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January 15, 2014

Alderman Robert J. Bauman
Fourth Aldermanic District
City Hall, Room 205

Alderman James A. Bohl, Jr.
Fifth Aldermanic District
City Hall, Room 205

Re: City Attorney opinion regarding delegation of licensing and regulation of taxicabs to Milwaukee County

Dear Alderman Bauman and Alderman Bohl:

In response to Milwaukee County Amended Resolution File No. 13-652, adopted on or about September 26, 2013, you requested a legal opinion from this office regarding the authority of the City of Milwaukee to delegate the regulation of taxicabs to Milwaukee County. It is our understanding that the amended county resolution called for the negotiation of an intergovernmental agreement between the city and county "in order to transfer all operation and regulation of taxicab services to Milwaukee County..."

It is the opinion of this office that such an agreement would not be legal or enforceable. Any delegation of the City of Milwaukee's power to regulate or license taxicabs to Milwaukee County via intergovernmental agreement would be *ultra vires*.

Wisconsin Statutes § 349.24 provides that only cities, villages and towns in the State of Wisconsin may regulate and license taxicabs and taxicab operators. See, Wis. Stat. § 349.24(1)(a) – (d). "The transportation of passengers for hire in a taxicab upon the streets of a city is not an inherent right, but a privilege which the city, in the exercise of its discretion may grant or refuse. . ." *Courtesy Cab Co. v. Johnson*, 10 Wis. 2d 426, 432, 103 N.W.2d 17 (1960). Wisconsin Statutes § 349.24, Authority to License Taxicab Operators and Taxicabs, authorizes the Common Council of the City of Milwaukee to "regulate and license the taxicab

business by licensing each taxicab used for hire” and to “[p]rohibit any person from operating a motor vehicle for taxicab purposes upon the highways of the city . . . unless the person is licensed as . . . an operator and unless the taxicab business is licensed by the licensing of each taxicab.” Wis. Stat. § 349.24(1)(b) and (c). Milwaukee Code of Ordinances (MCO) Chapter 100 sets forth the City of Milwaukee’s public passenger vehicle regulations that govern taxicabs and other forms of public transportation such as shuttle buses, limousines, pedicabs and carriages.

A city cannot bargain away its police power. *City of Milwaukee v. Milwaukee Amusement, Inc.*, 22 Wis. 2d 240, 253, 125 N.W.2d 625 (1964), citing, 6 McQuillen, Mun. Corp. (3d ed.), page 530, § 24.41.

[W]hen authority to exercise the police power within a defined sphere is delegated by the state to a municipal or other public corporation, the authority is inalienable in the corporation, and it cannot in any manner be contracted away or otherwise granted, delegated, diminished, divided, or limited by the corporation. The authority, until withdrawn by the legislature or by the people a constitutional change, continues to exist in the corporation unfettered and unrestricted by anything done by it, by its legislative body, or by any other part of it, the power when delegated to a city must at all times be available to it to meet any public need that may arise.

6A McQuillen, *Municipal Corporations, Municipal Police Power and Ordinances*, (3d ed.), pp. 151-154, § 24:42.

Further, while Wisconsin counties are permitted to create and maintain transit commissions and to establish public transportation systems, taxicabs are specifically exempted from the definition of “transportation system.” Wis. Stat. § 59.58(3)(d)1. This provision thus seems to provide additional support for the conclusion that taxicab regulation in Wisconsin is solely within the municipal province.


Of course, in the event the realities of modern public transportation policy and practice lend themselves to a regional approach to taxicab regulation, state enabling legislation may be pursued by the City of Milwaukee and/or Milwaukee

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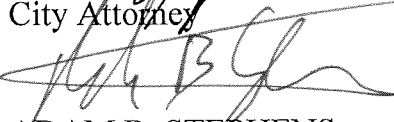
County. Please note that a county-wide licensing system for taxicabs was specifically proposed by the *City of Milwaukee Taxicab and Paratransit Licensing Study, Phase 1 Report*, Edward A. Beimborn, July 31, 1987, pp. 34-35 (City of Milwaukee Legislative Reference Bureau library, 388.413214, M64tp (1987)).

Please feel free to contact Assistant City Attorney Adam B. Stephens with any additional questions or concerns.

Very truly yours,



GRANT E. LANGLEY
City Attorney



ADAM B. STEPHENS
Assistant City Attorney

C: Ald. Willie L. Hines Jr., Common Council President
Ald. Terry L. Witkowski, Public Safety Committee Chairman
James Owczarski, City Clerk
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