



OFFICE OF CORPORATION COUNSEL


MARGARET C. DAUN
Corporation Counsel

PAUL D. KUGLITSCH
Deputy Corporation Counsel

TIMOTHY R. KARASKIEWICZ
MOLLY J. ZILLIG
ALAN M. POLAN
DEWEY B. MARTIN
JAMES M. CARROLL
KATHRYN M. WEST
DALE R. NIKOLAY
SCOTT F. BROWN
TEDIA R. GAMINO
MARYNELL REGAN
Assistant Corporation Counsel

TO: Honorable Supervisors of the County Board

CC: County Clerk George Christenson (c/o Janelle Jensen)
County Executive Chris Abele
Interested Parties

FROM: Margaret Daun, Corporation Counsel
Paul Kuglitsch, Deputy Corporation Counsel 

DATE: October 18, 2018

RE: Referral of File No. 18-633

At its September 20, 2018 meeting, your honorable body referred File No. 18-633 to the Office of Corporation Counsel (“OCC”) pursuant to MCO 1.15. That ordinance allows a one-third minority of the County Board to refer a matter to the OCC for a “written opinion ... as to the legality of the resolution or ordinance offered.” File No. 18-633 is as follows:

From the Director, Department of Health and Human Services (DHHS), requesting authorization to create Capital Project WS12401 – Secured Youth Facility – Phase I, and to transfer up to \$3 million in tax levy surplus from DHHS’ operating budget to the new capital project to support the initial planning and design of a Secured Residential Care Center for Children and Youth.

On September 12, 2018, the Finance and Audit Committee unanimously recommended authorization of Capital Project WS12401 to the County Board. The Board then considered the item at its meeting on September 20, 2018. During its discussions, the County Board asked the OCC: (1) whether the Board has the authority to approve the location of the Secured Youth Facility, and (2) what effect, if any, the distinction between leasing an already-existing facility and constructing a new one has on that authority.

I. Background

Capital Project WS12401 stems from 2017 Wisconsin Act 185 (“Act 185”). Act 185 was adopted by the state legislature in March 2018 and directs the closure of the Lincoln Hills and Copper Lake youth correctional facilities by January 1, 2021. In place of these facilities, the Act authorizes the use of less restrictive county-operated Secured Residential Care Centers for Children and Youth (“SRCCCYs”). To assist counties in designing and constructing SRCCCYs, the State has set aside

\$40 million in a juvenile corrections grant program administered by the State Department of Corrections.

Counties may apply to the grant program to cover the following:

- 95% of the costs of designing and constructing an SRCCCY.
- 95% of the costs of designing and constructing a facility housing both an SRCCCY and a juvenile detention facility.
- 100% of the costs of designing and constructing an SRCCCY or a portion of an SRCCCY that is only for female juveniles.

To qualify for the funds, counties must apply to the State Juvenile Corrections Grant Committee by March 31, 2019.

II. County Board Approval of SRCCCY Location

A. Identifying the SRCCCY Location is Likely Part of the Grant Application Process.

It is highly likely, though not certain, that the grant application process will require applicants to identify the proposed location of an SRCCCY.¹ The non-statutory provisions of Act 185, which set forth the grant application process, grant preference to proposals that utilize existing facilities in locations relatively close to the juvenile population(s) being served. This preference thus strongly suggests that the final application process will mandate identification of the proposed SRCCCY's location.

B. Two of the Three Grant Options Require Expenditure of County Funds.

As noted above, two of the three grant options provide that the State of Wisconsin will cover 95% of costs. The remaining 5% of costs would thus be absorbed by the County under these options. Conversely, the third grant option provides that 100% of the costs will be paid by the State of Wisconsin.

C. Conclusion

Under Wis. Stat. § 59.52(19), the Board is responsible for approving and/or accepting grants. By ordinance, however, the Board has delegated or refined some its responsibility. Per MCO 56.06(1), Board approval is required to apply for or accept federal, state or private grants if the grant requires a county contribution. On the other hand, if the grant does not require a county contribution, Board approval is not necessary, assuming the grant is not contrary to the adopted budget or any existing policy and is consistent with the role and mission of the requesting department. *See id.*

Thus, under MCO 56.06(1), the County Board must approve either the grant application or the acceptance of grant funding if any County dollars are required. By extension then, under either scenario, if the grant application includes the location of the SRCCCY, the County Board will also have the ability to review and vote upon the location. However, if no County dollars are required,

¹ To date, the OCC understands that the state has not released the application.

then, per the same ordinance, the County Board has elected to delegate its authority over the grant and/or the SRCCCY location to the department. It is the understanding of the OCC that the County will pursue a grant that does require County funding and if this remains true, the Board will then vote upon either the application itself or the receipt of the grant moneys and will also have the opportunity to review the location of the SRCCCY.

III. Distinction Between Leasing an Existing Facility and Building a New Facility

The distinction between leasing an existing facility and constructing a new one is irrelevant for purposes of the juvenile corrections grant program and has no bearing on whether County Board approval is required. While other legislation addresses disposition of County property in various scenarios, in the context of this grant program Wis. Stat. § 59.52(19) and MCO 56.06(1) control. Per the above analysis, the County Board's authority over the grant application and, by extension, the location of the SRCCCY hinges only on whether County funds are being contributed to the SRCCCY project in question.

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