

2003 DRAFTING REQUEST

Bill

Received: **03/27/2003**

Received By: **mlief**

Wanted: **As time permits**

Identical to LRB:

For: **Ann Nischke (608) 266-8580**

By/Representing: **mary jan**

This file may be shown to any legislator: **NO**

Drafter: **mlief**

May Contact:

Addl. Drafters:

Subject: **Munis - miscellaneous**

Extra Copies: **MES**

Submit via email: **YES**

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

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Authorizing municipal courts to contract with collection agencies and sharing of collection costs by cities, towns, villages, and counties.

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>
/?							S&L
/1	mlief 03/27/2003	kgilfoy 04/03/2003	chaskett 04/04/2003		sbasford 04/04/2003	amentkow 04/24/2003	

FE Sent For:

*At
intro.*

<END>

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1/1	mlief	11-4/3 Hmg	1 CPH 4/4	4/4 SAIF			

FE Sent For:

<END>



ANN NISCHKE
STATE REPRESENTATIVE

March 26, 2003

Marc Shovers
Legislative Reference Bureau
5th Floor Hamilton
Internal Mail

Dear Marc,

Attached is the correspondence we have from Judge Stern concerning his problem hiring a collection agency to collect delinquent fines.

Thank you for offering to take a look and see if his solution is necessary and/or practical.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Mary Jan Rosenak", is positioned below the "Sincerely yours," text.

Mary Jan Rosenak

LAKE COUNTRY MUNICIPAL COURT

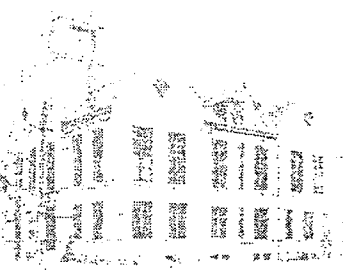
174 E. Wisconsin Avenue
Oconomowoc, WI 53066

Phone: (262) 569-0920

Fax: (262) 569-0771

website: lcmunict.com/lcmunict.org

email address: clerk@lcmunict.com



Douglas R. Stern
Municipal Judge

Pamela Strunk
Court Clerk

Theresa Berlin
Deputy Clerk

Proudly Serving:

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- Town of Delafield
- Village of Dousman
- Village of Hartland
- Village of Lac La Belle
- Town of Lisbon
- Town of Merton
- Village of Nashotah
- City of Oconomowoc
- Town of Oconomowoc
- Village of Oconomowoc Lake
- Town of Summit
- Village of Sussex

March 17, 2003

Discussed

State Representative Steven M. Foti
Room 215 West
State Capitol
PO Box 8952
Madison, WI 53708

RECEIVED
MAR 18 2003
BY: _____

Re: §59.40(4) Collection Agencies

Dear Representative Foti:

I am writing to express concern and request assistance on an issue affecting the communities served by this court which are also part of your district. We are attempting to forward some \$500,000.00 in delinquent forfeitures to collection but have been unable to do so since under State law we are unsure how to apply the cost of collection. It is very clear under §59.40(4), a copy of which I enclose, that at the circuit court level, these costs are assessed pro rata. However, the municipal court level appears to be a different story.

I enclose copies of my memorandum of May 16, 2002 and my letters to our Attorney General dated January 30, 2003 and February 11, 2003. As of this date, my inquiries with the Attorney General remain unanswered.

I request that you sponsor and/or support legislation to allow the 220 + municipal courts in this state to utilize collection agencies and to assess the cost of collection pro rata to those receiving the proceeds of this effort. For municipal court forfeitures, the court, municipality, county, and state share in varying proportions the forfeitures assessed.

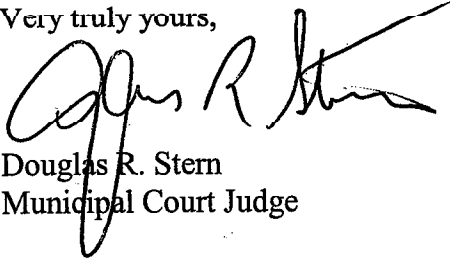
As noted, this court has approximately \$500,000 in delinquent forfeitures due. We use every means available and expend considerable effort to collect these delinquencies. We are looking for one more option to assist in this endeavor. If we were fully successful on the current balance, the state's share would be approximately \$135,000.00. Imagine if 220+ municipal courts throughout the state could also use this means to help clear up their delinquencies.

I believe the solution is very simple. The language of the statute, which is enclosed, could be amended to read "or municipal court" wherever the "circuit court" appears in the body of (4). The other option is to utilize the language in Chapter 800 governing the operations of the circuit courts and make the same language apply to the municipal courts.

I am authorized to let you know that members of this court's administrative committee would be willing to testify at any hearings concerning this proposed bill as would I.

I look forward to hearing from you on this.

Very truly yours,



Douglas R. Stern
Municipal Court Judge

DRS:mjm

Enclosures

cc: Wisconsin Municipal Judges Association
Lake Country Municipal Court Administrative Committee:
Jeffery Musche, Town of Lisbon
Chief James Race, Town of Summit
Chief Robert Rosch, Village of Hartland
Chief Robert Douglas, Village of Chenequa
Janis Husak, Town of Oconomowoc
Chief Donald Wiemer, Village of Oconomowoc Lake
Jackee Gardner, Village of Nashotah
Officer Reid Brueser, Town of Merton
Susie Oman, Town of Merton
Timothy Rieck, Village of Lac La Belle
Steve Werner, Village of Dousman
William Chapman, Herro, Chapman & Herro
Paul Kanter, Town of Delafield
M. Chris Swartz, Village of Sussex

MEMO

TO: Chief James Race
Chief Robert Rosch
Chief Donald Wiemer
FROM: Douglas Stern
DATE: 5-16-02
RE: Professional Collections Solutions Proposal

I have made a number of inquiries with the legal department at the Wisconsin Department of Transportation and reviewed relevant statutes on the issue of assessing the defendant the 25% collection fee.

I enclose copies of Section 814.65 and 757.05 of the Wisconsin Statutes. You will note that 814.65(4) specifically prohibits the assessment of any fees and costs except those specified. The costs of collection is not specified. 757.05(1) regards penalty assessment and allows this portion of the forfeiture to be reduced pro rata. If we only collect 75%, then the penalty assessment is reduced to 75% of the original amount. This is not true for the \$5.00 costs. The \$5.00 is a set fee no matter what is collected, pursuant to 814.65(1).

Based upon the above, the example of a \$100 forfeiture sent to collection and returning \$75.00, \$5.00 would come off the top and the balance of \$70.00 would be divided pro-rata between state, county, court and municipality. I trust the enclosed answers this issue.

cc: Pamela Strunk

LAKE COUNTRY MUNICIPAL COURT

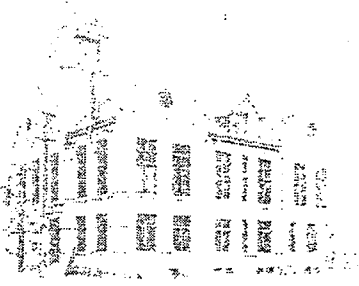
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Village of Nashotah
City of Oconomowoc
Town of Oconomowoc
Village of Oconomowoc Lake
Town of Summit
Village of Sussex

January 30, 2003

Attorney General Peggy A. Lautenschlager
Wisconsin Department of Justice
PO Box 7857
Madison, WI 53707-7857

Re: Collection of delinquent forfeitures

Dear Attorney General Lautenschlager:


This court's operations committee has directed me to request an opinion concerning our proposal to submit for collection delinquent forfeitures. For your reference, I enclose a copy of our 2002 spread sheet indicating that we sent the State almost \$300,000.00. I also enclose a copy of my memo of May 16, 2002, which outlines the nature of my inquiry. Essentially, this court has approximately \$500,000.00 in delinquent forfeitures that we could turn over for collection. The collection agency charges a standard contingency fee based upon amounts collected.

The question is how the amounts collected should be divided. We have not been able to come up with the algebraic formula necessary to take the \$814.65(1) fee off the top and then divide the balance somehow between the remaining interests. This is quite complex since there are various percentage portions going to the State and County. In fact, the only way to do it pursuant to the statute is by hand calculating each forfeiture or portion of forfeiture paid. This is so labor intensive as to be impractical.

My opinion is that every entitled interest to the forfeiture should share pro-rata in the cost of collection. Otherwise, we will not be able to move forward with this initiative. This is not a minor matter, multiply our situation times two hundred plus other municipal courts in the state.

I appreciate any advice and/or direction that your office can provide. If you or one of your deputies needs to call, please feel free to call the above number on any Friday or (414) 771-7780/(262) 227-9779 any Monday through Thursday.

Very truly yours,


Douglas R. Stern
Municipal Court Judge

DRS:mjm

Enclosures

cc: Operations Committee

**LAKE COUNTY
MUNICIPAL COURT**

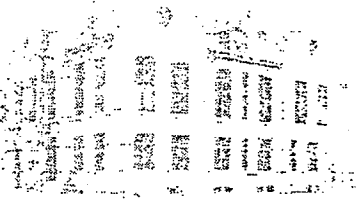
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- Town of Summit
- Village of Sussex

February 11, 2003

Attorney General Peggy A. Lautenschlager
Wisconsin Department of Justice
PO Box 7857
Madison, WI 53707-7857

Re: Collection of delinquent forfeitures

Dear Attorney General Lautenschlager:

I wrote you on January 30, 2003 regarding this Court's dilemma concerning a collection agency and how to allocate that agency's fee. I have continued to research the matter and have found a statute dealing with circuit courts that may be instructive. For your reference, I have enclosed a copy of my letter of January 30, 2003 and a copy of §59.40(4).

I look forward to advise from your office as to my initial inquiry.

Very truly yours,

Douglas R. Stern
Municipal Court Judge

DRS:mjm
Enclosures

cc: Operations Committee

appropriate court record, civil or criminal, the data which this paragraph requires to be recorded.

(e) Keep a judgment and lien docket of all money judgments of the court, transcripts from judgment and lien dockets of other Wisconsin courts and of federal courts, warrants for unemployment insurance and warrants for delinquent Wisconsin income or franchise taxes.

(f) Keep a judgment and lien docket of all claims for liens filed by contractors, subcontractors, materialmen and laborers and all claims filed for log, mining and maintenance liens.

(g) Keep an index to the court record, the criminal record, the judgment record and the lien record.

(i) File, enter, record and keep such other papers, books and records as are required by law.

(im) Keep a record of all payments ordered by the court under s. 973.05 (4) or 778.30 (1) to be paid to the clerk of circuit court.

(j) Keep a record called registers of officials and write or copy in the record in tabular form the names of court commissioners, deputy sheriffs, notaries public and municipal judges. The clerk shall list the officers' names, the dates of their qualification and the commencement and termination, if any, of their terms. The names shall be in alphabetical order or there shall be an index in alphabetical order to the names.

(k) Keep a record called certificate lists and write or copy in the record a list of all certificates issued by him or her to witnesses, interpreters, jurors, sheriffs, deputy sheriffs and deputy clerks, stating the persons to whom issued, the number, date and amount of each certificate. At each annual session of the board, the board may request that the clerk prepare a summary report of certificates issued in the previous year.

(L) Send to the secretary of state on or before June 1 of each year a certified list of all municipal judges who filed their official bonds during the preceding year.

(m) Pay monthly to the treasurer for the use of the state the state's percentage of the fees required to be paid on each civil action, criminal action and special proceeding filed during the preceding month and pay monthly to the treasurer for the use of the state the percentage of court imposed fines and forfeitures required by law to be deposited in the state treasury, the amounts required by s. 757.05 for the penalty assessment surcharge, the amounts required by s. 165.755 for the crime laboratories and drug law enforcement assessment, the amounts required by s. 167.31 (5) for the weapons assessment, the amounts required by s. 973.045 for the crime victim and witness assistance surcharge, the amounts required by s. 938.34 (8d) for the delinquency victim and witness assistance surcharge, the amounts required by s. 973.046 for the deoxyribonucleic acid analysis surcharge, the amounts required by s. 961.41 (5) for the drug abuse program improvement surcharge, the amounts required by s. 100.261 for the consumer information assessment, the amounts authorized by s. 971.37 (1m) (c) 1. or required by s. 973.055 for the domestic abuse assessment surcharge, the amounts required by s. 253.06 (4) (c) for the enforcement assessment under the supplemental food program for women, infants and children, the amounts required by ss. 346.177, 346.495 and 346.65 (4r) for the railroad crossing improvement assessment, the amounts required by s. 346.655 for the driver improvement surcharge, the amounts required by s. 102.85 (4) for the uninsured employer assessment, the amounts required by s. 299.93 for the environmental assessment, the amounts required under s. 29.983 for the wild animal protection assessment, the amounts required under s. 29.987 (1) (d) for the natural resources assessment surcharge, the amounts required by s. 29.985 for the fishing shelter removal assessment, the amounts required by s. 350.115 for the snowmobile registration restitution payment and the amounts required under s. 29.989 (1) (d) for the natural resources restitution payments. The payments shall be made by the 15th day of the month following receipt thereof.

(n) Pay monthly to the treasurer the amounts required by s. 302.46 (1) for the jail assessment surcharge. The payments shall be made by the 15th day of the month following receipt thereof.

(o) Address process to the coroner if a party, the party's agent or the party's attorney files an affidavit that the party believes the sheriff will not properly perform the sheriff's duty in such action.

(p) Cooperate with the department of workforce development with respect to the child and spousal support and establishment of paternity and medical liability support program under ss. 49.22 and 59.53 (5), and provide that department with any information from court records which it requires to administer that program.

(q) Perform all other duties that are required by law.

(3) CLERK OF COURT: FEES: INVESTMENT OF FUNDS. (a) The clerk of the circuit court shall collect the fees that are prescribed in ss. 814.60 to 814.63. The clerk may refuse to accept any paper for filing or recording until the fee prescribed in subch. II of ch. 814 or any applicable statute is paid.

(b) Except as provided in par. (c), the clerk may invest any funds that are paid into his or her office and are being held for repayment. The investments shall be made in suitably protected accounts in the manner specified in s. 66.0603 (1) [s. 66.0603 (1m)] and all income that may accrue shall be paid into the county general fund.

NOTE: The bracketed language indicates the correct cross-reference. Corrective legislation is pending.

(c) A judge may direct that par. (b) does not apply to certain funds paid into the office. The judge's authority applies only to funds relating to cases before his or her court.

(4) CLERK OF CIRCUIT COURT: COLLECTION AGENCY CONTRACT. If authorized by the board under s. 59.52 (28), the clerk of circuit court may contract with a collection agency for the collection of unpaid fines and forfeitures. Any contract entered into shall provide that the collection agency shall be paid from the proceeds recovered by the collection agency. The net proceeds received by the clerk of circuit court after the payment to the collection agency shall be considered the amount of fines and forfeitures collected for purposes of distribution to the state and county under sub. (2) (m).

History: 1995 a. 27 ss. 3290, 3291; 1995 a. 201 ss. 311 to 318, 320 to 322, 325; 1995 a. 224 ss. 11 to 13; 1995 a. 227 s. 203; 1995 a. 279 s. 8; 1995 a. 404 s. 185; 1995 a. 438; 1995 a. 448 s. 61; Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); 1997 a. 3, 27; 1997 a. 35 ss. 185, 186; 1997 a. 39, 135, 148, 191, 237, 248, 252; 1999 a. 9, 32; 1999 a. 150 s. 672.

Cross-references: Furnish information to the state registrar of vital statistics, ss. 69.01 (5), 69.12 (1), 69.14 (1) (h), 69.15 (1) (b), 69.16 (2), 69.17, 69.19 and 69.21 (4) (b).

Collect and disburse maintenance and support payments, ch. 767.

Furnish information to the judicial council, s. 758.13.

Authenticate, certify and transmit documents, ss. 753.30, 801.61, 809.15, 889.08 and 889.09.

Receive bail as provided by law, ch. 818 and ch. 969.

Perform duties with respect to jurors, ch. 756.

Care for county law library, s. 151.40.

Tax costs and collect fees, ch. 814.

Issue executions and writs of assistance, ch. 815.

Issue and sign subpoenas, s. 885.01.

Keep a lien docket, s. 779.07.

A clerk of court who customarily supplies an affidavit form to persons claiming witness fees cannot refuse one to a person whom he believes not entitled to such fees. State ex rel. Hurley v. Schmidley, 48 Wis. 2d 659, 180 N.W.2d 605.

Under s. 59.42 (1) [now 59.40 (3) (a)], a clerk retains discretion to refuse to file documents unless the fee is tendered, even though the standard may result in inconsistent policies among the counties. Giese v. LIRC, 153 Wis. 2d 212, 450 N.W.2d 489 (Ct. App. 1989).

The payment to a county under s. 59.42 (2) [now 59.40 (3) (b)] of interest earned on a condemnation award deposited with the clerk is not an unconstitutional taking. Brongman v. Douglas County, 164 Wis. 2d 718, 476 N.W.2d 611 (Ct. App. 1991).

The express powers to appoint and discharge deputies under this section are separate from those of the county and are not subject to a collective bargaining agreement entered into by the county. Crawford County v. WERC, 177 Wis. 2d 66, 501 N.W.2d 836 (Ct. App. 1993).

Crawford County v. WERC is restricted to its facts. Deputized employees, apart from the chief deputy, are exempt from the terms of collective bargaining agreements only to the extent that they are managerial or supervisory employees. Eau Claire County v. AFSCME Local 2223, 190 Wis. 2d 298, 526 N.W.2d 802 (Ct. App. 1994).



MJL: k...
kmg

2003 BILL

1 AN ACT ^{Gen. Cert.}; relating to: authorizing municipal courts to contract with collection
 2 agencies and the sharing of collection costs by cities, towns, villages, and
 3 counties.

stet *Analysis by the Legislative Reference Bureau* ^{village} ^{town}

Under current law, ~~the~~ municipal court collects forfeitures and certain assessments and surcharges for violations of city, ~~town~~, and ~~village~~ ordinances and disburses them to the appropriate municipal entities and, in some instances, to the counties.

This bill authorizes ^{stet} ~~the~~ municipal court to contract with a collection agency to collect these forfeitures, assessments, and surcharges. The bill also provides that the costs of collection are deducted before the forfeitures, assessments, and surcharges are disbursed so that the collection costs are shared by the cities, towns, villages, and counties on whose behalf the forfeitures, assessments, and surcharges are collected.

For further information see the *state and 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:

4 SECTION 1. 66.0114 (1) (d) of the statutes is created to read:

BILL**SECTION 1**

1 66.0114 (1) (d) [✓]The municipal court may contract with a collection agency for
2 the collection of unpaid forfeitures, assessments, and surcharges under par. (a). The
3 contract shall provide that the collection agency shall be paid from the proceeds
4 recovered by the collection agency. The net proceeds that the municipal court
5 receives after the payment to the collection agency shall be considered the amount
6 of forfeitures, assessments, and surcharges collected for distribution under par. (b) [✓]
7 and sub. (3) (b) [✓] and (c) [✓].

8 (END)

Mentkowski, Annie

From: Rosenak, Mary Jan
Sent: Thursday, April 24, 2003 10:06 AM
To: LRB.Legal
Subject: Draft review: LRB 03-2429/1 Topic: Authorizing municipal courts to contract with collection agencies and sharing of collection costs by cities, towns, villages, and counties.

It has been requested by <Rosenak, Mary Jan> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 03-2429/1 Topic: Authorizing municipal courts to contract with collection agencies and sharing of collection costs by cities, towns, villages, and counties.