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DATE: June 28, 2012

TO: Marina Dimitrijevic, Chairwoman,
Milwaukee County Board of Supervisors

FROM: Kimberly R. Walker, Corporation Counsel

Advisory Legal Memorandum: Substantive Difference Between a Resolution And an Ordinance; Legally Binding Effect of Fiscal Note

We have been asked to provide an advisory legal opinion as to the substantive difference between a resolution and an ordinance. Further, we have been asked whether a fiscal note is legally binding. It is our opinion that contrary to a permanently enacted ordinances, adopted resolutions have temporary legal effect. Additionally, we do not believe that a fiscal note is legally binding.

The Supreme Court of Wisconsin addressed the distinction between an ordinance and a resolution in Wisconsin Gas & Electric Co. v. Fort Atkinson, 193 Wis. 232, 243-44, 213 N.W. 873, 878 (1927). The court stated the general rule as follows: "...a resolution in its nature is of a temporary character, an ordinance prescribes a permanent rule of conduct or government.." Simply put, ordinances are intended to be formal, permanent enactments by a governing body. Resolutions are intended to be informal enactments of a temporary nature. See also Winninger v. City of Waupun, 183 Wis. 32, 197 N.W. 249 (1924). Given the court's analysis regarding the treatment of resolutions, to the extent that a governing body adopted a resolution which was contradicted by a subsequently adopted resolution, we are of the opinion that the subsequently adopted resolution would supplant the formerly adopted resolution. While resolutions can authorize acts which have permanent effect, we do not believe that resolutions which attempt to express policy have a permanent binding effect. The permanent policy would be expressed via an ordinance.

In addition to the question above, we have been asked to opine as to the legal effect of a fiscal note. Milwaukee County's legislative body requires that proposed resolutions and ordinances include a fiscal note, "a reliable estimate of fiscal effect." Sec. 1.10, M.C.G.O. Notwithstanding, we are of the opinion that a fiscal note is not a legally binding document of which the legislative body can adopt or enact. Rather, as is the case with the Wisconsin Legislative Fiscal Bureau, we believe that the fiscal note serves as a source of information, to assist the governing body in its deliberations and ultimate decision-making. It is our opinion that the legislative bodies' authority to adopt policy

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rests in its adoption of resolutions or ordinances. We do not believe the governing legislative body has the authority to adopt or enact a fiscal note.

In summary, we are of the opinion that resolutions serve a temporary legal purpose. Ordinances serve to be permanent formal legal enactments. Fiscal notes, while required to be included with proposed resolutions or ordinances, are not legally binding. The fiscal note serves as a guide as to fiscal impact for the legislative body to consider during deliberation and ultimate action on resolutions or ordinances.

Respectfully submitted,



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