



OFFICE OF CORPORATION COUNSEL

PAUL BARGREN
Corporation Counsel

MARK A. GRADY
COLLEEN A. FOLEY
Deputy Corporation Counsel

TIMOTHY R. KARASKIEWICZ
MOLLY J. ZILLIG
ALAN M. POLAN
JENNIFER K. RHODES
DEWEY B. MARTIN
JAMES M. CARROLL
PAUL D. KUGLITSCH
KATHRYN M. WEST
JULIE P. WILSON
CHRISTINE L. HANSEN
Assistant Corporation Counsel

Date: December 29, 2015

To: Members of the Committee on Judiciary, Safety
and General Services

cc: All Other Supervisors
Kelly Bablitch
Shanin R. Brown
Erica Hayden
Stephen Cady
Joseph Czarnezki
Other Interested Parties

From: Paul Bargren *PB*
Corporation Counsel

Re: Redistricting – File 15-691

At the Judiciary Committee meeting of December 3, 2015, Research and Policy Analyst Erica Hayden and I were asked to compile material on a number topics related to redistricting of County Board Supervisor districts. File 15-691 proposes creation of an independent citizen redistricting panel to propose a map for consideration by the County Board, which has final adoption authority. The next redistricting is scheduled after the 2020 Census.

We have collected substantial material for you in an Outlook Sharepoint Group site that is very easy to use. You each have received or will shortly receive an email with a link to click that will give you access to all the material there. The material is described below. This memo also provides some additional requested information regarding lawsuits and the size of the Board.

On the Redistricting Materials Sharepoint Group site

In response to requests, on the Sharepoint Group site¹ we have provided:

- A variety of draft maps and related material from 2011 and 2012
- County Board staff redistricting recommendations from 2012
- Corporation Counsel reviews of 2011 and 2003 plans
- City of Milwaukee's redistricting process
- The 2011 Wisconsin Counties Association redistricting guide

¹ You can also control-click this link:

https://milwaukeecountywi.sharepoint.com/sites/redistrictingmaterial/_layouts/15/GroupsDocuments.aspx

- Minutes and other material from Dane County's current Redistricting Subcommittee
- A 2015 proposal for which State Rep. Sanfelippo was seeking co-sponsors.
- A copy of this memo.

Lawsuits

Committee members asked about any past lawsuits over County redistricting. There have not been any lawsuits filed directly over the fairness of maps or boundaries. However, in June 2011, Supervisor Joseph Rice filed an Open Meetings Law action (as relator on behalf of the state) against then-Chairman Holloway and the Board Supervisors, *State v. Milwaukee County Board*, 2011 CV 9399. Sup. Rice alleged that adoption of the redistricting plan had not been properly noticed at the Board's April 2011 meeting. At that time, the Board consisted of the Chair and 18 other supervisors. The final order in the case was issued by Judge Carroll on November 21, 2011, as follows:

IT IS HEREBY ORDERED that Plaintiff's motion for summary judgment is granted and that judgment be entered in favor of the Plaintiffs and against the Defendants declaring that consideration of the decennial redistricting at the April 21, 2011 meeting of the Milwaukee County Board of Supervisors violated the open meetings law, Wis. Stat. ss. 19.81 et seq.

IT IS FURTHER ORDERED, that Judgment is entered against the Defendant Lee Holloway in the amount of \$300.00 and against the Defendant Milwaukee County Board of Supervisors in the amount of \$300.00 for forfeitures under ss. 19.96, awarded to the Plaintiff State of Wisconsin.

IT IS FURTHER ORDERED, that costs and attorney fees be awarded to the Relator Joseph A. Rice as follows: \$269.00 (Filing Fee); \$62.00 (Service Fee); \$15.80 (Postage); \$6575.00 (Attorney Fees).

HOWEVER, the Court will not enjoin use of the redistricting plan adopted by the County Board on July 28, 2011, which was passed into law after the County Executive failed to sign or veto it within the requisite time period. File forwarded to the judgment clerk for processing.

Thus even though the Court ruled that the April meeting constituted a violation of the Open Meetings Law, the Court did not grant Sup. Rice's request to vacate the action taken. Judges have discretion to vacate or not.

On the advice of Corporation Counsel, the \$300 fine against the Board of Supervisors was levied – in the sum of \$33.33 each – against the nine supervisors who did not vote in some fashion “to prevent the violation from occurring.” *See Wis. Stat. § 19.96.*²

Changes in the size of the Board

We were asked whether the size of the Board could be changed from 18 supervisors.

The answer is yes.

² One supervisor was excused and eight supervisors voted against the redistricting proposal or in favor of one or more motions to delay action. The Court rejected without explanation the argument of the nine supervisor who were fined that they should be exempt from the fine under the Open Meetings Law provision that allows good faith reliance on the advice of counsel.

Under existing statutes, the number of supervisors is established by the County Board at the time of the decennial redistricting. The relevant provision is found in Wis. Stat. § 59.10(2)(a), which states as relevant (emphasis added):

MILWAUKEE COUNTY. In each county with a population of at least 500,000 ... no later than July 1 following the year of each decennial census, the board shall adopt ... a tentative county supervisory district plan to be considered by the cities and villages when dividing into wards. **The tentative plan shall specify the number of supervisors to be elected** and shall divide the county into a number of districts equal to the number of supervisors...³

There is no statutory limit on the number of supervisors in Milwaukee County. *Compare* Wis. Stat. § 59.10(3)(a) (setting limits for smaller counties, e.g., up to 47 supervisors in counties of 100,000 to 499,999 population). As part of decennial redistricting, the County Board could decide to make the board as large or as small as it wished for the next 10 years.⁴

However, there is an implicit salary reduction in making the board larger. Under Wis. Stat. § 59.60(7), the Board:

may not adopt a budget in which the total amount of budgeted expenditures related to the compensation of county board members, and to any other costs that are directly related to the operation and functioning of the county board, including staff, is greater than 0.4 percent of the county portion of the tax levy for that year to which the budget applies.

This means that if more supervisors were added, salaries would likely need to be reduced to stay within the 0.4 percent overall cap.

Conversely, regardless of the number of supervisors, individual Milwaukee County supervisor salaries “may not exceed the annual per capita income of Milwaukee County” Wis. Stat. § 59.10(2)(c)1.

In other words, generally speaking, increasing the size of the Board would cause individual supervisor salaries to go down, but salaries would stay the same if the size of the board was reduced. That may be a factor if the Board considers increasing or reducing its size after the 2020 census.

³ A final plan is adopted after the municipalities adjust their wards and after the Board holds a public hearing. Wis. Stat. § 59.10(3)(b)2.

⁴ The Sanfelippo proposal floated this fall would have offered financial incentives for a reduction in size to 14 or fewer supervisors before November 2017.