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## WISCONSIN LEGISLATIVE COUNCIL

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### DIFFERENCES IN LAWS APPLICABLE TO CITIES AND VILLAGES

Room 225 Northwest, State Capitol  
Madison, Wisconsin

August 5, 2008  
12:00 p.m. – 2:20 p.m.

[The following is a summary of the August 5, 2008 meeting of the Special Committee on Differences in Laws Applicable to Cities and Villages. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc>.]

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#### Call to Order and Roll Call

Chair Gottlieb called the meeting to order. The roll was called and it was determined that a quorum was present.

COMMITTEE MEMBERS PRESENT: Rep. Mark Gottlieb, Chair; Sen. Jeff Plale, Vice Chair; and Public Members Patrick Cannon, Mike May, Jerry Menne, Mike Morse, and Curt Witynski.

COMMITTEE MEMBERS EXCUSED: Reps. Joan Ballweg and Suzanne Jeskewitz; and Public Member Christine Nuernberg.

COUNCIL STAFF PRESENT: Don Dyke, Chief of Legal Services; and Ronald Sklansky, Senior Staff Attorney.

APPEARANCES: Terry C. Anderson, Director, Legislative Council Staff; Senator Fred A. Risser, Co-Chair, Joint Legislative Council; and Dan Mahoney, Village Administrator, Plover.

#### Opening Remarks

Senator Fred A. Risser, Senate Co-Chair of the Joint Legislative Council, gave a brief summary of the Joint Legislative Council and its history. He explained that he and Representative Steve Wieckert, Assembly Co-Chair of the Joint Legislative Council, determined that the subject matter of the

special committee's study is worthy of consideration and suitable for possible legislative recommendations. Senator Risser welcomed members of the special committee and thanked them for agreeing to serve on the committee.

Terry C. Anderson welcomed the committee and introduced the Legislative Council staff members assigned to work with the committee. He discussed rules for voting and described the process of reimbursement of expenses. He noted that the committee's meetings will be recorded and available on the Internet.

### **Introduction of Committee Members**

Chair Gottlieb introduced himself and welcomed the committee. At the request of the chair, committee members then introduced themselves.

### **Discussion of Committee Assignment**

Staff summarized for the committee the Memos and drafts listed below. A brief summary of the issues presented and committee consideration of the issues follows.

- Memo No. 1, *Selected Issues for Special Committee Consideration* (July 24, 2008)

#### ***1. Salary Changes for Certain Elected and Appointed City Officers***

Section 62.09 (6) (b), Stats., requires that salary changes for elected city officers and for appointed city officers serving definite terms be made no later than the first regular city council meeting in February if they are to take effect that year. There is no corresponding provision that applies to village officers.

Committee members noted that interpretation of the provision is confusing in many respects and expressed interest in clarifying the provision. There was consensus to deal with elected officials only; there is no apparent reason to establish a timeframe for setting the salaries of appointed city or village officials. There was consensus to require salaries for both city and village elected officials to be established prior to the deadline for filing nomination papers for the office. Staff was requested to consider that candidates for elective village offices may be chosen by the caucus method.

A related issue was raised concerning the fact that s. 61.32, Stats., prohibits a decrease in village board salaries but there is no city counterpart. There was consensus that salaries for city and village elected officials should not be subject to modification during the term of office.

Staff was requested to prepare a draft reflecting the committee's discussion.

#### ***2. Peace Officer Status of Village President and Trustees***

Section 61.31, Stats., confers officer-of-the-peace status on village presidents and trustees. There is no corresponding provision currently applicable to city council members. (At one time, city council members had the "powers of a city policeman.")

There was committee consensus to repeal the provision giving village board members and village presidents officer-of-the-peace status, particularly in light of the fact that the corresponding provision for city council members was repealed in the 1983 Legislative Session. The provision that currently applies to villages was viewed as anachronistic and as a possible source of liability issues.

### ***3. Publication of Receipts and Disbursements by City Clerk***

Section 62.09 (11) (g), Stats., requires the city clerk to publish, as a class 1 notice under ch. 985, a statement showing the receipts and disbursements as to each fund during the preceding fiscal year. There is no corresponding requirement applicable to village clerks.

The committee discussed the utility of the requirement on city clerks in light of information that must be published as part of the budget summary under s. 65.90 (3) (b) 6., Stats. The committee concluded that the requirement in s. 62.09 is duplicative and differs from the requirement in connection with the budget summary only in regard to its timing.

There was consensus to repeal the publication requirement.

### ***4. Regulation of Political Signs***

Section 12.04 (4) (b), Stats., authorizes towns and first, second, and third class cities, but not fourth class cities or villages, to regulate the size, shape, or placement of any political sign that is more than 11 square feet in area.

Following discussion of the history and possible policy reasons underlying s. 12.04 (4) (b), the committee agreed that there is no apparent rationale not to include fourth class cities and villages within the scope of the permitted regulation. The committee recognizes that s. 12.04 in general presents policy and First Amendment issues; however, these are beyond the scope of the committee's charge and, given the existence of the statute and the current authority granted to first, second, and third class cities and towns, there was consensus to expand the regulatory authority to fourth class cities and villages.

### ***5. Liability for Mob Damage***

Section 893.81, Stats., provides that counties and cities are strictly liable for injury to person or property caused by a mob or a riot within their respective jurisdictions, subject to contributory negligence principles. There is no corresponding liability on the part of villages for mob damage (although under s. 893.80, Stats., a village would be liable for a negligent ministerial act on its part in connection with a mob or riot).

It was noted that s. 893.81 can be viewed as anachronistic given that municipalities no longer enjoy common law municipal immunity and that there is no apparent reason for treating mob damage liability any differently than the liability and immunity principles that apply to municipalities under current s. 893.80, Stats. There was consensus to recommend repeal of s. 893.81.

## **6. *Election of Village Trustees by District***

The statutes contemplate the election of city council members by district, rather than at large. There are no corresponding statutory provisions for electing village trustees by district. (The League of Wisconsin Municipalities has opined that a village may, through adoption of a charter ordinance, establish districts for the purpose of providing district representation by village trustees as an alternative to the election-at-large method.)

The committee discussed current arrangements for election of village board members in various villages and noted that the charter ordinance option provides substantial flexibility. However, there was interest in considering further the possibility of expressly providing for election of village board members by district in the statutes; the statutes could provide a standard guide for doing so and the decision to elect by district could be accomplished through ordinary ordinance rather than a charter ordinance.

Chair Gottlieb directed staff to consult with the Legislative Reference Bureau regarding what might be involved in drafting such legislation.

## **7. *Trains Blocking Highways***

Section 191.292, Stats., makes it unlawful “to stop any railroad train, locomotive, or car upon or across any highway or street crossing, outside of cities, or leave the same standing upon such crossing longer than 10 minutes, except in cases of accident....” There is no corresponding provision on obstructing highways or streets in cities.

Committee discussion of this issue focused on enforcement difficulties and preemption issues. There was consensus not to consider the issue further.

- *Memo No. 2, Police and Fire Protection (July 24, 2008)*

The current scheme of statutory regulation of police and fire protection for cities and villages reveals differences in the regulations as they relate to cities and villages, particularly regarding when police and fire protection is required and the means for providing such protection.

Committee discussion focused on the apparent lack of rationale for the differences in police and fire regulation for cities and villages. However, it was noted that, despite the differences, the differences have not resulted in any significant issues for cities and villages and there appears to be little interest in reconciling the differences. There was consensus not to generally address the differences, with the exception of authorizing cities to exercise the same flexibility that villages enjoy relating to the provision of police and fire protection.

- *Memo No. 3, Letting of Contracts (July 24, 2008)*

The current scheme of statutory regulation of the letting of contracts for works of public construction by cities and village highlights both the differences in the regulations as applied to cities and villages (even though a village may elect to comply with the statutory contract provisions for cities) and the meshing of those requirements with more generally applicable public works contracting provisions in ch. 66.

After discussing the apparent lack of rationale for the differences between villages and cities in connection with public works contracts, there was consensus to allow villages to delegate contract signing authority to correspond to the delegation authority that cities currently have and to provide one set of rules that apply to both cities and villages, blending the current requirements applicable to cities in chs. 62 and 66. Staff was requested to prepare a draft reflecting committee discussion.

- Memo 4, Claims Procedures (July 24, 2008)

The statutory regulation of claims procedures for cities and villages includes differences in those procedures as they apply to cities and villages. However, an alternate method of handling financial claims, other than claims for damages, is available to both villages and cities under ch. 66 and apparently is widely utilized.

There was committee consensus, in light of the apparent lack of issues and concerns regarding the claims procedures, not to address the issue further.

- WLC: 0001/1, relating to salaries paid to village presidents and board members

The draft, to comport with language currently applicable to cities, removes the requirement that salaries of a village president and village board members be described as “annual” salaries. There was committee consensus to support this change; it was noted that in many villages, salaries are established on a monthly or per-meeting basis. There was consensus in support of the draft.

- WLC: 0002/1, relating to terms of office for appointive city officers

The draft creates a provision, parallel to a current provision that applies to villages, requiring that appointed city officers serve in office until their respective successors are appointed and qualify.

There was considerable committee discussion about what might happen, for example, if an appointing authority deliberately failed to name a successor or if a confirming authority failed to confirm. While it was agreed many of these situations can be addressed by charter ordinance, there was not yet apparent consensus on the desirability of the approach taken in the draft but there was sufficient interest to hold the matter for future consideration.

- Members’ Suggestions for Additional Issues to Review

Mr. Morse suggested that the committee review the application of the condemnation procedure under s. 32.05, Stats., to villages. Currently the procedure expressly applies to cities and may, indirectly through indirect cross-reference in other related statutes, apply to villages. Chair Gottlieb requested staff to provide the committee with a memo on the issue.

### **Other Business**

There was no other business brought before the committee.

### **Plans for Future Meetings**

The next meeting of the Special Committee will be at the call of chair.

### **Adjournment**

The meeting was adjourned at 2:20 p.m.

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