

COUNTY OF MILWAUKEE
Interoffice Memorandum

DATE: November 29, 2010

TO: Supervisor Willie Johnson, Jr., Chairman, Committee on Judiciary, Safety and General Services

FROM: Rick Ceschin, County Board Research Analyst
Robert Andrews, Deputy Corporation Counsel

SUBJECT: Committee Referral of File No. 10-258 – Amending Chapter 9, Code of Ethics regarding closed session information

Issue

At the October 21, 2010 meeting of the Committee on Judiciary, Safety and General Services, as part of the discussion on the above referenced matter, the Committee directed County Board staff to consult with Corporation Counsel to draft recommendations as to how to amend Chapter 1 of the Milwaukee County Code of General Ordinances (MCGO) to address recording of closed session meetings.

Background

The issue of retaining minutes of closed session was addressed most recently in late 2004. At that time, Corporation Counsel advised that minutes should be kept when County Board members convene in closed session, provided that minutes were secured to prevent disclosure. Corporation Counsel did note that recording closed session may potentially hinder information sharing and committee participation due to potential disclosure of closed session activities to a larger audience. In January 2005 the County Board Chairman directed standing committees to begin recording closed session meetings on audio tape, and directed committee clerks to circulate sign-in sheets to track attendees of closed session meetings. In May 2005, the County Board Chairman revised the prior policy and discontinued closed session recordings, but continued the sign-in procedures. The sign-in procedure continues as the current policy on the matter. The three memos are attached for the committee's convenience.

Discussion

The taking of minutes in standing committee meetings is directed in Section 1.13 of the MCGO, indicating committee clerks 'shall enter in appropriate files kept for that purpose, a complete record of all such committee meetings, including the attendance thereat, appearances for and against pending matters, and minutes of the proceedings, including all motions made and by whom, how each member voted upon each matter considered, together with the final action by the committee thereon.'

However, the ordinances do not specifically address closed session minutes, recordings or note taking, and do not require nor prohibit such actions at the committee level. The ordinance requires only that "all meetings of a committee shall be conducted in accordance with the provisions of ss.

19.81 – 19.98, Wis. Stats.” That section of the statutes, known as Wisconsin’s Open Meetings Law, provides no direction regarding closed session activities.

In the December 2004 memo, Corporation Counsel highlights an opinion of the Attorney General that the decision to record closed session proceedings is within the authority of the governmental body, provided that the governmental body “should then arrange to keep the records thereof under security to prevent their improper disclosure.” On the basis of that opinion, Corporation Counsel concludes that the County Board and its committees are not prohibited from taking minutes or recording proceedings in closed session. As mentioned above, the County Board Chairman initially implemented closed session recordings, but later rescinded the practice citing “the loss of full participation on the part of County Board members.”

Recommendation

The Committee had requested direction as to how to amend County Ordinances to address recording of closed session proceedings. To that end, an amendment to Chapter 1.13 MCGO can be crafted at the direction of a legislative sponsor. However, given the discussion above and the detail of the attached discussion from the Office of Corporation Counsel, no action is recommended at this time.

Cc: County Board Chairman
Committee members
Corporation Counsel



OFFICE OF CORPORATION COUNSEL

Milwaukee County

WILLIAM J. DOMINA
Corporation Counsel

TIMOTHY R. SCHOEWE
MARY ANN GRIMES
ROBERT E. ANDREWS
Deputy Corporation
Counsel

LOUIS EDWARD ELDER
JOHN F. JORGENSEN
MARY ELLEN POULOS
MARK A. GRADY
JOHN E. SCHAPEKAHM
TIMOTHY R. KARASKIEWICZ
RICHARD H. BUSSLER, JR.
Principal Assistant
Corporation Counsel

TO: TERRENCE D. COOLEY, CHIEF OF STAFF, MILWAUKEE COUNTY
BOARD OF SUPERVISORS

FROM: WILLIAM J. DOMINA, CORPORATION COUNSEL

SUBJECT: **ADVISORY LEGAL MEMORANDUM;** RECORD OF
PROCEEDINGS CONDUCTED IN "CLOSED SESSION" UNDER
WISCONSIN OPEN MEETINGS LAW.

DATE: DECEMBER 2, 2004

The current practice of the Milwaukee County Board of Supervisors and its committees with respect to proceedings conducted in closed session under Wis. Stat. s. 19.85 is that the tape recorder is turned off and no minutes are made or kept to memorialize what occurs during closed session. This practice serves to guarantee the confidentiality of discussions held during closed session, which comports with the public policy justification for convening in closed session in the first place. Evidently, however, the absence of any record of closed session proceedings has led to occasional disputes over what has actually transpired during those sessions.

The Open Meetings Law, Wis. Stat. ss. 19.81-19.98, does not provide any specific direction with respect to recording proceedings conducted in closed session, nor does any reported appellate decision address that issue. However, the attorney general has provided some guidance.¹

The attorney general has opined that anyone, including a member of a governmental body, has the right to record the proceedings of a governmental body in open session, so long as the act of recording is not "physically disruptive" of the meeting, but that no such right exists with respect to proceedings in closed session, 66 Wis. Op. Att'y. Gen. 318 (1977). In that opinion, the attorney general indicates that a governmental body has the authority to decide whether to create and maintain a record of a closed meeting.

¹ In relying on an opinion of the attorney general, we are mindful of the attorney general's special statutory duty to provide advice as to the application of the Public Meetings Law, Wis. Stat. s. 19.98.

However, any record of a closed meeting must be retained in the custody of the governmental body and secured to prevent "improper disclosure". Such disclosure would, of course, defeat the purpose of the closed meeting:

It may be that a governmental body will believe it desirable to record its closed meetings, but it should then arrange to keep the records thereof under security to prevent their improper disclosure. The tape recording could be made by the Board itself, perhaps with its administrative secretary handling the task. The Board might permit one of its members to use his tape recorder to record a closed meeting, but the record produced should be in the Board's custody.

Id., p. 325.

On the basis of the attorney general's opinion, we believe that the Open Meetings Law neither requires nor forbids the County Board and its committees to keep minutes of those portions of meetings conducted in closed session. However, minutes should not be kept unless the County Board is capable of securing those minutes so as to prevent disclosure to anyone other than the County Board members and necessary staff who were permitted to remain in the closed session.

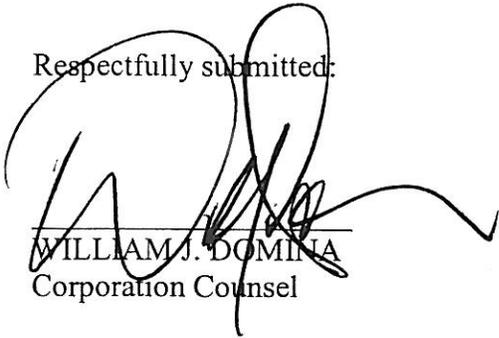
Clearly implicit in the attorney general's opinion is the conclusion that minutes and other records of meetings conducted in closed session under Wis. Stat. s. 19.85 are not subject to disclosure under the Public Records Law, Wis. Stat. ss. 19.31-19.38. That same conclusion follows logically from Wis. Stat. s. 19.35(1)(a), which provides that an authority can deny access to a record on the basis of the any of the reasons in Wis. Stat. s. 19.85 which permit a body to convene in closed session.

In view of the questions which have arisen among members of the County Board, our recommendation is that minutes be kept when County Board members convene in closed session. The decision to keep a record of closed sessions implicates two competing policy considerations. Keeping a record of closed sessions may detract from the relatively informality of those sessions. County Board members and others who participate in closed sessions may be less candid in expressing their views and sharing information if they are concerned that the substance of their statements may ultimately be disclosed to a larger audience. However, a record of closed sessions should resolve any concerns about the credibility and integrity of the Board's proceedings. In our view, this latter interest is the more compelling one, and it militates in favor of keeping minutes of closed sessions.

Finally, it should be noted that in making this recommendation we have not weighed the staffing needs and other logistical issues which will arise if the Board undertakes to keep minutes of closed sessions and preserve the confidentiality of those records.

We hope these observations are useful to you.

Respectfully submitted:



WILLIAM J. DOMINIA
Corporation Counsel

COUNTY OF MILWAUKEE
INTEROFFICE COMMUNICATION

DATE : January 13, 2005
TO : County Board Supervisors
FROM : County Board Chairman Lee Holloway
SUBJECT : **Advisory Opinion Concerning Recording Closed Session Proceedings**

Attached is an advisory legal memorandum from the Corporation Counsel concerning the recording of proceedings of County Board committee meetings that are conducted in closed session. For reasons identified in the memorandum, the Corporation Counsel has recommended that minutes be kept when County Board members convene in closed session. It is Corporation Counsel's opinion that these minutes would not be subject to open records requests. These policies are designed to protect the integrity and confidentiality of the record of the closed session.

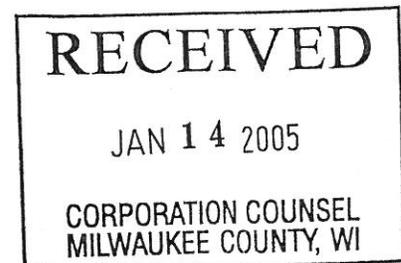
In keeping with this advisory legal memorandum and recommendation, I am requesting that all County Board committees use the following procedure when convening into closed session:

1. Record each closed session in its entirety with a separate audio tape (or tapes) designated for the closed session. (This will meet the recommendation for keeping "minutes" of the closed session.)
2. At the conclusion of the closed session, secure the audio tape in a sealed envelope and place in a secured, locked file in the area of the Committee Clerks' offices.
3. If a member of a committee that went into closed session, requests to review the audio tape from the session, they will be provided access to a designated County Board room to review the tape on a tape player. They will not be able to make a copy of the tape or remove the tape from the room.
4. No one other than a member of the committee that went into closed session, the Committee Clerk or Research Analyst for the Committee, or the Chief of Staff, will be provided access to the tape of the closed session.
5. Committee Clerks should circulate and keep a sign in sheet for each closed session, to be signed by all persons included in the closed session (including any individuals who come into the closed session after it has begun). This sign-in sheet(s) also will be kept sealed and would not be subject to any open records requests.

Lee Holloway
Chairman, County Board of Supervisors

Attachment

cc: All Committee Clerks
All Research Analysts
Shirley Szklarski, Administrative Secretary-Support Services
William Domina, Corporation Counsel
Terrence Cooley, Chief of Staff



COUNTY OF MILWAUKEE
INTEROFFICE COMMUNICATION



DATE : May 18, 2005
TO : County Board Supervisors
FROM : County Board Chairman Lee Holloway
SUBJECT : **Closed Sessions of County Board Committees - Revised Policy**

On January 13, 2005, I sent you a communication attaching a December 2, 2004 advisory legal memorandum from the Corporation Counsel concerning the recording of proceedings of County Board Committee meetings conducted in closed session. Based on that memorandum, in which the Corporation Counsel recommended minutes be kept of closed session meetings, I requested all Committee Chairs to use a procedure for closed sessions that included tape recording each closed session in its entirety and keeping the tapes in a secure locked location. According to the Corporation Counsel, such tape recordings would not be subject to open records laws because of the confidential nature of closed sessions.

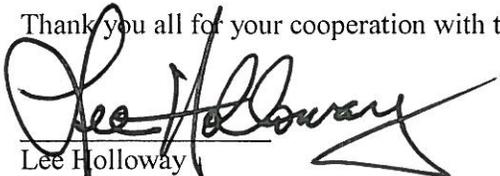
We have now tried this new procedure of recording closed session meetings over the past several months. We have had a number of closed session meetings of Committees during this time. It has been brought to my attention that, notwithstanding the confidential nature of the closed sessions, the tape recording of such sessions has inhibited some County Board members from fully participating as they otherwise might.

Clearly, it was my intent to keep a record, to the extent possible, of such meetings, following the advise of Corporation Counsel. It now appears, however, that any advantage in doing so is outweighed by the loss of full participation on the part of County Board members.

Consequently, I am hereby changing the policy initiated in my January 13, 2005 memorandum. From this point forward, closed sessions of County Board Committees will not be taped. Nor will Committee Clerks be required to take notes of conversations in closed sessions, as I think this does not really address the issue and, given that any such notes would be subjective, would only place the Committee Clerks in a difficult position.

The policy of County Board staff circulating and keeping a sign-in sheet for each closed session will continue to be in effect. These sign-in sheets should include any and all persons included in the closed session (including any individuals who come into the closed session after it has begun). Also, I would ask that, for any closed session item, only individuals who have a legitimate and appropriate contribution to make to the closed session proceedings be included in the closed session. The Committee Chair should make this determination.

Thank you all for your cooperation with this change in policy.


Lee Holloway
Chairman, County Board of Supervisors

cc: All Committee Clerks
All Research Analysts
Shirley Szklarski, Administrative Secretary-Support Services
✓ William Domina, Corporation Counsel
Terrence Cooley, Chief of Staff



OFFICE OF CORPORATION COUNSEL

Milwaukee County

TIMOTHY R. SCHOEWE
Acting Corporation Counsel

ROBERT E. ANDREWS
Deputy Corporation Counsel

JOHN F. JORGENSEN
MARK A. GRADY
JOHN E. SCHAPEKAHM
TIMOTHY R. KARASKIEWICZ
JEANEEN J. DEHRING
ROY L. WILLIAMS
COLLEEN A. FOLEY
LEE R. JONES
MOLLY J. ZILLIG
Principal Assistant
Corporation Counsel

DATE: October 12, 2010

TO: Supervisor Willie Johnson, Jr., Chairman
Committee on Judiciary, Safety and General Services

FROM: Robert E. Andrews, Deputy Corporation Counsel

SUBJECT: File No. 10-258 – Amendment of Code 9, Code of Ethics as it relates to privileged information.

At the meeting of your committee on September 16, 2010 the above subject file was considered. It proposes that the Code of Ethics be amended to make it a violation of the Code for the unauthorized release of privileged information. The Committee requested that Corporation Counsel provide a report back on six matters. These items will be addressed in the order presented on the referral.

The first request is listed as “Disclosure of confidential information being considered as classified information”. In our view the terms “privileged information”, “confidential information” and “classified information” are interchangeable as each can be used to assist in defining the others. Information that is privileged is protected by a legally recognized right against disclosure. In other words, such information is to remain confidential or classified. The term “privileged information” has been part of our Code of Ethics in one form or another for many years. The present Code already contains a section which prohibits the disclosure of privileged information. Section 9.05(2)(d) reads as follows:

“No county, public official or employee shall use or disclose privileged information gained in the course of, or by reason of, his/her position or activities which in any way could result in financial gain for himself/herself or for any other person.”

The proposal currently before this Committee makes it unnecessary for there to be a “financial gain” in order to have a violation of the Code. The amendment to the Code, if adopted, with the elimination of the financial gain element, would cover a wider range of situations.

The second question asked, “Who decides what is confidential?” The Milwaukee County Ethics Board is vested with the authority to determine whether information is “privileged”. If the Board found that the information at issue was privileged it would follow with a determination as to whether the release of the information violated the Code.

The next question inquired as to the legal impact on the operation of the Code if the proposed amendment is adopted. Any response at this point would be conjecture. However, in my more than 25 years of staffing the Ethics Board I cannot recall an investigation or a complaint that implicated the privileged information provision. As previously stated, the proposed change does broaden the areas that might give rise to allegations that privileged information was improperly released. It is my sense, however, that the adoption of the amendment would not result in a significant impact on the operation of the Ethics Board.

Identifying what is acceptable material for a closed session was also raised. Every meeting of a government body must be held in open session except as provided by Wis. Stat. §19.85. A closed session of a meeting may be held only for those specific purposes listed in that section. Because the legislative mandate weighs heavily in favor of meetings being open, the exceptions to that strong policy are to be narrowly construed.

The exceptions that would permit a closed session that are relevant to the county are: 1) preliminary discussions of personnel problems; 2) considerations about public employees; 3) bargaining; 4) personal information; and 5) litigation strategy. And, it must be stated that simply because an item may be discussed in closed session does not mean that it has to be. This area of the open meetings law is dynamic as appellate court decisions continue to create a more nuanced understanding of the proper application of the facts to the law when determining whether a meeting may be closed.

The fifth item requested that we address making notes in closed session of a meeting. Because there currently is no prohibition to creating hand-written notes in county meetings, I will assume that the request is directed at whether such note taking could be banned. Presently, there is no legal authority one-way or the other in the state of Wisconsin. There is a letter, however, from an assistant attorney general in 2006 to the legal counsel of a school board which discussed this. Although the author declined to take a position on the issue he did present comments of the various forces that are at odds on the subject:

“The powers of the body and the rights of its members must be considered in relation to each other. Individual members, in exercising their own participatory rights, have a duty to not interfere with the concomitant rights of other members or of the body of the whole and, accordingly, must generally obey the procedural rules of the body. Conversely, the body, in regulating its collective proceedings, should not interfere with the participatory rights of an individual member anymore than is necessary to protect the coordinate rights of other members in ability of the body to carry out its public functions...the ability of a member of a governmental body to effectively discharge his or her official duties may require the taking of personal notes in order to occasionally refresh the member’s memory, to assist in effectively

gathering information, or to record the member's own thoughts about matters needing further investigation. On the other hand, as discussed above, the governmental body also has a substantial and legitimate interest in restricting the creation of any tangible, lasting record that might threaten the confidentiality of a lawfully closed meeting." (Assistant AG letter to Mr. Thomas A. Maroney October 31, 2006)

It is my opinion that the County Board does possess the authority to limit or prohibit the creation of hand-written notes in a closed session. It was not that long ago when the Board directed that all closed sessions be tape-recorded. This came about in response to a number of instances in which attendees of the closed session voiced significantly different recollections of what was discussed in the closed session.

The final inquiry of this office is related to the last item. Support has been shown that closed sessions be tape-recorded and any documents along with the tape of the meeting be deposited with this office for the purpose of shielding these items from the public. It is my recollection that for a relatively short period of time the County Board did record the closed sessions of its committees. A review of the tapes was limited to those individuals who had a right to be present at the closed session. The potential vulnerability of those tapes being released to other individuals was demonstrated in the recently concluded major lawsuit involving the County's pension benefits. Opposing counsel pressed hard to obtain access to those recordings. This led to the County Board reversing its policy of making recordings of its closed sessions.

A 2008 Supreme Court decision has further clouded the matter. In the case of *Sands v. Whitnall School Dist.*, 312 Wis.2d 1 (2008), Sands, an employee of the Whitnall School District learned, following a closed session meeting of the school district board that she was fired. She proceeded to file a lawsuit against the school district. During discovery her attorney served interrogatories on the school district inquiring as to the events in closed session. Our supreme court ruled that Sands was entitled to this evidence. In this instance the laws governing the discovery of evidence in civil cases trumped the ability to go into closed session under the open meetings law. Clearly, this is the trend: more access by the public to what formally had been closed. Using the Sands cases as a prelude it is my opinion that our ability to avail ourselves of the protections provided by attorney-client privilege will be further restricted. If there is a record, whether it be hand-written notes or a tape-recording, there will be an effort to bring those matters out into the public eye. It is recommended that the Board proceed cautiously in taking any action that seeks to limit the access of the public to meetings as well as to informationally be disclosed.

/s/ ROBERT E. ANDREWS
REA/rf

cc: Linda Durham

3 **AN ORDINANCE**

4 Amending Chapter 9, Code of Ethics, of the Milwaukee County Code of General
5 Ordinances as it relates to confidential information, privileged communications and
6 information acquired in meetings convened in closed session.

7 The County Board of Supervisors of the County of Milwaukee does ordain as
8 follows:

9 **SECTION 1.** Section 9.02 (14) of the General Ordinances of Milwaukee County is
10 amended as follows:

11 9.02 Definitions

12 (14) "Privileged information" means information obtained under government
13 authority which has not become a part of the body of public
14 information. including but not limited to information that has been
15 acquired in a meeting convened in closed session under the provisions
16 of Wis. Stats. 19.85, or information contained in a communication
17 labeled as privileged or confidential.

18 **SECTION 2.** Section 9.05 of the General Ordinances of Milwaukee County is
19 amended as follows:

20 9.05. Standards of conduct.

21 (1) No personal or economic interest in decisions and policies: The county
22 board hereby reaffirms that a county elected official, appointed official or
23 employee holds his/her position as a public trust, and any effort to realize
24 personal gain through official conduct is a violation of that trust. This
25 chapter shall not prevent any county elected official, appointed official or
26 employee from accepting other employment or from following any
27 pursuit which does not interfere with the full and faithful discharge of
28 his/her duties to the county. The county board further recognizes that in a
29 representative democracy, the representatives are drawn from society
30 and, therefore, cannot and should not be without all personal and
31 economic interest in the decisions and policies of government; that
32 citizens who serve as public officials or public employees retain their
33 rights as citizens to interests of a personal or economic nature; that
34 standards of ethical conduct for public employees and public elected and
35 appointed officials need to distinguish between those minor and
36 inconsequential conflicts which are unavoidable in a free society and
37 those conflicts which are substantial and material; and that county
38 elected officials, appointed officials or employees may need to engage in

39 employment and/or professional or business activities, other than official
40 duties, in order to support their families and to maintain a continuity of
41 professional or business activity or may need to maintain investments.
42 However, the code maintains that such activities or investments must not
43 conflict with the specific provisions of this chapter.

44 (2)(a) No financial gain or anything of substantial value: Except as otherwise
45 provided or approved by the county board, no county public official or
46 employee shall use his/her public position or office to obtain financial
47 gain or anything of substantial value for the private benefit of
48 himself/herself or his/her immediate family, or for an organization with
49 which he/she is associated. This paragraph does not prohibit a county
50 elected official from using the title or prestige of his/her office to obtain
51 campaign contributions that are permitted by and reported as required by
52 ch. 11, Wis. Stats.

53 (b) No person may offer anything of value: No person shall offer or give to
54 any public official or employee, directly or indirectly, and no public
55 official or employee shall solicit or accept from any person, directly or
56 indirectly, anything of value if it could reasonably be expected to
57 influence the public official's or employee's vote, official actions or
58 judgment, or could reasonably be considered as a reward for any official
59 action or inaction or omission by of the public official or employee. This
60 section does not prohibit a public official or an employee from engaging
61 in outside employment.

62 (c) No substantial interest or benefit: Except as otherwise provided in
63 paragraph (1.), no public official or employee shall:

64 1. Take any official action substantially affecting a matter in which the
65 public official, employee, a member of his/her immediate family, or
66 an organization with which the public official or employee is
67 associated has a substantial financial interest.

68 2. Use his/her office or position in a way that produces or assists in the
69 production of a substantial benefit, direct or indirect, for the public
70 official, employee, members of the public official's or employee's
71 immediate family either separately or together, or an organization
72 with which the public official or employee is associated.

73 (d) No disclosure of privileged information: No county public official or
74 employee shall use or disclose privileged information gained in the
75 course of, or by reason of, his/her position or activities which in any way
76 could result in financial gain for himself/herself or for any other person.

77 (e) No use of public position to influence or gain unlawful benefits,
78 advantages or privileges: No county public official or employee shall use
79 or attempt to use his/her public position to influence or gain unlawful
80 benefits, advantages, or privileges for himself/herself or others.

81 (f) No offer of gifts or anything of value: No county public official shall offer
82 or give anything of value to a member or employee of a county
83 department or entity, while that member or employee is associated with

84 the county department or entity, and no member or employee of a
85 department shall solicit or accept from any such person anything of value
86 from a county official or employee.

87 (g) Limits on contracts with county: No county public official or employee
88 and no business with which he/she or his/her spouse has a significant
89 fiduciary relationship or any organization with which he/she or his/her
90 spouse is associated shall enter into any contract with the county unless
91 that contract has been awarded through a process of public notice and
92 competitive bidding in conformity with applicable federal and state
93 statutes and county ordinances.

94 (h) Limits on lease of real estate with county: No county public official or
95 employee and no business in which that county public official or
96 employee has a ten (10) percent or greater interest shall enter into a lease
97 of real property with the county, except that the county board, upon a
98 publicly filed and considered request, shall waive this subsection when it
99 is in the best interests of the county.

100 (i) No limits on lawful payments: Paragraph (c) does not prohibit an elected
101 official from taking any action concerning lawful payment of salaries or
102 employee benefits or reimbursement of actual and necessary expenses, or
103 prohibit an elected official from taking official action with respect to any
104 proposal to modify a county ordinance.

105 (j) No solicitation of at-will employees: No elected county official shall
106 knowingly solicit a campaign contribution from any "at-will employee"
107 defined as an employee who is not under union or labor contract with
108 the county, who is hired for an indefinite term or who is under an
109 independent contract with the county or its subparts or who can be
110 discharged or terminated at any time for any nondiscriminatory reason.

111 (k) No campaign contributions to county officials with approval authority:
112 No person(s) with a personal financial interest in the approval or denial of
113 a contract or proposal being considered by a county department or with
114 an agency funded and regulated by a county department, shall make a
115 campaign contribution to any county elected official who has approval
116 authority over that contract or proposal during its consideration. Contract
117 or proposal consideration shall begin when a contract or proposal is
118 submitted directly to a county department or to an agency funded or
119 regulated by a county department until the contract or proposal has
120 reached final disposition, including adoption, county executive action,
121 proceedings on veto (if necessary) or departmental approval. This
122 provision does not apply to those items covered by section 9.14 unless
123 an acceptance by an elected official would conflict with this section. The
124 language in subsection 9.05(2)(k) shall be included in all Requests for
125 Proposals and bid documents.

126 | (l) ~~(l)~~—Limits on honorarium fees or expense reimbursements: No county
127 public official or employee shall accept or solicit any honorariums, fees
128 | or expense reimbursements except in accordance with section 9.14.

129 (m) Closed Session, Confidential Information and Privileged
130 Communications.

131
132 (1) No county public official or employee may disclose privileged
133 information, as defined in Section 9.02, to any individual who was not
134 authorized to receive such information as defined below, except as
135 provided in subsection (4) below.

136
137 (2) For purposes of this section, an individual is authorized to receive
138 privileged information if:

- 139 a. that individual is a public official as defined in Section 9.02 of this
140 chapter or a member of the governmental body as defined in Wis.
141 Stats. 19.89; or
142 b. that individual was authorized to attend a closed session by the
143 County Board Chairman or presiding Committee Chair; or
144 c. that individual was authorized to receive privileged information
145 presented in a closed session after the fact with the authorization
146 of the County Board Chairman or the presiding Committee Chair;
147 or
148 d. that individual is specified as an addressee or copied recipient of a
149 privileged communication, or otherwise authorized as a recipient
150 by the author of such communication.

151
152 (3) Violation of this section may be addressed by the use of such
153 remedies as are currently available by law, including but not limited to
154 the following actions:

- 155 a. Corporation Counsel is authorized to seek injunctive relief to
156 prevent disclosure or further disclosure of privileged information
157 obtained in closed session;
158 b. An investigation request or verified complaint may be filed as
159 provided in Section 9.09(4) of this chapter, and shall be processed
160 and disposed in accordance with the procedures contained herein.

161
162 (4) No action authorized under subsection (3) above may be taken
163 against a person, nor shall it be deemed a violation of this section, if:

- 164 a. The disclosure of privileged information is part of a confidential
165 inquiry or complaint to a district attorney concerning a perceived
166 violation of law, including the disclosure of facts to a district
167 attorney that are necessary to establish the illegality of an action
168 taken by a public official or the potential illegality of an action if
169 that action were to be taken by a public official;
170 b. The County Board adopts a resolution authorizing the release of
171 privileged information.

173 (5) Nothing in this section shall be construed to prohibit disclosures
174 permitted under Subchapters III and IV of Wis. Stats. 230
175 ("Whistleblower" laws).

176
177 (6) The Ethics Board shall include the requirements of closed session
178 confidentiality and notice of the requirements of this section as part of
179 Ethics training conducted under 9.08 (10).

180
181 (3) *Limits on contact:*

- 182 (a) *Limits on contact with former county associates:* No former county
183 public official or employee, for twelve (12) months following the date on
184 which he/she ceases to be a county public official or employee, shall, for
185 compensation, on behalf of any person other than a governmental entity,
186 make any formal or informal appearance before or try to settle or arrange
187 a matter by calling, writing, or conferring with, any county public official,
188 officer or employee of the department with which he/she was associated
189 as a county public official or employee.
- 190 (b) *Limits on contact with judicial or quasi-judicial proceedings:* No former
191 county public official or employee for twelve (12) months following the
192 date on which he/she ceases to be a county public official or employee,
193 shall for compensation on behalf of himself/herself or any person other
194 than a governmental entity, make any formal or informal appearance
195 before, or try to settle or arrange a matter by calling, writing, or
196 conferring with, any county public official, officer or employee of a
197 department in connection with any judicial or quasi-judicial proceeding,
198 application, contract, claim, or charge which was under the former public
199 official's or employee's responsibility as a county public official or
200 employee.
- 201 (c) *Limits on contacts with judicial or quasi-judicial proceedings where*
202 *personally participated:* No former county public official or employee
203 shall, whether for compensation or not, act on behalf of any party other
204 than the county in connection with any judicial or quasi-judicial
205 proceeding, application, contract, claim, or charge in which the former
206 public official or employee participated substantially as a public official
207 or employee.
- 208 (d) *Consideration of exemptions:* The ethics board shall accept and review
209 written requests by former appointed officials for an exemption from the
210 prohibitions of (3). Such exemption requests must be heard and
211 deliberated during a properly convened open session of an ethics board
212 meeting and must be included in a written ethics board opinion stating
213 the reason(s) that the former appointed official should be exempt from the
214 otherwise prohibited conduct.

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: June 2, 2010

Original Fiscal Note

Substitute Fiscal Note

SUBJECT: AN ORDINANCE

Amending Chapter 9, Code of Ethics, of the Milwaukee County Code of General Ordinances as it relates to confidential information, privileged communications and information acquired in meetings convened in closed session.

FISCAL EFFECT:

- | | |
|--|--|
| <input checked="" type="checkbox"/> No Direct County Fiscal Impact | <input type="checkbox"/> Increase Capital Expenditures |
| <input checked="" type="checkbox"/> Existing Staff Time Required | <input type="checkbox"/> Decrease Capital Expenditures |
| <input type="checkbox"/> Increase Operating Expenditures
(If checked, check one of two boxes below) | <input type="checkbox"/> Increase Capital Revenues |
| <input type="checkbox"/> Absorbed Within Agency's Budget | <input type="checkbox"/> Decrease Capital Revenues |
| <input type="checkbox"/> Not Absorbed Within Agency's Budget | |
| <input type="checkbox"/> Decrease Operating Expenditures | <input type="checkbox"/> Use of contingent funds |
| <input type="checkbox"/> Increase Operating Revenues | |
| <input type="checkbox"/> Decrease Operating Revenues | |

Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.

	Expenditure or Revenue Category	Current Year	Subsequent Year
Operating Budget	Expenditure	0	0
	Revenue	0	0
	Net Cost	0	0
Capital Improvement Budget	Expenditure		
	Revenue		
	Net Cost		

DESCRIPTION OF FISCAL EFFECT

In the space below, you must provide the following information. Attach additional pages if necessary.

- A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
- B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated. ¹ If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
- C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
- D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

This ordinance amendment addresses disclosure of confidential information obtained through privileged or confidential communications, and information acquired in a meeting convened in closed session. There is no direct fiscal impact, although Ethics Board staff will be required to add training on confidentiality to the Ethics Training materials.

Department/Prepared By County Board / Ceschin

Authorized Signature _____

Did DAS-Fiscal Staff Review? Yes No

¹ If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

MILWAUKEE COUNTY BOARD OF SUPERVISORS
Committee on Judiciary, Safety and General Services

DATE: September 16, 2010

AGENDA ITEM No. 2

AMENDMENT NO. 1

Resolution File No.

Ordinance File No. 10-258

OFFERED BY SUPERVISOR(S): Sanfelippo

1. AMEND Section 1 of the proposed ordinance, beginning on line 11, as follows:

9.02 Definitions

- (14) "Privileged information" means information obtained under government authority which has not become a part of the body of public information, including but not limited to information that has been acquired in a meeting convened in closed session under the provisions of Wis. Stats. 19.85, or information contained in a communication distributed in a closed session meeting that is labeled as privileged or confidential.

2. AMEND Section 2 of the proposed ordinance, beginning on line 152, as follows:

9.05 Standards of Conduct

(3) Violation of this section may be addressed by the use of such remedies as are currently available by law, including but not limited to, the following actions:

- a. Corporation Counsel is authorized to seek injunctive relief to prevent disclosure or further disclosure of privileged information obtained in closed session;

An investigation request or verified complaint may be filed as provided in Section 9.09(4) of this chapter, and shall be processed and disposed in accordance with the procedures contained herein.

(4) No action authorized under subsection (3) above may be taken against a person, nor shall it be deemed a violation of this section, if:

- a. The disclosure of privileged information is part of a confidential inquiry or complaint to a district attorney

concerning a perceived violation of law, including the disclosure of facts to a district attorney that are necessary to establish the illegality of an action taken by a public official or the potential illegality of an action if that action were to be taken by a public official;

~~a.~~b. [The disclosure of privileged information is part of a legal proceeding or judicial action; or](#)

~~b.~~c. The County Board adopts a resolution authorizing the release of privileged information.



OFFICE OF CORPORATION COUNSEL

Milwaukee County

TIMOTHY R. SCHOEWE
Acting Corporation Counsel

ROBERT E. ANDREWS
Deputy Corporation Counsel

JOHN F. JORGENSEN
MARK A. GRADY
JOHN E. SCHAPEKAHM
TIMOTHY R. KARASKIEWICZ
JEANEEN J. DEHRING
ROY L. WILLIAMS
COLLEEN A. FOLEY
LEE R. JONES
MOLLY J. ZILLIG
Principal Assistant
Corporation Counsel

DATE: September 13, 2010

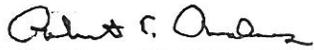
TO: Supervisor Willie Johnson, Jr., Chairman
Committee on Judiciary, Safety and General Services

FROM: Robert E. Andrews, Deputy Corporation Counsel

SUBJECT: File No. 10-258 – Ordinance by Supervisor Rice, amending Chapter 9, Code of Ethics of the Milwaukee County Code of General Ordinances, as it relates to confidential information, privileged communications and information acquired in meetings convened in closed session.

At your meeting on July 15, 2010, the committee voted to refer the above matter to the Office of Corporation Counsel for further review. The referral did not contain any specific questions or issues.

We have reviewed the proposed amended version of the initial proposal and it is our opinion that there is no legal impediment to the adoption of the resolution/ordinance.



REA/rf

cc: Linda Durham