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Via Electronic Mail: George.christenson@milwaukeecountywi.gov

May 25, 2018

George Christenson
Milwaukee County Clerk
Courthouse, Room 105
901 N. 9th Street
Milwaukee, WI 53233, Room

Dear County Clerk Christenson:

Upon request, the OCC researched the disallowance of claims against the Milwaukee Transport Services, Inc. (MTS) by the Milwaukee County Board of Supervisors at each meeting of the body as a whole. Additionally, the related agenda item appears as an informational report but actually involves a vote for disallowance of these claims.

In researching the issue, the OCC analyzed the MTS Amended and Restated Bylaws and Articles of Incorporation, Wisconsin State statutes and Milwaukee County ordinances, and the duties of the County Board's standing committee on Transportation, Public Works and Transit (TPW). The OCC also communicated with MTS President Dan Boehm, and former Milwaukee County Department of Administration (DAS) Risk Manager, now-DAS Deputy Director Amy Pechacek for further context. Ultimately, the OCC recommended that the County Board cease its practice of disallowance of MTS claims since it lacks authority and jurisdiction to do so, and relatedly, that the County Clerk cease listing those disallowances as an agenda item and issuing disallowance letters to claimants and/or counsel.

Background

As way of background, Milwaukee County acquired the assets of the transportation system owned by the Milwaukee and Suburban Transport Corporation in 1975. Milwaukee County retained title to the assets of the system and contracted with MTS for management and operation. The final MTS/Milwaukee County contract ended in December 2014 with MTS's Amended and Restated Bylaws and Articles of Incorporation, approved that same month by the Federal Transit Administration/FTA. MTS Board members include a County Board Supervisor and Milwaukee County Department of Transportation staff.

MTS Amended and Restated Bylaws

Article XI of the MTS Amended and Restated Bylaws describes Milwaukee County's oversight duties for MTS. Specifically, the MTS Board delegates to Milwaukee County enumerated

powers pursuant to Wis. Stat. §§ 59.58(3) and 181.0801. Those duties are as follows: to exercise power over transit matters, as referenced in the Milwaukee County Code of General Ordinances; to monitor MTS budgetary compliance; and to review all records deemed necessary to assess MTS performance. MTS in turn, must issue to Milwaukee County an annual report outlining the operations of the Corporation for the preceding fiscal year.

Statute / Ordinance Provisions

Wis. Stat. § 59.58(3) addresses public transit in counties and related Board powers. But it does not include claim disallowance for another entity that operates the transit system. (Wis. Stat. § 181.0801 simply deals with requirements for and duties of a corporate board.) And per MCGO 1.11(c)(6), TPW's duties as a County Board standing committee are to establish departmental policy for the "department of transportation airport, **transportation services**, highway, fleet management, **county transit/paratransit system**, administration; and department of administrative services facilities management division. . . ." TPW's transit policy duties involve "matters pertaining to the establishment of fares and other charges, standards of service, route locations, capital improvements, and service improvements." TPW's duties *do not* include disallowance of MTS claims. Indeed, MTS's insurance policy, legal counsel, organizational structure, and staff are separate and distinct from Milwaukee County.

As noted, the OCC recommends that the County Clerk cease listing MTS claims for disallowance on the County Board agenda and issuing disallowance letters to claimants and/or counsel. Instead, those matters must be addressed by the legal entity with authority and jurisdiction over those matters -- MTS. It is also recommended that the County Clerk issue a notification letter to MTS on this issue and confer with MTS officials to ensure an efficient and well-communicated transition.

Very truly yours,



Colleen Foley
Deputy Corporation Counsel

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