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wine*

Department of Corrections Policy
Relating to the usage of communion wine by inmates.

INTERNAL MANAGEMENT PROCEDURES	PROCEDURE NUMBER: DOC 309- IMP # 6	PAGE NUMBER: 11 of 13
	ORIGINAL EFFECTIVE DATE: 4-1-81	NEW EFFECTIVE DATE: 04-17-01
	SUPERSEDES NUMBER: DOC 309- IMP # 6, 6A - 6K	DATE: 6-1-92 & 05-15-96

- c. Inmate responsibility
--Comply with all policies and procedures

10. Communion Wine

Notes:

The use of alternatives to communion wine is strongly encouraged. To bring communion wine into the institution, the Chaplain/Spiritual Leader must obtain prior approval and clearance from the institution. Once approved, only a small amount of communion wine (approximately one ounce) in a clear plastic vial will be authorized, and this must be checked in on each occasion by security staff. Under no circumstances will communion wine (alcoholic or non-alcoholic) be given to inmates.

-Staff have the following responsibilities:

- a. Warden/Designee Responsibility
--Ensure development of and compliance with, institution policies and procedures
- b. Chaplain/Designee Responsibility
1. Follow institution policies and procedures
 2. Coordinate with institution staff

B. DONATIONS

Notes:

Institutions may receive literature and other printed materials of a religious nature provided the materials are in compliance with Wisconsin Administrative Code DOC 309.04- Inmate Mail, and 309.05 - Inmate Publications.

All donated items including monetary donations will become the property of the institution.

Each institution will establish procedures for donations of religious books, tapes, and other materials consistent with the security needs and practices of the institution.

Literature and religious property left for inmates on pastoral visits must be given to a staff member in compliance with institution policies and procedures. Under no circumstances may it be given directly to an inmate

-Staff have the following responsibilities:

- a. Warden / Designee Responsibility
1. Establish institution policy relating to acceptance of donations
 2. Approve/deny donated property
 3. Ensure appropriate allocation of monetary donations

SENATOR JOSEPH LEIBHAM
CO-CHAIRMAN



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIRMAN

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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

May 13, 2004

MAY 14 2004

Matthew Frank, Secretary
Department of Corrections
P.O. Box 7925
Madison, WI 53707-7925

Secretary Frank:

As you may know, the Joint Committee for Review of Administrative Rules held a public hearing on April 28, 2004 on the Department of Corrections policy regarding communion wine.

Numerous pastors testified with regard to their ministry to parishioners serving time in Wisconsin's correctional institutions. In the case of some of the ministers, their Synod has passed a resolution stating that only wine can be used for communion, and do not feel grape juice or any other beverage is an appropriate, or acceptable substitute for wine.

We would like you to consider changing your procedure for inmates who are members of a church body that feel it is essential to use wine for communion. We cannot believe that a clergy member bringing a few small vials of wine into the institution for him and an inmate would pose a serious threat to the inmate, the staff or the institution. The Lutheran Church has been using communion wine for hundreds of years. We do not know why the Department of Corrections feels they could not control this situation.

In addition, a 2002 federal appeals court unanimously found that a lower court erred in its decision to prohibit prisoners from receiving communion wine. Although we are aware of a statute that prohibits inmates from receiving intoxicating liquor, we do not believe one ounce of wine is intoxicating. Also, the committee was told the Wisconsin Department of Corrections allows medicine that qualifies as intoxicating liquor. We believe a common sense exception should be made for a small amount of communion wine as well.

We look forward to your response on this matter. If you have any questions, or need further information, please contact us.

Sincerely,

Representative Glenn Grothman
Co-Chair

Representative Scott Gunderson

Representative Lorraine Seratti

Senator Joe Leibham
Co-Chair

Senator Mary Lazich

Senator Robert Welch

GG/mjd

Cc: Pastor Joseph Fisher
Barbara Sella

302.372 PRISONS

(6) ACTION TO OBTAIN REIMBURSEMENT. (a) Within 12 months after the release of a prisoner from jail, the county where the jail is located shall commence a civil action in circuit court to obtain a judgment for the expenses under sub. (2) (a) or be barred. The jailer shall provide any assistance that the county requests related to an action under this subsection.

(b) An action commenced under this subsection shall be commenced in the county where the jail is located or in the county where the defendant resides.

(c) The complaint in an action commenced under this subsection shall include the date and place of the sentence, the length of time of the sentence, the length of time actually served in the jail and the amount of expenses incurred by the county under sub. (2) (a).

(d) Before entering a judgment for the county, the court shall consider any legal obligations of the defendant for support or maintenance under ch. 767 and any moral obligation of the defendant to support dependents and may reduce the amount of the judgment entered for the county based on those obligations.

(e) Any money obtained as the result of an action commenced under this subsection shall be deposited in the county treasury.

History: 1995 a. 281; 1997 a. 191; 1999 a. 32.

302.373 Prisoner reimbursement to municipality. (1) In this section:

(a) "Jail" means a county jail, a rehabilitation facility established by s. 59.53 (8), or a county house of correction under s. 303.16.

(b) "Prisoner" means a person who is incarcerated in a jail by court order under s. 800.095 (4) (b) 1.

(2) (a) Except as provided in par. (b), a city, village, or town may seek reimbursement from the prisoner for the amount paid to a county under s. 800.095 (6) for the expenses incurred by the county to incarcerate the prisoner.

(b) This section applies to expenses incurred after June 3, 2003.

(3) Within 12 months after the release of a prisoner from jail, the city, village, or town shall commence a civil action in circuit court to obtain a judgment for the amount paid to the county under sub. (2) or be barred.

(4) Before entering a judgment in an action under sub. (3) for a city, village, or town, the court shall consider any legal obligations of the defendant for support or maintenance under ch. 767 and any moral obligation of the defendant to support dependents and may reduce the amount of the judgment entered for the city, village, or town based on those obligations.

History: 2003 a. 28.

302.375 Restrictions on liquor and dangerous drugs; placement of prisoners. (1g) In this section:

(a) "Controlled substance" has the meaning given in s. 961.01 (4).

(am) "Controlled substance analog" has the meaning given in s. 961.01 (4m).

(b) "Precinct" means a place where any activity is conducted by the prison, jail or house of correction.

(1m) Any sheriff, jailer or keeper of any prison, jail or house of correction or any other person who does any of the following with respect to a prisoner within the precincts of any prison, jail or house of correction shall be fined not more than \$10,000 or imprisoned not more than 9 months or both:

(a) Sells, gives or delivers any intoxicating liquor to the prisoner.

(b) Willfully permits a prisoner to have any controlled substance, controlled substance analog or intoxicating liquor.

(c) Has within his or her possession in the prison, jail or house of correction any intoxicating liquor, with intent to sell, give or deliver the liquor to the prisoner.

(2) Any prisoner who uses intoxicating liquor in violation of s. 302.37 (2) shall be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

(3) (a) Any sheriff, jailer or keeper of any prison, jail or house of correction or any other person who places, keeps together or knowingly permits to be kept together prisoners of different sexes within the precincts of any prison, jail or house of correction shall be fined not more than \$500 or imprisoned not more than 6 months or both.

(b) Notwithstanding par. (a), the sheriff, jailer or keeper may permit prisoners of different sexes to participate together in treatment or in educational, vocational, religious or athletic activities or to eat together, under such supervision as the sheriff, jailer or keeper deems necessary.

History: 1977 c. 337; 1979 c. 116; 1983 a. 185; 1989 a. 31 s. 1654; Stats. 1989 s. 302.375; 1995 a. 448; 2001 a. 103.

302.38 Medical care of prisoners. (1) If a prisoner needs medical or hospital care or is intoxicated or incapacitated by alcohol the sheriff, superintendent or other keeper of the jail or house of correction shall provide appropriate care or treatment and may transfer the prisoner to a hospital or to an approved treatment facility under s. 51.45 (2) (b) and (c), making provision for the security of the prisoner. The sheriff, superintendent or other keeper may provide appropriate care or treatment under this subsection for a prisoner under 18 years of age and may transfer a prisoner under 18 years of age under this subsection without obtaining the consent of the prisoner's parent, guardian or legal custodian. The sheriff, superintendent or other keeper may charge a prisoner for the costs of providing medical care to the prisoner while he or she is in the jail or house of correction. If the sheriff or other keeper maintains a personal money account for an inmate's use for payment for items from canteen, vending or similar services, the sheriff or other keeper may make deductions from the account to pay for the charges under this subsection.

(2) The prisoner is liable for the costs of medical and hospital care outside of the jail or house of correction. If the prisoner is unable to pay the costs, the county shall pay the costs in the case of persons held under the state criminal laws or for contempt of court and, except as provided in s. 302.336 (2) and (3) (b), a municipality shall pay the costs in the case of persons held under municipal ordinance by the municipality.

(3) The maximum amount that a governmental unit may pay for the costs of medical or hospital care under this section is limited for that care to the amount payable by medical assistance under subch. IV of ch. 49, except s. 49.468, for care for which a medical assistance rate exists. No provider of medical or hospital care may bill a prisoner under sub. (1) for the cost of care exceeding the amount paid under this subsection by the governmental unit. If no medical assistance rate exists for the care provided, there is no limitation under this subsection.

(4) The governmental unit paying the costs of medical or hospital care under this section, regardless of whether the care is provided in or out of the jail or house of correction, may collect the value of the same from the prisoner or the prisoner's estate. If applicable, the governmental unit may proceed to collect under this section or may seek reimbursement under s. 302.372, but may not collect for the same expenses twice.

(5) This section does not require the sheriff, superintendent or keeper of the jail or house of correction to provide or arrange for the provision of appropriate care or treatment if the prisoner refuses appropriate care or treatment.

History: 1973 c. 198; 1987 a. 27, 269; 1989 a. 31 s. 1655c, 1656d; Stats. 1989 s. 302.38; 1989 a. 261, 359; 1995 a. 27, 43, 281, 352; 1997 a. 35.

Appropriate medical care for prisoners is mandatory under this section, but sheriffs have the discretion as to how to provide that care. *Swatek v. Dane County*, 192 Wis. 2d 47, 531 N.W.2d 45 (1995).

When charges against a prisoner were dismissed after the prisoner was admitted to a hospital for medical care, the prisoner lost his status as "a person held under the state criminal laws" under sub. (2), and the county was no longer liable for medical costs incurred after the charges were dismissed. *Meriter Hospital, Inc. v. Dane County*, 2003 WI App 248, ___ Wis. 2d ___, 673 N.W.2d 328.

Pilgrim Ev. Lutheran Church

The Lutheran Church - Missouri Synod

462 Meadowbrook Drive, West Bend, Wisconsin 53090

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Pastor Joseph M. Fisher

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I come before you today on behalf of the need to give pastoral care to members whom having fallen into sin and committed crimes against their neighbors and the civil authorities have been incarcerated in order to pay their debt to society. I pray that these members are receiving the wise council and care to prepare them to resume their roles as productive citizens, upon their return to our communities.

However the department of corrections has a policy, which does not allow the use of wine in bringing the Lord's Supper to the members of my church. I do fully understand that the state has the right to restrict the privileges and freedoms of the men and women in the state correctional facilities. Yet, this policy of the board restricts the use of a legal substance from being used in sacramental right of the Lutheran Church. This policy or Law of the State restricts the free exercise of Religion. Further the policy has established rules under which the reformed church bodies are comfortable by using grape juice and the Roman Catholic tradition of offering the Eucharist in one kind having the priest consume the wine is allowed, yet neither practice is acceptable within the Lutheran Church and The Missouri Synod.

I come before you seeking your help because the Triune God Father, Son and Holy Ghost has established the governing authorities and placed all citizens under your authority in the Fourth Commandment which states "Honor your father and your mother." Our Small Catechism teaches, *What does this mean? We should fear and love God so that we do not despise or anger our parents and other authorities, but honor them, serve and obey them, love and cherish them.*¹ St. Paul gives further instruction in the Letter to the Church at Rome in **Romans 13:1 - 7** **Let every soul be subject to the governing authorities. For there is no authority except from God, and the authorities that exist are appointed by God.** **Therefore whoever resists the authority resists the ordinance of God, and those who resist will bring judgment on themselves.** **For rulers are not a terror to good works, but to evil. Do you want to be unafraid of the authority? Do what is good, and you will have praise from the same.** **For he is God's minister to you for good. But if you do evil, be afraid; for he does not bear the sword in vain; for he is God's minister, an avenger to execute wrath on him who practices evil.** **Therefore you must be subject, not only because of wrath but also for conscience' sake.** **For because of this you also pay taxes, for they are God's ministers attending continually to this very thing.** **Render therefore to all their due: taxes to whom taxes are due, customs to whom customs, fear to whom fear, honor to whom honor.**(New King James Version)

¹Luther, Martin, *Luther's Small Catechism with Explanation*, (Saint Louis, MO: Concordia Publishing House) 1998 c1986.

I therefore come to you seeking the ability to give faithful pastoral care to my members.

Enclosed are some of the confessional documents of the Lutheran Church and the Missouri Synod. I place this matter in your capable hands.

Respectfully Submitted,

Rev. Joseph M. Fisher
Pastor, Pilgrim Ev. Lutheran Church

The unaltered Augsburg Confession states in the section under the heading of Articles of Faith and Doctrine: Articles

X. THE HOLY SUPPER OF OUR LORD

¹ It is taught among us that the true body and blood of Christ are really present in the Supper of our Lord under the form of bread and wine and are there distributed and received. ² The contrary doctrine is therefore rejected.²

XIII. THE USE OF THE SACRAMENTS

¹ It is taught among us that the sacraments were instituted not only to be signs by which people might be identified outwardly as Christians, but that they are signs and testimonies of God's will toward us for the purpose of awakening and strengthening our faith. ² For this reason they require faith, and they are rightly used when they are received in faith and for the purpose of strengthening faith.³

ARTICLES ABOUT MATTERS IN DISPUTE IN WHICH AN ACCOUNT IS GIVEN OF THE ABUSES WHICH HAVE BEEN CORRECTED (GERMAN)

From the above it is manifest that nothing is taught in our churches concerning articles of faith that is contrary to the Holy Scriptures or what is common to the Christian church. However, inasmuch as some abuses have been corrected (some of the abuses having crept in over the years and others of them having been introduced with violence), we are obliged by our circumstances to give an account of them and to indicate our reasons for permitting changes in these cases in order that Your Imperial Majesty may perceive that we have not acted in an unchristian and frivolous manner but have been compelled by God's command (which is rightly to be regarded as above all custom) to allow such changes.

XXII. BOTH KINDS IN THE SACRAMENT

¹ Among us both kinds are given to laymen in the sacrament. The reason is that there is a clear command and order of Christ, "Drink of it, all of you" (Matt. 26:27). ² Concerning the chalice Christ here commands with clear words that all should drink of it.

³ In order that no one might question these words and interpret them as if they apply only to priests, Paul shows in 1 Cor. 11:20ff. that the whole assembly of the congregation in Corinth received ⁽¹¹⁻⁶¹⁾ both kinds. ⁴ This usage continued in the church for a long time, as can be demonstrated from history and from writings of the Fathers.⁶⁵ In several places Cyprian mentions that the cup was given to laymen in his time.⁷ ⁶ St. Jerome also states that the priests who administered the sacrament distributed the blood of Christ to the people.⁸ ⁷ Pope Gelasius himself ordered that the sacrament was not to be divided.⁹⁸ Not a single canon can be found which requires the reception of only one kind. Nobody knows when or through whom this custom of receiving only one kind was introduced, although Cardinal Cusanus mentions when the use was approved.¹ ¹⁰ It is evident that such a custom,

²Tappert, T. G. (2000, c1959). *The book of concord : The confessions of the evangelical Lutheran church* (The Confession of Faith: 2, X-, 2). Philadelphia: Fortress Press.

³Tappert, T. G. (2000, c1959). *The book of concord : The confessions of the evangelical Lutheran church* (The Confession of Faith: 2, XIII-, 2). Philadelphia: Fortress Press.

introduced contrary to God's command and also contrary to the ancient canons, is unjust.¹¹

Accordingly it is not proper to burden the consciences of those who desire to observe the sacrament according to Christ's institution or to compel them to act contrary to the arrangement of our Lord Christ.¹² Because the division of the sacrament is contrary to the institution of Christ, the customary carrying about of the sacrament in processions is also omitted by us.^{2 4}

The Apology to the Augsburg Confession states

[ARTICLE X. THE HOLY SUPPER]

¹ They approve the tenth article, where we confess our belief that in the Lord's Supper the body and blood of Christ are truly and substantially present and are truly offered with those things that are seen, the bread and the wine, to those who receive the sacrament.² After careful examination and consideration of it, we firmly defend this belief. For since Paul says³ that the bread is "a participation in the Lord's body," it would follow that the bread would not be a participation in the body of Christ but only in his spirit if the Lord's body were not truly present.

² We know that not only the Roman Church affirms the bodily presence of Christ, but that the Greek Church has taken and still takes this position. Evidence for this is their canon of the Mass, in which the priest clearly prays that the bread may be changed and become the very body of Christ.⁴ And Vulgarius, who seems to us to be a sensible writer, says distinctly that "the bread is not merely a figure but is truly changed into flesh."^{5 3} There is a long exposition of John 15 in Cyril which teaches that Christ is offered to us bodily in the Supper. He says: "We do not deny that we are joined to Christ spiritually by true faith and sincere love. But we do deny that we have no kind of connection with him according to the flesh, and we say that this would be completely foreign to the sacred Scriptures. Who has ever doubted that Christ is a vine in this way and that we are truly branches, deriving life from him for ourselves? Listen to Paul say, 'We are all one body in Christ' Rom. 12:5); 'We who are many are one body, for we all partake of the same loaf' (1 Cor. 10:17). Does he think perhaps that we do not know the power of the mystical benediction? Since this is in us, does it not also cause Christ to dwell in us bodily through the communication of the flesh of Christ?" A little later he says, "Therefore we must consider that Christ is in us, not only according to the habit which we understand as love, but also by a natural participation," etc.⁶

⁴ We have quoted all of this here, not to begin an argument on this subject (his Imperial Majesty does not disapprove this article), but to make clear to all our readers that we defend the doctrine received in the whole church — that in the Lord's Supper the body and blood of Christ are truly and substantially present and are truly offered with those things that are seen, bread and wine. We are talking about the presence of the living Christ, knowing that "death no longer has dominion over him."^{7 5}

[ARTICLE XXII.] THE LORD'S SUPPER UNDER BOTH KINDS

⁴Tappert, T. G. (2000, c1959). *The book of concord : The confessions of the evangelical Lutheran church* (The Confession of Faith: 3, -I, 12). Philadelphia: Fortress Press.

⁵Tappert, T. G. (2000, c1959). *The book of concord : The confessions of the evangelical Lutheran church* (Apology of the Augsburg Confession: 1, IV, 53-57). Philadelphia: Fortress Press.

hearts when they believe that Christ's flesh, given for the life of the world, is their food and that they come to life by being joined to Christ. Our opponents argue that the laity has been kept from the one kind as a punishment. They say, "They should be satisfied."

¹¹ This is the way a tyrant would act. But why should they be satisfied? They should not ask for a reason; but whatever the theologians say, let that be law! These are the dregs of Eck.⁷ We recognize these Thrasonian voices,⁸ and if we wanted to answer them we would have enough to say. Look at the great effrontery of the man. Like some tyrant in a play, he commands, "Whether they like it or not, they should be satisfied!" ¹² In the judgment of God, will the reasons he gives exonerate those who withhold a part of the sacrament and rage against good men who use the entire sacrament? ¹³ If they withhold it to make a distinction of orders, this in itself should keep us from agreeing with our opponents, even though otherwise we might want to maintain their practice. There are other distinctions of order between priest and people, but there is no mystery as to why they defend this distinction so zealously. But to avoid the impression that we are minimizing the real dignity of the order, we shall not say anything more about their crafty designs.

¹⁴ They also refer to the danger of spilling and similar factors⁹ which are not cogent enough to change Christ's ordinance. ¹⁵ Even if we grant the freedom to use one kind or both, how can they make the withholding of one kind mandatory? But the church cannot arrogate to itself the freedom to call Christ's ordinances matters of indifference. ¹⁶ We do not blame the church, which has suffered this injury because it could not obtain both parts; but we do blame the writers who defend the legitimacy of withholding both kinds in the sacrament and who even excommunicate and violently persecute anyone that uses the entire sacrament. Let them figure out how they will account to God for their decisions. ¹⁷ Nor dare we assume that the church immediately approves or accepts whatever the pontiffs decide, especially when Scripture prophesies about bishops and pastors in the words of Ezekiel (7:26), "The law perishes from the priest."⁶

The Lutheran Church Missouri Synod Commission on Constitutional matters stated in 1983 in its Document The Lord's Supper Pages 14& 15

b. The Wine

All four accounts of the Lord's Supper speak of "the cup." The content of this cup was most definitely wine. The references in Matt. 26:29 and parallels to the "fruit of the vine" would not have suggested anything else

to Jesus' listeners than the grape wine of the Jewish Passover ritual. [19] In 1 Cor. 11:21 there is corroboration that the early Christian church understood wine for "fruit of the vine." Some of the Corinthians, sadly, had abused the Holy Supper by becoming drunk.The substitution of grape juice raises the question of whether the Lord's instruction is being heeded.

¹⁹"Fruit of the vine" is, exegetically, synonymous with wine. Cf. H. Buechsel, "genema," **Theological Dictionary of the New Testament**, I (Grand Rapids: Wm. B. Eerdmans, 1965), p. 164; W. Lane, **The Gospel According to Mark** (Grand Rapids: Wm.

⁶Tappert, T. G. (2000, c1959). *The book of concord : The confessions of the evangelical Lutheran church* (Apology of the Augsburg Confession: 1, X-, 17). Philadelphia: Fortress Press.

B. Eerdmans, 1974), pp. 508-09; H. Seesemann, "oinos," **Theological Dictionary of the New Testament**, V (Grand Rapids: Wm. B. Eerdmans, 1967), p. 164; Vincent Taylor, **The Gospel According to Mark** (London: St. Martin's Press, 1966), p. 547.

The South Wisconsin District passed a resolution in 1994 re-affirming that only wine may be used in the distribution of the Lord's Supper and The Lutheran Church re-affirmed this in 2001.

2002

Court Says Catholic Inmates May Be Allowed Wine With Communion

WASHINGTON (RNS) — A federal appeals court said Friday (March 8) that a lower court erred in its decision that prison inmates do not have a right to receive wine with Holy Communion.

The unanimous decision by the three-judge panel in Washington may mean a Florida inmate, Daniel J. Levitan, and other Roman Catholic inmates will be able to receive wine with Holy Communion. The case now must be reconsidered by the district judge who ruled against Levitan.

Until 1997, inmates were allowed to take Holy Communion with bread and wine, according to Catholic tradition. But in 1998, new rules restricted the wine to priests because consumption of wine was not "essential" to the rite, according to The Washington Post.

Levitan filed a complaint accusing the government of violating his First Amendment rights to free exercise of religion. "The practice of consuming a minuscule amount of wine at Holy Communion is a long-standing practice of my faith, and the government has now seen fit to take this practice of my faith away," he wrote in his original complaint.

The appeals court ruling now forces that Justice Department to demonstrate how allowing wine would impede prison management. Michael Golden, the lawyer appointed by the court to represent the inmates, told The Post that the case "is more about religious liberty than prison administration."

* * *

The 13th day of July, 1999

Mr. Steve Rowe
Sheriff of Columbia County
723 East Cook Street
Portage, WI 53901

Dear Sir:

Over the past thirty years of ministry, we, together with others in the pastorate, have sought to minister to the imprisoned in accord with the teachings of our respective denominations. Some denominations have more stringent guidelines for ministry than do others; nonetheless, all of us strive conscientiously to minister to those in prison as to Christ Himself as taught in the 25th chapter of the holy Gospel of St. Matthew and elsewhere.

Auricular confession and the Sacrament of Absolution, personal counseling and the Blessed Sacrament of the Altar are among those blessings which the Lord has commanded that we afford those who receive His ministry by our hand. In order to comply, we need to gain access to those who are committed to and reside within your care. While we have been informed that we may call any time day or night, we have also been told that such immediate, direct, physical access is to be denied in principle, regardless of our office and the One Whom we represent.

While some ministry is possible from behind glass by means of audio equipment, clearly this excludes the most important ministry of Christ through His ordained servants of the Church. Because of confidentiality, auricular confession by means of listening devices is forbidden in principle to the clergy, for reasons that ought to be self-evident. Concerning the Eucharist, adherence to Christ's use of bread and wine for a valid Sacrament is obligatory for some denominations even as it is a matter of conscience for many of us as His called and ordained servants. While some may administer the Sacrament employing grape juice, for others, Christ's use of wine determines the element to be used for a validly consecrated Sacrament. Again, for some denominations, communication can be given under one species, that of the consecrated Host. In any event, physical access to the inmate is as necessary in this instance as it is in the ministry of the Sacrament of Confession/Absolution.

In years past, all of these kinds of ministry were not only allowed but encouraged in the counties where we have carried on our ministry. It is only within the recent past that Columbia and Dane counties have sought to restrict it either by refusing us physical contact or by forbidding the use of consecrated wine.

Concerning physical contact, if these inmates were particularly dangerous and violent to any and all whom they encounter, this restriction would, at least, be understandable and might even be acceptable to us. However, most, if not all, are not persons unknown to us, neither would they be considered dangerous or a physical threat to our persons or our sacred ministry. Most of them are parishioners who, for one reason or another, have either been arrested and are awaiting trial (and thereby legitimately to be considered innocent until tried

and found guilty by a jury!) or persons who have been declared guilty by a jury and in need of all the help they can obtain from the Lord God and His ordained servants for their betterment, the good of society and His glory.

Recently two inmates, neither of whom had appeared in court and both of whom were reported to be either suicidal or extremely distraught, were not allowed to have any physical contact with the clergy person who was summoned nor the privilege of auricular confession/absolution nor the Sacrament of the Altar when visited. An inquiry was made in October of 1998 concerning this prohibition, and thus far, no response has been proffered. We wonder: In such situations, would it not be discreet to allow physical contact so as to temper the situation and perhaps thereby allay any self-destructive act-not to mention the investigating and probing which surely will accompany such an event?

With regard to the use of sacramental wine, the communicant receives what amounts to little more than a thimble full of the consecrated element. Ten years ago, a youthful murderer, convicted and sentenced to life plus 5 years, received, among other ministries, the consecrated elements of bread and wine in the Holy Eucharist on a weekly basis for months in the Dane county jail until he was finally transferred to a state prison.

It is hard to believe ministry like that is now strictly forbidden, both to one like him who especially needs it! and to us who are called, set apart and commanded by God to freely provide this ministry of Word and Sacrament. It is out of concern both for our holy calling and those who stand in need of this ministry that we address this letter to you and others like you in positions of authority.

We also question whether or not, in spite of incarceration, convicted inmates lose their privilege and right to practice their religious beliefs and/or receive our ministry or that of other religious persuasions, as well as physical access to clergy who offer personal, confidential counseling, auricular confession/absolution and the presence of Christ in the Sacrament of the Altar. We are not aware that one loses all of his civil liberties upon being arrested even if he has been convicted and duly sentenced and, most especially, if he has not been tried, convicted and sentenced in a duly convened court of law. Interestingly enough, some of us who visit inmates in the maximum security prison in Portage have not encountered these same restrictions or difficulties.

We hope that whatever policies are in place, you would consider the prison ministry and spiritual care to which the Lord Jesus Christ has called us as well as the legally afforded rights to religious practice and devotion guaranteed by the Constitution of the United States which seemingly should remain in place for those committed to your care. We are looking forward to your gracious reply and positive response to our inquiry.

Our very best to you and those committed to your care, now and always. We remain yours,

In the holy name of Jesus,

Alan Gaylord Boeck, Pastor

Stanley Clinton Curtis, Pastor

Marion Lars Hendrickson, Pastor

Sharon Lydia Jaekel, Pastor

Robert William Jelliffe, Pastor

Stephen Lee Kurth, Pastor

Bruce Delmar Loewenhagen, Pastor

Brian Jerome Norsman, Vicar

Todd Christopher Riordan, Pastor

Harold William Sturm, Pastor

Anthony John Young, Pastor

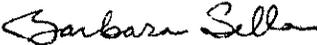
Enclosure

cc Governor Tommy G. Thompson
Senator Charles Chvala
Representative Eugene Hahn
Columbia County Board Members
Dane County Sheriff
Dane County Board Members
Francis Murphy, Legal Counsel to Arlington-Poynette Clergy Association
Karl Gurgel, Synod President, WELS
Ronald Meyer, Synod President, LC-MS
Jon Enslin, Bishop, ELCA
Roger White, Bishop, Diocese of Milwaukee
William Bullock, Bishop, Diocese of Madison
George Wirz, Bishop, Diocese of Madison
Sharon Zimmerman Rader, Bishop, United Methodist Church
John Knox Presbytery
Portage Daily Register
Wisconsin State Journal



WISCONSIN CATHOLIC CONFERENCE

TO: Members of the Joint Committee for Review of Administrative Rules

FROM: Barbara Sella, Associate Director 

DATE: April 28, 2004

RE: DOC policy on communion wine

Thank you for the opportunity to offer testimony for information on the subject of communion wine in Wisconsin's prisons.

The Wisconsin Catholic Conference has long advocated protecting the religious rights of prison inmates. For Catholics, religious freedom is a civil right and as Vatican II's *Declaration on Religious Freedom* teaches, constitutional limits should always be placed on the powers of governments to inhibit religious rights and their public expression.

The *Declaration* explains that this freedom derives from the very nature of human beings, not from any individual's merit or disposition. As a result, the right to religious liberty exists even for non-believers and by extension for those who have previously strayed from the truth.

However, the *Declaration* also recognizes that legitimate concerns for public order can be invoked by governments in restricting this liberty. The issue at hand, therefore, is whether DOC's policy on sacramental wine truly represents a legitimate concern for security.

Sacramental wine was one of the topics of discussion at the last meeting of DOC's Religious Practice Advisory Committee, of which the Wisconsin Catholic Conference is a member. The committee has been meeting regularly for the past two years to study DOC's Internal Management Procedures (IMPs) and to discuss ways in which the faith community can foster the rehabilitation of inmates both within prison and upon their release.

While the Committee discussed the use of communion or sacramental wine at some length at this meeting on February 3, 2004, the issue was not completely resolved. The Wisconsin Catholic Conference recognizes that the issue of permitting prisoners to consume wine is complex. First, because DOC strictly prohibits the consumption of alcohol within its institutions, citing security reasons. Second, because if DOC were to permit the use of sacramental wine, other faith traditions might legitimately insist that prisoners have access to a whole range of foods and drinks that DOC finds problematic, difficult to supply or both.

From our standpoint, the Eucharist is complete even when only the bread is received. As the Catechism of the Catholic Church teaches, "Since Christ is sacramentally present under each of

the species, communion under the species of bread alone makes it possible to receive all the fruit of Eucharistic grace.” (*Catechism*, 1390)

While the Catholic Church teaches that bread alone suffices for the reception of the sacrament, it also teaches that priests can only fully celebrate the Eucharist when they consecrate and consume both the bread and the wine. For this reason, DOC has accommodated our priests by permitting them to bring in sacramental wine. We recognize, however, that this is not the case for all faiths and we hope that their traditions will be respected as much as possible.

However you decide this issue, we hope that you do so in a way that affirms the work being done by the Religious Practice Advisory Committee, so that both individual religious rights and legitimate security interests are protected.

Thank you.

APPLETON - NEENAH - MENASHA, WISCONSIN

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LOCAL NEWS

Posted May 18, 2004

Minister seeks communion wine for inmates

On the Web

Department of Corrections:
www.wi-doc.com

Lutheran Church-Missouri
Synod: www.lcms.org

Wisconsin law prohibits liquor; review sought

The Associated Press

MADISON — Jesus didn't drink grape juice at the Last Supper. A Wisconsin minister says jail inmates who want to take Holy Communion shouldn't either.

Wisconsin law forbids delivering "intoxicating liquors" into a prison, but the Rev. Joseph Fisher is trying to convince state officials to allow him to bring full Communion to members of his church who are incarcerated.

"We're talking about less than an ounce of wine," said Fisher, who leads Pilgrim Lutheran Church, a member of the Missouri Synod of the Lutheran Church.

The situation is a clash between religious freedom for inmates who believe their sins can't be forgiven with grape juice and corrections officials who say serving wine would be illegal and potentially



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counterproductive to its efforts to treat inmates suffering from alcoholism.

Fisher notes the state Department of Corrections already makes exceptions for religious observances, including permitting American Indian inmates to smoke tobacco during ceremonies in prisons that are designated as smoke-free.

Fisher, along with state Rep. Glenn Grothman, R-West Bend, and state Sen. Joe Leibham, R-Sheboygan, has spent three years trying to convince corrections officials to interpret the law more liberally to allow him to deliver Communion behind bars. Grothman and Leibham are members of Missouri Synod churches.

But Tom Borgen, warden of Fox Lake prison and head of an agency committee that reviews religious practices, said while tobacco use is governed by prison rules, state law prohibits alcohol.

Still, the committee plans to discuss the issue at its meeting Wednesday, though Borgen said it could take months to reach any recommendations.

While some Christian denominations deem grape juice an acceptable substitution, the Missouri Synod dictates that its members drink only wine or not take Communion at all.

Members believe they receive forgiveness for their sins and strengthen their faith through eating bread and drinking wine, which they believe is the body and blood of Christ.

Borgen said it's unknown how many Wisconsin inmates are Missouri Synod, but the denomination has about 236,000 baptized members in Wisconsin and upper Michigan.

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DAILY CITIZEN

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Communion wine for inmates sought

MADISON (AP) -- Jesus didn't drink grape juice at the Last Supper. A Wisconsin minister says jail inmates who want to take Holy Communion shouldn't either.

Wisconsin law forbids delivering "intoxicating liquors" into a prison, but the Rev. Joseph Fisher is trying to convince state officials to allow him to bring full Communion to members of his church who are incarcerated.

"We're talking about less than an ounce of wine," said Fisher, who leads Pilgrim Lutheran Church, a member of the Missouri Synod of the Lutheran Church.

The situation is a clash between religious freedom for inmates who believe their sins can't be forgiven with grape juice and corrections officials who say serving wine would be illegal and potentially counterproductive to its efforts to treat inmates suffering from alcoholism.

Fisher notes the state Department of Corrections already makes exceptions for religious observances, including permitting American Indian inmates to smoke tobacco during ceremonies in prisons that are smoke-free.

Fisher, along with Rep. Glenn Grothman, R-West Bend, and Sen. Joe Leibham, R-Sheboygan, has spent three years trying to convince corrections officials to interpret the law more liberally to allow him to deliver Communion behind bars. Grothman and Leibham are members of Missouri Synod churches.

But Tom Borgen, warden of Fox Lake prison and head of an agency committee that reviews religious practices, said while tobacco use is governed by prison rules, state law prohibits alcohol.

"We're not in a position to just simply disregard the law," he said.

Still, the committee plans to discuss the issue at its meeting Wednesday, though Borgen said it could take several months to reach any recommendations for corrections officials.

"The department needs to balance its security needs with the needs of all faiths, with the needs of all religions," he said.

While some Christian denominations deem grape juice an acceptable substitution, the Missouri Synod dictates that its members drink only wine or not take Communion at all.

Borgen said it's unknown how many Wisconsin inmates are Missouri Synod.

Their beliefs about Communion have put the church at odds with corrections officials, who have even rejected offers to cut the wine with water.

Borgen said three-fourths of inmates have issues with drug or alcohol abuse.

"There's a school of thought that calls for abstinence, period," he said.

But Dr. Michael Bohn, a clinical assistant professor of psychiatry at University of Wisconsin-Madison and medical director of Gateway Recovery, said he didn't know of any scientific reason why taking wine with Communion would cause an alcoholic to relapse.

Bohn said studies of alcoholics in treatment who were given small amounts of alcohol found they were no more likely to start drinking again than those who did not have any.

Fisher also said he's seen no evidence that alcoholics relapse by taking Communion wine.

"The person who is coming to receive the Lord's body and blood is not thinking he's bellying up to a bar," he said.

Grothman, chairman of the Legislature's Joint Committee for Review of Administrative Rules, has asked corrections officials to put in writing their rules governing Communion wine. That would allow the committee to suspend the rules and introduce legislation to exempt Communion wine from the law.

"All laws have to be interpreted with common sense," Grothman said, adding that doctors are already allowed to administer inmates cold medicines containing alcohol.

Grothman also points to a 2002 decision by the U.S. Court of Appeals in Washington, D.C., reinstating a lawsuit by two Roman Catholic inmates who said their constitutional rights were violated by a federal-prison rule that barred them from having wine with Communion.

Since August 2002, federal inmates have been permitted to receive wine as part of a religious ritual, when administered under supervision of clergy, federal Bureau of Prisons spokeswoman Traci Billingsley said.

On the Net:

Department of Corrections: <http://www.wi-doc.com/>

Lutheran Church-Missouri Synod: <http://www.lcms.org/>

RENEWING  WORSHIP

Principles for Worship

*Bread and wine are used***Principle 44**

In accordance with the words of institution, this church uses bread and wine in the celebration of the Lord's Supper. Communicants normally receive both elements, bread and wine, in the Holy Communion.

Application 44A

A loaf of bread and a chalice are encouraged since they signify the unity which the sacrament bestows. The bread may be leavened or unleavened. The wine may be white or red.

Background 44B

The use of leavened bread is the most ancient attested practice of the Church and gives witness to the connection between the Eucharist and ordinary life. Unleavened bread underscores the Passover themes which are present in the biblical accounts of the Last Supper.

Application 44C

For pressing reasons of health, individuals may commune under one element. In certain circumstances, congregations might decide to place small amounts of non-wheat bread or nonalcoholic wine or grape juice on the altar. Such pastoral and congregational decisions are delicate, and must honor both the tradition of the Church and the people of each local assembly.

Background 44D

Some communicants suffer from allergic reactions or are recovering from alcoholism. As suggested by the 1989 Evangelical Lutheran Church in America *A Statement on Communion Practices*,⁷⁹ it is appropriate for them to receive only one of the elements. Their pastor may assure them that the crucified and risen Christ is fully present for them in, with, and under this one element. While our confessions speak against Communion "in one form,"⁸⁰ their intent is to protest the practice of withholding the cup from the whole assembly. The confessional concern is to make both the bread and the wine of the sacrament available to the faithful, and not to inhibit them.

⁷⁹ *A Statement on Communion Practices*, 1989, II.C.3.

⁸⁰ See Smalcald Articles, III., 6.

WI DOC Religious Practice Advisory Committee

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<p>Selena Fox, Rev. Circle Sanctuary P.O. Box 219 Mt. Horeb, WI. 53572 (608) 924-2219 (608) 924-2216 FAX: E-Mail Address: sfox@mhtc.net E-Mail Address: circle@mhtc.net</p>		
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**To Affirm the Use of Wine and No Substitutes in the Sacrament
RESOLUTION 13-03**

Overtures 13-09 and 13-10 (CW, p. I-5)

- WHEREAS, Scattered reports of divergent communion practices in various congregations of the Missouri Synod indicate the use of grape juice or "non-alcoholic wine" in the Sacrament; and
- WHEREAS, The Lutheran Confessions refer eighty-seven times to the exclusive use of bread and wine for the Sacrament; and
- WHEREAS, Any change in the use of these divinely mandated elements is a variance from Jesus' own institution of the sacrament; and
- WHEREAS, The Augsburg Confession reminds us that "the church is the assembly of saints in which the Gospel is taught *purely* and the sacraments are administered *rightly* (AC VII 1; emphasis added); and
- WHEREAS, Such change will serve to burden consciences with doubt, in place of the supreme comfort and consolation the Sacrament means to give them; and
- WHEREAS, In the Apology to the Augsburg Confession (AP XXIII.45,) the practice of abstaining from the use of wine in the Lord's Supper was condemned; and
- WHEREAS, The use of "non-alcoholic wine" in the sacrament introduces an element of doubt as to whether we are following our Lord's command; therefore be it
- RESOLVED, That the congregations of the South Wisconsin District affirm the practice of using only the two elements instituted by our Lord in the Sacrament, namely bread and wine; and be it further
- RESOLVED, That we reject all use of grape juice, "non-alcoholic wine", or any other substitute; and be it further
- RESOLVED, That pastors be reminded and encouraged to counsel in an evangelical manner those who have difficulty in receiving the wine; and be it finally
- RESOLVED, That we as District forward this resolution to the Synodical Convention of 1995.

Action: Adopted (4).

(A motion to refer the resolution to the Praesidium and District Pastoral Conference failed. A motion to amend the resolution failed.)

+ + + + + + +

To Encourage Use of Only Wine in Administration of Lord's Supper

RESOLUTION 3-16

Overture 3-52 (CW, p. 172)

WHEREAS, A number of congregations in the Synod have introduced grape juice for use in the Sacrament of the Altar; and

WHEREAS, The clear statements of our Confessions instruct us that "As the Words of Institution of Christ expressly state: while at the table during the Supper, he distributed natural bread and wine to his disciples" (FC SD VII 64); and

WHEREAS, The use of an element other than wine is an alien practice in the churches of the Augsburg Confession and brings about doubt whether the Sacrament is offered or not; and

WHEREAS, "Since Christ used and sanctified no other element for this Sacrament; since no place in Scripture which treats of the Lord's Supper mentions even a single other element; since it befits the true disciples of Christ to abide by His ordinance and institution, John 8:31; since the promise of Christ concerning the sacramental reception of His body and blood is expressly dependent upon the bread and wine; and finally, since bread and wine are the essential elements of the holy Lord's Supper, it follows that under no circumstances can or should one substitute elements, which might be comparable, in place of bread and wine" (Johann Gerhard, *A Comprehensive Explanation of Holy Baptism and the Lord's Supper* [trans. Elmer M. Hohle; Repristination Press, 2000], 228-29); and

WHEREAS, Both theological faculties of the LCMS have offered opinions (*Gutachten*) (cf. *Concordia Theological Quarterly* 45:1/2 [Jan./Apr., 1981], 77-80; *Theological Observer* 17:1 [Jan. 1991], 4-6) supporting the use of wine, or reduced-alcohol wine, offering the clear teaching of the Evangelical Lutheran Church with regard to this matter from the Scriptures, the Confessions, and the teaching of the church; and

WHEREAS, The Synod has spoken in 1998 Res. 3-16B "To Affirm Use of Bread and Wine in the Sacrament of the Altar"; therefore be it

Resolved, That the congregations be encouraged to use only wine for the Sacrament; and be it further

Resolved, That the theological faculties of our seminaries be commissioned to offer guidelines to pastors and congregations in meeting the needs of those who feel they cannot drink wine; and be it finally

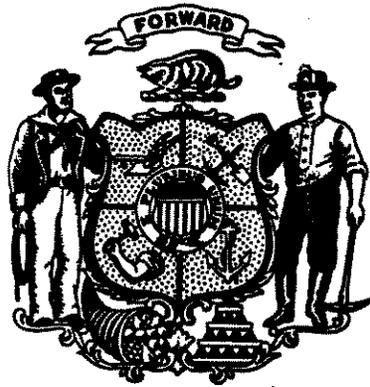
Resolved, That all action taken in this resolution shall be used to help carry out "The Great Commission" and shall not in any way detract or distract from the primary mission of God's kingdom here on earth. We will remember 1-02!

Action: Adopted as amended (11)

(This resolution was first discussed during session 10. The fifth whereas as presented by the committee, *WHEREAS, Both theological faculties of the LCMS have offered opinions (Gutachten) to the contrary (cf. "Opinion of the Department of Systematic Theology: The Fruit of the Vine in the Sacrament of the Altar," Concordia Theological Quarterly 45:1/2 [Jan./Apr., 1981], 77-80; Department of Systematic Theology, Concordia Seminary, "Is Non-Alcoholic Wine Really Wine?" (Theological Observer, Concordia Journal 17:1 [Jan. 1991], 4-6), offering the clear teaching of the Evangelical Lutheran Church with regard to this matter from the Scriptures, the Confessions, and the teachers of the church; and, was amended by replacing it with the paragraph included in the adopted resolution. A substitute resolution, To Encourage Use of Fruit of Vine in Lord's Supper, was considered by the delegates when this resolution was brought back by the committee in session 11: WHEREAS, Any guidelines for celebrating the Lord's Supper must originate in God's Word; and WHEREAS, The Constitution of the Synod, Article II, refers to "The Scriptures of the Old and the New Testament as the written Word of God and the only*

rule and norm of faith and of practice"; and WHEREAS, God's Word says in Luke 22:17-18, "And taking the cup and giving thanks He said, "Take this and distribute it among yourselves. For I say to you that I will certainly not drink from the fruit of the vine until the kingdom of God comes"; and WHEREAS, God's Word says in Mark 14:24-25, "And He said to them, this is My blood of the covenant which is being poured out on behalf of many. Truly I say to you that I will certainly not any longer drink of the fruit of the vine until that day when I drink it anew in the kingdom of God"; and WHEREAS, God's Word says in Matthew 26:27-29, "And taking a cup and giving thanks He gave to them saying, drink of it all of you, for this is My blood of the covenant being poured out for the many for forgiveness of sins. And I say to you that I will certainly not drink of the fruit of the vine until that day whenever I drink with you anew in the kingdom of My Father"; and WHEREAS, the word wine (oinos) is used in the New Testament 33 times, but never in relation to the Lord's Supper; and WHEREAS, God's Word only uses "the fruit of the vine" in regards to the content of the cup; therefore be it Resolved, That the congregations be encouraged to use only the fruit of the vine as one of the elements for the Sacrament. The substitute motion was defeated and the original motion was adopted as amended in session 10 [yes: 814; no: 184]. The final resolve is added as required by Res. 1-02, adopted by the convention at an earlier session.)

END



END

DWD
59
SENATOR JOSEPH LEIBHAM
CO-CHAIR



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIR

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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

February 20, 2004

Roberta Gassman, Secretary
Department of Workforce Development
P.O. Box 7946
Madison, WI 53707-7946

Dear Secretary Gassman:

The Joint Committee for the Review of Administrative Rules met in Executive Session on February 19, 2004 and adopted the following motion:

Emergency Rule DWD 59 Relating to a childcare local pass-through program. Moved by Representative Grothman, seconded by Senator Welch that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extends DWD 59 at the request of the Department of Workforce Development by 27 days.

Motion Carried 10 Ayes, 0 Noes.

Pursuant to s. 227.24(2)(c) Stats, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,

Senator Joseph Leibham
Senate Co-Chair

Representative Glenn Grothman
Assembly Co-Chair

JKL:GSG:pvs

cc: Secretary of State Doug LaFollette
Revisor of Statutes Gary Poulson



FEB 12 2004

February 9, 2004

The Honorable Joseph Leibham
Co-Chair, Joint Committee for
Review of Administrative Rules
Room 409 South, State Capitol
P.O. Box 7882
Madison WI 53707-7882

The Honorable Glenn Grothman
Co-Chair, Joint Committee for
Review of Administrative Rules
Room 15 North, State Capitol
P.O. Box 8952
Madison WI 57308

Dear Senator Leibham and Representative Grothman:

Your letter of January 21, 2004, notified me that your committee had adopted the following motion:

Moved, pursuant to s. 227.26(2)(b), Stats., the Joint Committee for Review of Administrative Rules directs the Department of Workforce Development to promulgate an emergency rule regarding their overtime policy for non medical home care companion employees of an agency as part of DWD 274 within 30 days.

The authority for the motion is sec. 227.26(2)(b), Stats., which provides:

227.26(2)(b) Requirement for promulgation. If the committee determines that a statement of policy or an interpretation of a statute meets the definition of a rule, it may direct the agency to promulgate the statement or interpretation as an emergency rule under s. 227.24 (1) (a) within 30 days after the committee's action.

Under this statute, when the JCRAR identifies a statement of policy by an agency that has not been promulgated as an administrative rule, it may determine and direct that the agency should promulgate the statement of policy as a rule. Often such statements of policy are found in agency correspondence or other documents, such as program manuals.

However, in this case, the Committee has not identified a statement of policy that it is directing DWD to promulgate. The DWD rule on overtime wages has a domestic service exemption (sec. DWD 274.015, Wis. Adm. Code). The DWD rules also contain a definition of "domestic service employment" that covers an "employee of a private householder." This definition does not cover an employee of a company that provides non medical home care services. In contrast, the federal regulations on overtime wages do contain an exemption for an employee providing "companionship services" that covers the employees of such companies.

The Committee's intent appears to be for DWD to have a rule that has the same overtime exemption as the federal regulations. However, this is not and has not been the policy of DWD, and therefore, there is no policy statement of this nature which can be the subject of a Committee directive under sec. 277.26(2)(b), Stats.

Therefore, I must respond to the Committee's determination of January 21, 2004, by stating that DWD has no statement of overtime policy for non medical home care companion employees of an agency other than the policies that are already set forth by the relevant statutes and administrative rules. Therefore, DWD is not in a position to promulgate any further administrative rule on this matter.

I appreciate your work on this topic and DWD would be pleased to work with you on other possible approaches for addressing your concerns.

Thank you very much for bringing this matter to my attention.

Sincerely,



Roberta Gassman
Secretary

Best regards to you.