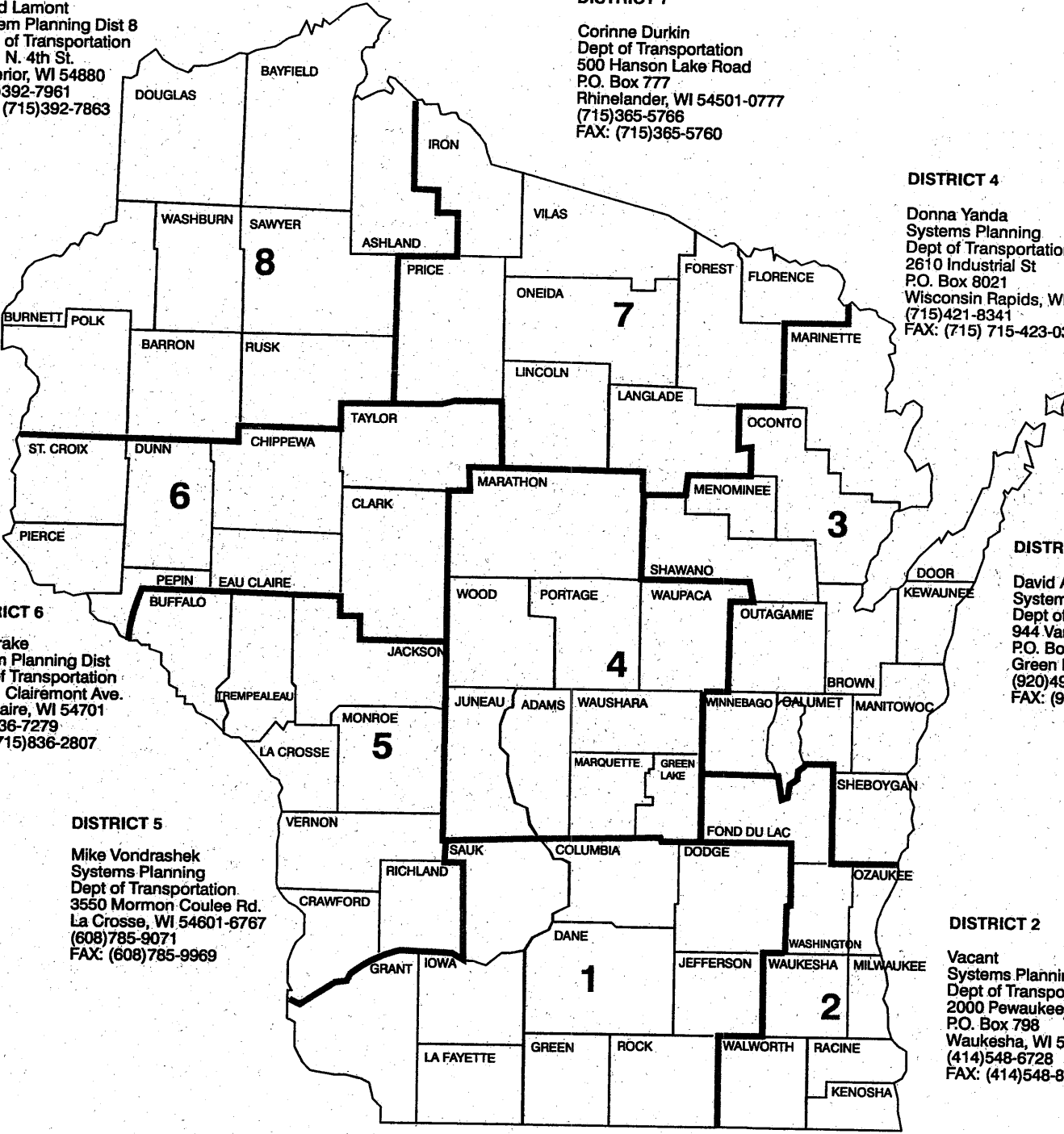
David Lamont
System Planning Dist 8
Dept of Transportation
1701 N. 4th St.
Superior, WI 54880
(715)392-7961
FAX: (715)392-7863

DISTRICT 7

Corinne Durkin
Dept of Transportation
500 Hanson Lake Road
P.O. Box 777
Rhinelander, WI 54501-0777
(715)365-5766
FAX: (715)365-5760

DISTRICT 4

Donna Yanda
Systems Planning
Dept of Transportation
2610 Industrial St
P.O. Box 8021
Wisconsin Rapids, WI 54494-8021
(715)421-8341
FAX: (715) 715-423-0334



DISTRICT 6

Ray Drake
System Planning Dist
Dept of Transportation
718 W. Clairmont Ave.
Eau Claire, WI 54701
(715)836-7279
FAX: (715)836-2807

DISTRICT 3

David Andre
Systems Planning
Dept of Transportation
944 Vanderperren Way
P.O. Box 28080
Green Bay, WI 54304-0080
(920)492-5681
FAX: (920)492-5640

DISTRICT 5

Mike Vondrashek
Systems Planning
Dept of Transportation
3550 Mormon Coulee Rd.
La Crosse, WI 54601-6767
(608)785-9071
FAX: (608)785-9969

DISTRICT 2

Vacant
Systems Planning
Dept of Transportation
2000 Pewaukee Rd. Ste. A
P.O. Box 798
Waukesha, WI 53187-0789
(414)548-6728
FAX: (414)548-8655

DISTRICT 1

Manoj Nag
Systems Planning
Dept of Transportation
2101 Wright Street
Madison, WI 53704
(608)243-3366
FAX: (608)246-3819

CENTRAL OFFICE

Bonnie Tripoli
Dept of Transportation
4802 Sheboygan Ave. Rm. 651
P.O. Box 7916
Madison, WI 53707-7916
(608)266-2372
FAX: (608)267-1862

**Request for Wisconsin Department of Transportation
Land Division Review**
DT1636 99

Wisconsin Department of Transportation

See Back for Name and Address of DOT Reviewer

Land Division Name: _____

County: _____

Submitter Name, Company & Address

Land Division Type: (Send to Office Noted in Parentheses)

- Preliminary Final
- Subdivision (Plat Review, DOA)
- County plat (C/O)
- Condominium Plat (C/O)
- Certified Survey Map (C/O or District)
- Other (C/O or District)

Telephone: _____

FAX: _____

Explain: _____

Land Divider Name, Address and Telephone:

(C/O - Central Office, DOA - Dept. Of Administration)

Required Information

Register of Deeds Name, Address and Telephone:

Approving Agency (if any) Name, Address and Telephone:

ENCLOSURES:

- Map, Number of Sheets _____
- Document, Number of Sheets _____
- Drainage Plans and Calculations
- Fee: \$110.00 check attached, payable to Wisconsin Department of Transportation

Submitter's Receipt & Transmittal Record		Shaded Area for Office Use Only
Date Received	Date Time Limit Expires	Receipt #
Date Copies Sent		DOT Approval Number
District/Central Office		
By:	DOT Reviewer	



WISCONSIN STATE SENATE
RODNEY C. MOEN
SENATOR - 31ST DISTRICT

COPY

State Capitol, P.O. Box 7882, Madison, Wisconsin 53707-7882 Phone: (608) 266-8546 Toll-free Hotline: 1-800-362-9472

August 17, 1999

Tim Stremcha
W 2530 Cedar Road
Eau Claire, WI 54701

Dear Tim,

Thank you for taking the time to express your concern about TRANS 233, the Department of Transportation administrative rule that imposes restrictions on divided land abutting a state trunk highway.

I have discussed this matter with Senator Roger Breske, the chair of the Senate Transportation Committee. After looking into the issue in more detail, including complaints about the rule received by other legislators, he may consider holding an informational hearing on the rule. We do agree that application of the rule to all land divisions could be inappropriate.

Again thank you for calling. I will be in touch with you in the future.

Sincerely,

A handwritten signature in black ink that reads "Rod".

Rodney C. Moen

bcc: VLV



State Senator
Chuck Chvala
SENATE MAJORITY LEADER

October 25, 1999

The Honorable Roger Breske
Wisconsin State Senator
Rm. No. 18 S., Capitol
Madison, WI 53703

Dear Senator Breske:

The Senate Committee on Organization has approved your request for the Members of the Senate Committee on Insurance, Tourism, Transportation and Corrections to travel to Eau Claire, Wisconsin on October 25, 1999 for the purpose of conducting legislative oversight and inspection of the proposed Stanley prison facility.

It is the Committee's understanding that you are seeking reimbursement for all actual and necessary expenses associated with the committee members' attendance at this function.

Your request has been approved contingent upon the Senate not being in session. Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Chuck Chvala".

CHUCK CHVALA
Chairman
Senate Committee on Organization

1999 ?

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Chatsworth, CA
91311 5833

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sschulz@nils.com

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818 998 8830

Facsimile
818 718 8482



Sam Schulz
Director, Government Relations

Man —
This is guy I
called in
S/C