

2003 DRAFTING REQUEST

Bill

Received: 02/25/2003

Received By: jkreye

Wanted: As time permits

Identical to LRB:

For: Mark Gottlieb (608) 267-2369

By/Representing: jenny

This file may be shown to any legislator: NO

Drafter: jkreye

May Contact:

Addl. Drafters:

Subject: Tax - property

Extra Copies:

Submit via email: YES

Requester's email: Rep.Gottlieb@legis.state.wi.us

Carbon copy (CC:) to: joseph.kreye@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Designating public depositories for property taxes

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							Local
/1	jkreye 03/11/2003	jdye 03/12/2003	rschluet 03/12/2003		sbasford 03/12/2003	amentkow 03/12/2003	
		jdye 03/12/2003					

FE Sent For:

At intro.

<END>

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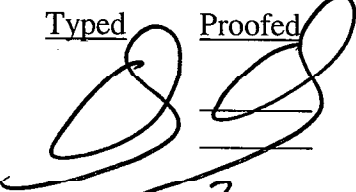
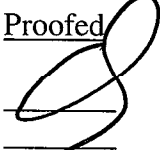
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/?	jkreye	1 3/12 jw					

3-12-3

FE Sent For:

<END>

57

Bill Request Form

Legislative Reference Bureau

100 N. Hamilton Street
Legal Section 266-3561

You may use this form or talk directly with the LRB attorney who will draft the bill.

Date 02/21/03

Legislator, agency, or other person requesting this draft Rep. Mark Gottlieb

Person submitting request (name and phone number) _____

Persons to contact for questions about this draft (names and phone numbers) _____

Jenny Walerak-Greiber 267-2369

Describe the problem, including any helpful examples. How do you want to solve the problem?

Clarify the statutes to allow municipal treasurers to designate a public depository for taxpayers to make property tax payments.

Please attach a copy of any correspondence or other material that may help us. If you know of any statute sections that might be affected, list them or provide a marked-up copy.

You may attach a marked-up copy of any LRB draft or provide its number (e.g., 2001 LRB-2345/1 or 1999AB-67).

Requests are confidential unless stated otherwise. May we tell others that we are working on this for you? YES NO

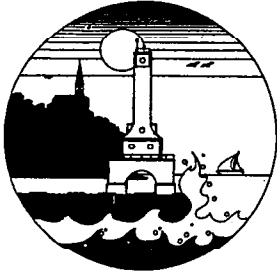
If yes: Anyone who asks? YES NO
 Any legislator? YES NO

Only the following persons _____

Do you consider this request urgent? YES If yes, please indicate why _____

Should we give this request priority over any pending request of this legislator, agency, or person?

YES NO



**CITY OF
PORT WASHINGTON**

**OFFICE OF
CITY ATTORNEY**

Eric E. Eberhardt
City Attorney

October 8, 2002

Mary Bley
City Treasurer
City of Port Washington
100 W. Grand Avenue
Port Washington, WI 53074

Re: Collection and Deposit of Taxes and Monies by
City Treasurer or Others on Treasurer's Behalf

Dear Mary:

At the City Administrator's direction, I have reviewed my prior legal opinions and undertaken further research regarding the statutory duty and responsibility of a city treasurer to collect, receive and/or deposit taxes and other funds belonging to a city into the city's accounts, and a city treasurer's authority to delegate those functions to others.

Based upon my further research, my opinions have not changed.

As you recall, secs. 62.09(9)(a) and (e) of the Wisconsin Statutes prescribe the duties of the city treasurer as follows:

"(a) The treasurer shall collect all city, school, county and state taxes, receive all moneys belonging to the city or which by law are directed to be paid to the treasurer and pay over the money in the treasurer's hands according to law.

...

(e) The treasurer shall deposit immediately upon receipt thereof the funds of the city in the name of the city in the public depository designated by the council. Such deposit may be in either a demand deposit or in a time deposit, maturing in not more than one year. Failure to comply with the provisions hereof shall be prima facie grounds for removal from office. When the money is so deposited, the treasurer and the treasurer's bonders shall not be liable for such losses as are defined by s. 34.01 (2). The interest arising therefrom shall be paid into the city treasury." (Emphases added)

2560 Highway 32

P. O. Box 366

Port Washington, WI 53074

Tel. (262) 284-2664

Fax (262) 284-6697

Sec. 74.07, Stats. lends further support for my conclusion. That statute provides:

"Treasurers responsible for collection. The taxation district treasurer and the county treasurer shall collect the general property taxes, special assessments, special taxes and special taxes shown on the tax roll."

Mary Bley
October 8, 2002
Page 2

Sec. 74.01(6), Stats. defines a "taxation district" as a city, village or town. Thus, a "taxation district treasurer" as referred to in sec. 74.07 includes a city treasurer.

It is hard to imagine two clearer statutory pronouncements on this subject, and I have found nothing in the Wisconsin Statutes that authorizes a city treasurer to delegate these fiscal responsibilities to others such as banks, retail grocery stores, etc.

In one particular case, the Wisconsin Legislature has granted specific authority to taxation district treasurers to designate one or more public depositories to which taxpayers may make payments *in advance of the tax levy*. Sec. 74.13(2), Stats. However, this does not authorize a city treasurer to delegate to one or more banks authority for the general collection of real estate taxes *after the tax levy*, as would be the more typical case.

In other cases, the Wisconsin Legislature has authorized the state treasurer and state agencies to use money transfer techniques (e.g., electronic funds transfer) to make specified regular periodic payments by transmitting funds directly into municipal accounts, thereby circumventing the above requirement that city treasurers personally "receive" and "deposit" all monies and funds belonging to the city. (See, e.g., secs, 14.58(6) and 16.412, Stats.) City treasurers are likewise authorized to process periodic payments and disburse city funds in this manner. (See sec. 66.0607(3m), Stats.)

Absent a direct grant of authority -- similar to that found in sec. 74.13(2) for advance property tax payments or in secs. 14.58(6), 16.412 and 66.0607(3) for state and municipal money transfers -- it is my opinion that the prescribed method of collecting, receiving and depositing taxes and city funds must be **strictly** followed by the city treasurer. The law clearly imposes these responsibilities on the treasurer alone. To delegate these duties to others, such as banks or other businesses, would be to implement a financial procedure for the collection, receipt and deposit of municipal funds inconsistent with and unauthorized under state law. A change in the law is necessary to permit such municipal financial practices.

Enclosed is a copy of a recent opinion letter from Ozaukee County Corporation Counsel Dennis E. Kenealy concurring with my conclusion. If you have any questions, please contact me.

Very truly yours,



Eric E. Eberhardt
City Attorney

EEE:amd
Enclosure
cc Mark Grams, City Administrator (w/encl.)

OCT 06 2002

OFFICE OF THE
CORPORATION COUNSEL
OZAUKEE COUNTY

Dennis E. Kenealy
Corporation Counsel

Administration Center
P. O. Box 994
Port Washington, Wisconsin 53074-0994

Rhonda K. Gorden
Assistant Corporation Counsel


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(262) 284-8328

Telephone
(262) 284-8400
Milw. Metro (262) 238-8400
Facsimile
(262) 284-8366

COPY

DATE: October 4, 2002

TO: Karen Makoutz
County Treasurer

FROM: Dennis E. Kenealy
Corporation Counsel 

RE: Treasurer's Use of Depositories For Tax Collection Under
Section 74.13(2) Wisconsin Statutes

I looked at this issue again specifically in regard to Section 74.13(2) of the Wisconsin Statutes. That section allows advance payment of taxes to previously named depositories. The municipalities in Ozaukee County and the County have designated depositories for placement of their money under Section 34.05 of the Wisconsin Statutes, Ozaukee County has several such bank depositories.

Section 74.13(2) allows the Taxation District Treasurer to designate those depositories where taxpayers may make payments in advance of the tax levy. A receipt issued for such advance payment has the same legal status as a receipt issued by the Taxation District Treasurer. That is a very specific use of these depositories and is not an allowance to use those depositories in general to collect taxes. The fact that the legislature has designated a specific use of these depositories would seem to exclude other uses of those depositories for the collection of taxes.

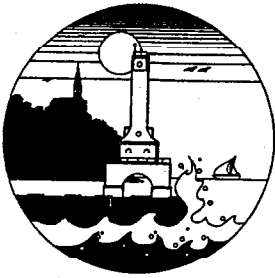
I see several problems in applying this statute to the County. First, it is stated that the Taxation District Treasurer may designate one or more depositories, it does not state that the County Treasurer may do so for collection of taxes in advance of the levy. Under the definitions of Section 74.01, "taxation district" means a city, village or town, taxation district does not include a county. Therefore, the advanced payment provisions of Section 74.13(2) apply only to a Taxation District Treasurer, which is a city, village or town, not county. *

Additionally, this section allows for payments in advance of the tax levy. I do not know what such payments would be for, but it does appear to be different than payment of taxes after levy which would follow the normal tax payment and collection process.

Therefore, my previous opinion has not changed. The County Treasurer does not have the authority to designate depositories for collection of taxes. As stated under Section 74.07, the Taxation District Treasurer and the County Treasurer shall collect the general property taxes, special assessments, special taxes and special charges shown in the tax roll. Section 74.13(2) appears to provide a limited exception to that requirement for taxation districts in certain circumstances. However, I could find nothing to change my previous opinion in regard to the ability of the County to designate other tax collection areas.

DEK:la

c: Thomas Meaux
Gerald Antoine
Eric Eberhardt



CITY OF
PORT WASHINGTON

OFFICE OF
CITY ATTORNEY

Eric E. Eberhardt
City Attorney

October 24, 2002

Mary Bley
City Treasurer
City of Port Washington
100 W. Grand Avenue
Port Washington, WI 53074

Re: Collection and Deposit of Property Taxes by
City Treasurer or Others on Treasurer's Behalf

Dear Mary:

I write to clarify certain aspects of my prior legal opinions regarding a city treasurer's responsibility to collect property taxes, as provided in secs. 62.09(9)(a) and 74.07, Wis. Stats.

First, although I find no statute specifically authorizing a city treasurer to designate financial institutions (e.g., banks) to which property tax payments may be made, I am likewise unable to cite you to any statute expressly limiting or prohibiting a city treasurer from doing so.

Second, I previously referred to sec. 62.09(9)(e), Stats. for the proposition that a city treasurer's failure to strictly comply with the statutorily prescribed financial procedures could lead to the treasurer's removal from office, or the treasurer's and the treasurer's bonding company's liability for any resulting loss. However, be advised that those potential sanctions are mentioned in the statute **only** with respect to a city treasurer's failure to **deposit** immediately all city funds into public depositories designated by the common council. In this case, I am advised that the financial institutions previously utilized to assist in collecting property tax payments from taxpayers have not also deposited those payments directly into the City's accounts; rather, you have made those deposits yourself. Thus, it would appear that the above-mentioned sanctions would not be applicable if the City continues to follow the same deposit practices in the future.

In addition, sec. 62.09 does **not** identify any sanctions which might result from a city treasurer's use of designated financial institutions to **collect** property taxes, instead of the city treasurer collecting those property tax payments on his or her own (or by a duly appointed deputy treasurer) at their office.

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Fax (262) 284-6697

Mary Bley
October 24, 2002
Page 2

Finally, we are attempting to obtain an opinion from the Wisconsin Attorney General addressing the legal authority of a municipal treasurer to designate a public depository to which taxpayers may make property tax payments *after* the tax levy, just as a municipal treasurer may already do so for tax payments made *before* the tax levy under sec. 74.13(2), Stats.

Based upon the above clarifications and pending receipt of that Attorney General's opinion, you may choose to continue the City's past practice of utilizing one or more financial institutions to assist in the collection of property tax payments, especially since the risk of loss to the City or personal liability for you would appear to be low.

Very truly yours,



Eric E. Eberhardt
City Attorney

EEE:amd
cc Mark Grams, City Administrator

OZAUKEE COUNTY TREASURER

ADMINISTRATION CENTER
121 WEST MAIN STREET
P.O. BOX 994

PORT WASHINGTON, WI 53074-0994


Website: www.co.ozaukee.wi.us

Karen L. Makoutz
County Treasurer
Email: kmakoutz@co.ozaukee.wi.us

Phone: Local (262) 284-8280
Metro (262) 238-8280
Fax: Local (262) 284-8100
Metro (262) 238-8100

DATE: October 23, 2002

TO: Ozaukee County Municipal Treasurers
Ozaukee Bank
Port Washington State Bank

FROM: Karen L. Makoutz 
County Treasurer

RE: Use of Financial Institutions for Property Tax Collection

On Monday, October 21, 2002, Corporation Counsel Dennis Kenealy, and I discussed the use of financial institutions with the Finance Committee. After discussing the issue they decided not to request any change in the tax collection procedures.

I have a final written opinion from my Corporation Counsel regarding the use of financial institutions for tax collection. His summary follows:

To summarize, I cannot explicitly indicate to you that I can find a statutory authority authorizing the current practice, however, it is not prohibited by law. It is likely that if anyone would challenge this practice the inherent authority of your office could be invoked to allow the practice to continue. Financially, I do not see any risk to you or the county due to the various bonding, insurance and financial arrangements of the various institutions. For whatever reason, the statutes have not been changed to reflect this practice, that is not unusual. There are many statutes in which outdated language is contained but the practical application of that is impossible and therefore not followed. A statutory change would be preferable, however, since that may never happen, the practice has become wide spread and probably a necessary means of tax collection in today's society and I could not tell you that you should discontinue it at this time.

Please see enclosure for the entire letter from my Corporation Counsel.

As you know, the assistance the financial institutions provide is a great benefit for the taxpayers, for government and the financial institutions. It is a shining example of a

community working together for the good of all. I know some of you have taken this issue to your Administrators, Attorneys and respective municipal committees. As of today and to my knowledge only one municipality may change its procedures and not request the financial institutions assistance in the tax collection process. At this time, **the county will continue to accept assistance from the financial institutions for property tax collection.**

If any of you are not going to use the financial institutions this year for property tax collection, please inform the financial institutions, Chip Mauel and me as soon as possible. Thank You.

OFFICE OF THE
CORPORATION COUNSEL
OZAUKEE COUNTY

Dennis E. Kenealy
Corporation Counsel

Administration Center
P. O. Box 994
Port Washington, Wisconsin 53074-0994


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(262) 284-8366

DATE: October 22, 2002

TO: Karen Makoutz
County Treasurer

FROM: Dennis E. Kenealy
Corporation Counsel 

RE: Use of Banks for Collection of Taxes

I wanted to further clarify my previous opinions regarding the County Treasurer's use of financial institutions to help with tax collections. While I did not find explicit authority for your office to use these banks as, in essence, branch offices for the collection of taxes, I also did not find that it was explicitly prohibited for your office to do that. This is an area where the statutes probably do not address the changes in technology and your office to explicitly allow for the safe collection and processing of taxes outside of your immediate office. This is similar to the situation where the statutes indicate that you shall have one deputy, that is not practical and not followed, however, the statutory changes have never kept up with actual practices.

Since I cannot say this is prohibited, the usual course of action is to advise that without explicit authority we should not proceed. However, in this case, you may have the inherent authority of your office to physically expand its function of collecting taxes to areas outside of your office using institutions other than your office. I believe if there is a challenge to that practice it could be found to be an allowable program due to the inherent authority of your office to use current technology for the safe and efficient collection of taxes. If you were not found to be able to do that, the only result would be that you would be ordered not to collect taxes outside of your office. Your current bonding as well as liability insurance and the financial resources of the collecting institutions certainly will provide enough security if any of these moneys were misplaced or otherwise misused. Therefore, I don't think there is any problem with that and I do not foresee any personal liability for you in this type of collection effort.

The general theory by law is that cities and villages have the inherent authority to perform most all functions except those that are prohibited by law. Towns and counties however are creatures of the state and in general have only the specific authority that is allowed them by statute, all other authority is prohibited. That concept has been eroded somewhat in that the counties and towns now have a great deal of administrative home

rule and the courts have found that there is much inherent authority in town and county officers to perform their duties efficiently with new technology and resources.

To summarize, I cannot explicitly indicate to you that I can find a statutory authority authorizing the current practice, however, it is not prohibited by law. It is likely that if anyone would challenge this practice the inherent authority of your office could be invoked to allow the practice to continue. Financially, I do not see any risk to you or the County due to the various bonding, insurance and financial arrangements of the various institutions. For whatever reason, the statutes have not been changed to reflect this practice, that is not unusual. There are many statutes in which outdated language is contained but the practical application of that is impossible and therefore not followed. A statutory change would be preferable, however, since that may never happen, the practice has become wide spread and probably a necessary means of tax collection in today's society and I could not tell you that you should discontinue it at this time.

DEK:la



RMK

m 3-11-03
5000

Gen

1 AN ACT ...; relating to: designating public depositories for the payment of
2 property taxes.

Analysis by the Legislative Reference Bureau

Under current law, a taxation district treasurer may designate one or more public depositories to which taxpayers may make property tax payments in advance of the property tax levy. Under this bill, a taxation district treasurer or county treasurer, as appropriate, may designate one or more public depositories to which taxpayers may make property tax payments after the property tax levy.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 74.11 (1) of the statutes is amended to read:
4 74.11 (1) APPLICABILITY. General property taxes, special assessments, special
5 charges and special taxes collectible under this chapter are payable as provided in
6 this section, except as provided in ss. 74.12, 74.125, and 74.87.

History: 1987 a. 378; 1989 a. 104, 336; 1991 a. 39, 293; 1993 a. 30.

7 SECTION 2. 74.12 (1) (b) of the statutes is amended to read:

1 74.12 (1) (b) In any taxation district which has enacted an ordinance under par.
2 (a), all general property taxes, special assessments, special charges and special taxes
3 shall be collected as provided in this section, rather than as provided in s. 74.11 and
4 except as provided in s. 74.125.

5 History: 1987 a. 378; 1989 a. 104, 336; 1991 a. 39, 283.

6 **SECTION 3.** 74.125 of the statutes is created to read:

7 **74.125 Public depositories.** The taxation district treasurer or county
8 treasurer, as appropriate, may designate one or more public depositories, among
9 those previously designated under s. 34.05, to which taxpayers may make payments
10 under ss. 74.11 and 74.12. A receipt for such payments issued by a designated public
11 depository has the same legal status as a receipt issued by the taxation district
12 treasurer or county treasurer.

13 **SECTION 4. Initial applicability.**

14 (1) This act first applies to the property tax assessments as of January 1, 2003.

(END)

Mentkowski, Annie

From: Walerak, Jenny
Sent: Wednesday, March 12, 2003 2:30 PM
To: LRB.Legal
Subject: Draft review: LRB 03-2147/1 Topic: Designating public depositories for property taxes

It has been requested by <Walerak, Jenny> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 03-2147/1 Topic: Designating public depositories for property taxes