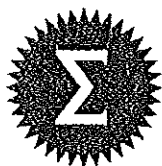


	(1) Agree		(2) Somewhat Agree		(3) Somewhat Disagree		(4) Disagree		No Opinion/ Not Applicable		Rating Average*	Response Count*
1. My board/commission is valuable in helping further the city's mission	55	74%	16	22%	2	3%	1	1%	1		1.31	74
2. The Common Council supports the recommendations of my board/commission	23	40%	29	51%	4	7%	1	2%	18		1.70	57
3. City staff is valuable in helping my board/commission reach a decision	51	73%	18	26%	0	0%	1	1%	5		1.30	70
4. City staff is responsive to requests for information from my board/commission	49	73%	12	18%	4	6%	2	3%	8		1.39	67
5. I have a good understanding of the charge/mission of my board/commission	56	75%	17	23%	0	0%	2	3%	0		1.31	75
6. Council Members understand the charge/mission of my board/commission	19	32%	33	56%	4	7%	3	5%	16		1.85	59
7. City staff understands the charge/mission of my board/commission	49	70%	18	26%	0	0%	3	4%	5		1.39	70
8. The Council Member that sits on my board/commission communicates well with us	17	53%	12	38%	0	0%	3	9%	43		1.66	32
9. Periodic meetings/workshops between the Council and my board/commission would be helpful	35	54%	19	29%	2	3%	9	14%	10		1.77	65
10. My board/commission meets too frequently	0	0%	5	7%	7	10%	56	82%	7		3.75	68
11. My board/commission does not meet often enough	5	8%	8	12%	6	9%	47	71%	9		3.44	66
12. My board/commission meets with an appropriate frequency	56	76%	8	11%	4	5%	6	8%	1		1.46	74
13. My board/commission has appropriate input into establishing its agenda	47	66%	13	18%	4	6%	7	10%	4		1.59	71
14. My board/commission adequately encourages public input	38	57%	22	33%	4	6%	3	4%	8		1.58	67

15. My board/commission receives sufficient public input	16	26%	28	46%	6	10%	11	18%	14			2.20	61
16. Members of boards/commissions should have term limits	26	38%	10	15%	7	10%	25	37%	7			2.46	68
17. Members of boards/commissions should be compensated	5	7%	6	9%	8	11%	51	73%	5			3.50	70
18. Compensating members of boards/commissions would encourage greater participation	6	9%	16	24%	7	10%	38	57%	8			3.15	67
19. The city should broaden its efforts to increase diversity on its boards/commissions	23	36%	27	42%	3	5%	11	17%	11			2.03	64

*Rating Average & Response Count do NOT include "No Opinion/Not Applicable" answers



EHLERS

LEADERS IN PUBLIC FINANCE

PRESS RELEASE
August 10, 2010

For Immediate Release
Media Contact:
Tim Schram
Ehlers
800.552.1171 ext. 8533
tschram@ehlers-inc.com

Debt Refinancing Saves City of Oshkosh Taxpayers Over \$2.6 Million

*City's Aa2 Bond Rating Affirmed by
Moody's Investor's Service*

BROOKFIELD, WI - August 10, 2010 - The City of Oshkosh Common Council has awarded the sale of \$34,330,000 in General Obligation bonds and notes. Savings to City taxpayers and utility customers of \$2,611,155 were achieved by issuing \$21,040,000 in bonds to refund existing City debt at lower interest rates. The balance of \$13,290,000 in bonds and notes are being issued to pay for costs of capital improvements to include street and park improvements, facility improvements, and acquisition of capital equipment. Competitive bids for purchase of the bonds were taken by Ehlers & Associates, the City's independent financial advisor.

"We are very pleased with the results the City achieved in the markets today" said Mike Harrigan, Senior Financial Advisor at Ehlers. "Strong national interest in the Oshkosh name coupled with the competitive sale mechanism produced a total of twenty bids for the four series of obligations that were offered."

Sale results submitted to the Council by Harrigan included:

- Purchase of \$9,140,000 in taxable General Obligation bonds by Stifel Nicolaus & Company, Inc. at a True Interest Cost (TIC) of 4.42%. The City has designated the bonds as "Build America Bonds" which provides for a 35% federal rebate on interest payments made, reducing the effective interest rate that will be paid to 2.89%. Proceeds of the bonds will be used to pay the costs of street, park and facility improvements.
- Purchase of \$4,150,000 in taxable General Obligation notes by Morgan Keegan & Co., Inc. at a TIC of 2.99%. The City has also designated the notes as "Build America Bonds" reducing the effective interest rate that will be paid to 1.98%. Proceeds of the notes will be used to pay for acquisition of capital equipment, and other minor capital improvement projects.
- Purchase of \$12,620,000 in tax-exempt General Obligation Refunding bonds by First Southwest Company at a TIC of 2.18%, resulting in refinancing savings of \$1,592,240 for City tax and rate payers.
- Purchase of \$8,420,000 in taxable General Obligation Refunding bonds by Baird at a TIC of 3.04%, resulting in refinancing savings of \$1,018,915 for City tax payers.

As part of the debt planning and issuance process, the City's Aa2 bond rating was reviewed and affirmed by Moody's Investors Service. "The Aa2 rating, the third highest assigned, indicates the strong credit quality of the City of Oshkosh" said Todd Taves, Financial Advisor with Ehlers. In its credit report, Moody's acknowledged the City's "stable financial operations" and its "conservative budgeting practices" as positive factors leading to the rating affirmation.

About the City of Oshkosh

The City of Oshkosh (<http://www.ci.oshkosh.wi.us/>) is a city in Winnebago County, Wisconsin, located where the Fox River enters Lake Winnebago. The population was 62,916 at the 2000 census and had a metropolitan area of 159,972 people. The University of Wisconsin Oshkosh has been providing the residents of northeastern Wisconsin with high-quality affordable education since 1871.

The City is also known for being home of the Oshkosh Corporation, a Fortune 500 Company. Oshkosh Corporation is a leading manufacturer and marketer of access equipment, specialty vehicles and truck bodies for the primary markets of defense, concrete placement, refuse hauling, access equipment and fire & emergency.

Oshkosh is also the location of Wittman Field, host of the annual Experimental Aircraft Association (EAA) Aviation Museum and annual AirVenture conference, America's largest gathering of aviation enthusiasts. Redevelopment is currently undergoing throughout Oshkosh.

About Ehlers

Ehlers, an independent public finance advisor for over 50 years, is ranked third nationally in number of competitive sales advised. Our goal is to expand public sector clients' horizons and achieve practical solutions at the lowest cost to taxpayers. Our allegiance is to the communities whom we serve. Our success is the result of established long-term relationships, hard work, and years of experience. Ehlers works with counties, cities, townships, school districts and other governmental units to build better communities through the products and service we offer: Debt Issuance Services, Economic Development and Redevelopment, Financial Planning, and Management, Communication and Public Participation. Visit <http://www.ehlers-inc.com/index.php> for more information.

#

Cautionary Note Regarding Forward-Looking Statements

This press release may contain forward-looking statements. Statements that are not historical or current facts, including statements about beliefs and expectations, are forward-looking statements and are subject to significant risks and uncertainties that are difficult to predict. These forward-looking statements cover, among other things, statements made about general economic and market conditions, our current deal pipelines, market share gains and trends, the environment and prospects for capital markets transactions and institutional brokerage activity, anticipated financial results (including expectations regarding revenue and expense levels, the compensation ratio, return on shareholders' equity, and our quarterly run rate for non-compensation expenses), liquidity and capital resources, inventory positions, share repurchase plans or other similar matters. These statements involve inherent risks and uncertainties, both known and unknown, and important factors could cause actual results to differ materially from those anticipated or discussed in the forward-looking statements. Forward-looking statements speak only as of the date they are made, and readers are cautioned not to place undue reliance on them. Ehlers undertakes no obligation to update them in light of new information or future events.



**City of Oshkosh
2010 Hotel/Motel Room Tax**

	2009 Room Tax	2009 YTD Room Tax	2010 Room Tax	2010 Receipts	2010 Exemptions	2010 YTD Room Tax	Month Difference	YTD Difference
January	46,021.66	46,021.66	60,328.29	665,705.07	62,422.28	60,328.29	14,306.63	14,306.63
February	68,201.25	114,222.91	76,419.86	892,524.89	128,328.09	136,748.15	8,218.61	22,525.24
March	67,352.03	181,574.94	84,137.06	933,180.42	91,813.25	220,885.21	16,785.03	39,310.27
April	58,398.57	239,973.51	75,795.95	860,440.65	102,485.69	296,681.16	17,397.38	56,707.65
May	69,998.24	309,971.75	88,352.49	957,656.46	74,128.06	385,033.65	18,354.25	75,061.90
June	103,530.53	413,502.28	116,421.10	1,244,127.85	80,421.65	501,454.75	12,890.57	87,952.47
July	202,331.42	615,833.70						
August	131,762.44	747,596.14						
September	87,823.31	835,419.45						
October	87,254.79	922,674.24						
November	68,276.52	990,950.76						
December	59,669.82	1,050,620.58						
Total	1,050,620.58		501,454.75	5,553,635.34	539,599.02		87,952.47	

Distribution: Mark Rohloff, City Manager
Peggy Steeno, Director of Finance
Wendy Hielsberg, Oshkosh Visitors Convention Bureau



Rohloff, Mark

From: Paul Esslinger [pesslinger@new.rr.com]
Sent: Thursday, August 12, 2010 4:35 PM
To: Lorenson, Lynn
Cc: Rohloff, Mark
Subject: FW: Appleton Residency Ordinance

Hi Lynn/Mark,

Here is Appleton's residency requirement.

Outside of the last sentence, this is what I'm looking for.

I would like this placed on the next agenda.

Thanks,

-Paul

Sec. 2-216. Residency policy.

All department heads and members of boards or commissions shall be residents of the City within twelve (12) months of the date of their hiring or appointment and maintain residency in the City while under the employment or service of the City. If any such City department head or member of a board or commission does not meet this requirement, his office or position shall be vacated and such vacancy shall be filled in the manner prescribed by law or ordinance. The residency deadline may be extended with the recommendation of the Mayor and approval of the Common Council. This section does not apply to persons in the employment or service of the City on the date of the adoption of the ordinance from which this section was derived. This section does not apply to the physician members of the Board of Health, Director of Facilities Management or non-City members of the Fox Cities Transit Commission.

(Code 1965, §1.10; Ord 130-95, §1, 12-20-95, Ord 237-02, §1, 11-6-02, Ord 124-04, §1, 9-21-04; Ord 55-10, §1, 3-23-10)

- (A) Notwithstanding anything to the contrary contained within this Municipal Code, terms for all citizen advisory boards, commissions and committees, whether enumerated in this Chapter or elsewhere in this Code, shall begin on June 1 and shall terminate on May 31 of the respective year; except that the terms for Board of Review shall begin on May 1 and shall terminate on April 30 of the respective year.
- (B) Except for boards and commissions specifying a particular membership by the person's position or title and members of the Library Board, all persons appointed to or serving as a member of a standing board or commission of the City shall be residents of the City of Oshkosh. A vacancy is created whenever a member who is required under this section to be a resident of the City of Oshkosh ceases to be a resident of the City of Oshkosh.
- (C) Individuals shall serve on no more than two (2) boards or commissions for the City of Oshkosh.
- (D) Boards and commissions shall hold regular meetings at a regular time and place as fixed by the board or commission. Special meetings may be called by the chairperson upon written notice to the members. Meetings shall be duly and properly noticed and open to the public as provided by law. Boards and commissions may adopt rules for their governance and procedures.
- (E) Each board and commission shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed with the secretary of the board or commission or with the City Clerk and shall be public records. Minutes of the meetings shall be forwarded to the City Council.
- (F) Each board and commission shall elect from its membership a chairperson who shall preside at all meetings, a vice chairperson who shall exercise the powers of chairperson in the absence or disability of the chairperson and a secretary. Each shall serve one-year terms, until a successor is elected and qualified.
- (G) No compensation shall be paid to any board or commission member for service as such, but members may be reimbursed for actual and necessary expenses incurred in performing related duties outside the City if so authorized by the board or commission.
- (H) A majority of the membership shall constitute a quorum. A lesser number may adjourn. A majority vote of those members present and voting shall be necessary to adopt any motion.
- (I) The Mayor, subject to Council approval, or the chairperson, subject to board or commission approval, may establish subcommittees for specific purposes as determined by the Council, or the board or commission. These general provisions shall apply to all subcommittees.

DIVISION 2. BOARDS AND COMMISSIONS

SECTION 2-37 COMMITTEE ON AGING

(A) Membership and Terms

The Oshkosh Committee on Aging shall consist of thirteen (13) members. Each member shall serve for a period of three (3) years. Associate members may be appointed for indefinite terms to serve on the Committee with all rights and privileges, except as to voting, as Board members appointed hereunder.



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

*Residence
Req.*

PEGGY A. LAUTENSCHLAGER
ATTORNEY GENERAL

114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857

Daniel P. Bach
Deputy Attorney General

December 29, 2006

Mr. James A. Flader
City Attorney
City of Fond du Lac
Post Office Box 150
Fond du Lac, WI 54936-0150

Dear Mr. Flader:

You request an opinion of the Attorney General upon the following two questions:

1. May a city organized under a city manager plan of government, as described in Wisconsin Statutes, Sections 64.01 through 64.14, require its city manager, department heads and other employees, or any of them, to reside in the city as a condition of that employment? For purpose of clarification, the question is not whether such persons can be required to be residents when interviewed, but rather whether that condition can be imposed as a condition of hire and continuing employment.
2. If the answer to question 1 is "No," may such city adopt a residency requirement by charter ordinance, or is the matter not a lawful subject of a charter ordinance.

It is my opinion that a city organized under the city manager form of government is prohibited by Wis. Stat. §§ 64.09(3) and 64.11(6) from requiring the city manager or any of the city's other employees to reside within the city as a condition of employment and that such a city may not elect to impose a residency requirement by charter ordinance.

Wisconsin Stat. § 17.03 provides in part:

Vacancies, how caused. Except as otherwise provided, a public office is vacant when:

....

(4) The incumbent ceases to be a resident of:

(a) This state; or

....

(d) If the office is local and appointive, and residency is a local requirement, the county, city, village, town, district or area within which the duties of the office are required to be discharged.

Wisconsin Stat. § 64.09, which governs the appointment of the city manager by the city council, provides in part:

(1) The council first elected after the reorganization of a city under the provisions of ss. 64.01 to 64.15 shall as soon after the reorganization as possible engage for an indefinite term a city manager who shall have charge of the executive side of the city government and who shall be responsible for the efficiency of its administration.

(2) The city manager shall be elected purely on merit. In electing the city manager the council shall give due regard to training, experience, executive and administrative ability, and efficiency and general qualifications and fitness for performing the duties of the office, and no person shall be eligible to the office of city manager who is not by training, experience, ability, and efficiency well qualified and generally fit to perform the duties of such office. No weight or consideration shall be given by the council to nationality, political, or religious affiliations, or to any other considerations except merit and direct qualifications for the office.

(3) Residence in the city or state shall not be a qualification for the office of city manager.

Wisconsin Stat. § 64.11, which governs the appointment of employees other than the city manager in cities with the city manager form of government, provides in part:

(1) The city manager shall be the chief executive officer of the city and head of the city administration and shall possess and exercise all the executive and general administrative powers imposed and conferred by general law or special charter upon the mayor and common council and upon the various boards, commissions and officers and in force in such city at the time of its reorganization under ss. 64.01 to 64.15, and such additional powers as are herein imposed and conferred.

(2) The city manager shall have the power to create minor administrative offices and positions and to discontinue such offices and positions according to the city manager's judgment of the needs of the city.

(3) The city manager shall have the power to appoint all heads of departments, all subordinate city officials and all city employees and to remove such appointees at any time their services or the conduct of their offices becomes unsatisfactory to the city manager. This subsection shall not be construed as depriving the board of fire and police commissioners or the chiefs of fire or police departments of any city of all the powers conferred by s. 62.13.

(4) No head of a department, city official, or city employee shall be appointed for a fixed term, but during good behavior and satisfactory service.

(5) All appointments shall be purely on merit and with a view to securing the best available appointee for the place. Due consideration shall be given to training, experience, ability, and general qualifications and fitness for performing the duties of the office and **no weight or consideration shall be given to residence, nationality, or to political or religious affiliations.**

(6) Residence in the city or state shall not be a qualification for any such appointment.

(7) Except as provided in s. 19.36(7), the applications, records, recommendations and qualifications of all applicants shall be immediately placed and thereafter kept on file and shall be matters of public record subject to the examination and inspection of the public at all reasonable times.

(8) In the event that such a city has established under the provisions of s. 66.0509 a civil service system, then the powers and duties of the city manager as provided in this section shall be limited and governed by such rules and regulations as may be promulgated under such civil service system.

Wisconsin Stat. § 62.11(5) provides for the exercise of statutory home rule authority by cities:

POWERS. Except as elsewhere in the statutes specifically provided, the council shall have the management and control of the city property, finances, highways, navigable waters, and the public service, and shall have power to act for the government and good order of the city, for its commercial benefit, and for the health, safety, and welfare of the public, and may carry out its powers by license, regulation, suppression, borrowing of money, tax levy, appropriation, fine, imprisonment, confiscation, and other necessary or convenient means. The powers hereby conferred shall be in addition to all other grants, and shall be limited only by express language.

Wisconsin Stat. § 66.0101(4) provides that a city may exercise its constitutional home rule authority under Wis. Const. art. XI, § 3 by enacting a charter ordinance that contains specific provisions:

A city or village may elect under this section that any law relating to the local affairs and government of the city or village other than those enactments of the legislature of statewide concern as shall with uniformity affect every city or every village shall not apply to the city or village, and when the election takes effect, the law ceases to be in effect in the city or village.

I. STATUTORY LIMITATION ON RESIDENCY REQUIREMENTS.

Wisconsin Stat. § 64.09 governs appointments by the city council to the office of city manager. Wisconsin Stat. § 64.09(2) provides that “[n]o weight or consideration shall be given by the council to nationality, political, or religious affiliations, or to any other considerations except merit and direct qualifications for the office [of city manager].” Wisconsin Stat. § 64.09(3) provides that “[r]esidence in the city or state shall not be a qualification for the office of city manager.”

Wisconsin Stat. § 64.11 governs the city manager’s selection of virtually all city employees. Wisconsin Stat. § 64.11(3) provides that “[t]he city manager shall have the power to appoint all heads of departments, all subordinate city officials and all city employees” Wisconsin Stat. § 64.11(5) provides that “[a]ll [such] appointments shall be purely on merit and with a view to securing the best available appointee for the place” and that “no weight or consideration shall be given to residence, nationality, or to political or religious affiliations.” Wisconsin Stat. § 64.11(6) provides that “[r]esidence in the city or state shall not be a qualification for any such appointment.”

Because related statutes are to be construed together, Wis. Stat. § 64.09 must be considered in conjunction with Wis. Stat. § 64.11. See *State v. Clausen*, 105 Wis. 2d 231, 244, 313 N.W.2d 819 (1982). Each of these statutes should mesh with the other so as to produce a harmonious whole. See *In re Marriage of Levy v. Levy*, 130 Wis. 2d 523, 530, 388 N.W.2d 170 (1986). Wisconsin Stat. §§ 64.09(3) and § 64.11(6) both provide that “[r]esidence in the city or state shall not be a qualification for . . .” appointment by the council to the office of city manager and for appointment by the city manager to any other position of employment. Since these statutes contain nearly identical language, they must be construed to impose the same limitation. Moreover, under Wis. Stat. § 64.11(5), the city manager may not even consider residence at the time of appointment in connection with his selection of employees, which must be based “purely on merit and with a view to securing the best available appointee for the place.”

In *State ex rel. Eyjue v. Weatherly*, 255 Wis. 225, 229, 38 N.W.2d 472 (1949), the court held that, in a city operating under the city manager form of government, the provisions of Wis. Stat. §§ 64.11(5) and 64.11(6) are applicable to the employment of the chief of police by the police and fire commission and that the appointment of a chief of police who was a resident of Texas at the time of his appointment was lawful: "[T]here is no reason for giving any other interpretation than its natural meaning, and that is that residence in the city or state shall not be a qualification for any appointment by the city manager or by the board of police and fire commissioners . . . in cities operating under the city-manager form of government[.]" In *Eyjue*, the court quoted both Wis. Stat. § 64.11(5) and Wis. Stat. § 64.11(6) but did not expressly consider whether a city with a city manager form of government could impose a residency requirement as a condition of continued employment.

The phrases "qualification for the office" in Wis. Stat. § 64.09(3) and "qualification for . . . appointment" in Wis. Stat. § 64.11(6) should be accorded their "natural meaning." *Eyjue*, 255 Wis. at 229. *See also*, Wis. Stat. § 990.01(1). It is my opinion that each of those phrases precludes imposition of a residency requirement both prior to and after appointment to office. *Compare* Wis. Const. art. I, § 19, which provides that "[n]o religious tests shall ever be required as a qualification for any office . . ." A city organized under a city manager plan of government is therefore prohibited by Wis. Stat. §§ 64.09(3) and 64.11(6) from requiring the city or any of the city's employees to reside within the city as a condition of employment.

II. EXERCISE OF HOME RULE POWERS.

Your second question is whether a city with a city manager form of government may exercise its constitutional or statutory home rule authority to adopt a residency requirement by charter ordinance.

In my opinion, the answer is no.

Whether a city may use its constitutional home rule authority and adopt a charter ordinance under Wis. Stat. § 66.0101(4) to elect against the residency requirement limitations contained in Wis. Stat. §§ 64.09(3) and 64.11(6) depends upon whether the statutory residency requirement limitations involve an item or items that are primarily of statewide concern:

In *Van Gilder v. Madison*, *supra*, we concluded that, when the legislature deals with matters that are primarily of statewide concern, it may deal with them free of any restriction contained in the home-rule amendment. The legislature can thus make effective a law touching on a matter of statewide concern in one city and not in another, provided that the classification is proper. The home-rule amendment does not limit the right of the legislature to deal with matters of statewide concern, even if, in so dealing, some cities and not others are affected. If, however, the matter enacted by the legislature is primarily of local concern, a

municipality can escape the strictures of the legislative enactment unless the enactment applies with uniformity to every city and village.

West Allis v. Milwaukee County, 39 Wis. 2d 356, 365-66, 159 N.W.2d 36 (1968). See also, *Anchor Savings & Loan Ass'n v. Madison EOC*, 120 Wis. 2d 391, 395, 355 N.W.2d 234 (1984); *State ex rel. Michalek v. LeGrand*, 77 Wis. 2d 520, 529, 253 N.W.2d 505 (1977).

The Wisconsin Constitution recognizes that the Legislature has an interest in the appointment of city officers:

All city, town and village officers whose election or appointment is not provided for by this constitution shall be elected by the electors of such cities, towns and villages . . . or appointed by such authorities thereof as the legislature shall designate for that purpose. All other officers whose election or appointment is not provided for by this constitution . . . shall be elected by the people or appointed, as the legislature may direct.

Wis. Const. art. XIII, § 9. In addition, Wis. Stat. ch. 66, subch. V contains a number of provisions that are applicable to municipal officers and employees. Notably, Wis. Stat. § 66.0509 authorizes cities, villages and towns to establish civil service systems for the appointment and selection of employees and specifies conditions under which such systems must operate.

In *Van Gilder v. Madison*, 222 Wis. 58, 83, 267 N.W. 25, *on reh.*, 268 N.W. 108 (1936), the court held "that the matter of the compensation of the police officers of the city is a part of a matter of state-wide concern and not a local affair within the meaning of the home-rule amendment" and that "the city [therefore] may not by a charter ordinance supplant the act of the legislature." The court reasoned as follows:

To carry out its functions, the constitution provides for the creation of municipal corporations by the state. These from the beginning have been held to be agencies of the state with respect to these primary functions. While they may in many respects serve the locality in these highly important respects, they also discharge state functions, and the discharge of these functions is not a local affair or a matter of local government, but is a matter of state-wide concern and of state government.

Van Gilder, 222 Wis. at 88-89.

At a minimum, *Van Gilder* and *Weatherly* indicate that it is a matter of statewide concern whether residency requirements should exist for city employees performing state functions. The state also does have an interest in ensuring that the imposition of residency requirements by

Mr. James A. Flader

Page 7

similarly situated political subdivisions of the state, including cities, is uniform and based upon merit. *See e.g.*, Wis. Stat. §§ 17.03(4) and 66.0509. I therefore conclude that a city with a city manager form of government may not exercise its constitutional home rule authority under Wis. Const. art. XI, § 3 so as to impose a residency requirement as a condition of continued employment for its city manager or for other city employees.

A city may exercise its statutory home rule authority under Wis. Stat. § 62.11(5) even as to matters that are primarily of statewide concern. *Anchor Savings & Loan Ass'n*, 120 Wis. 2d at 395. When matters that are primarily of statewide concern are involved, the question is whether the ordinance is preempted:

A municipal ordinance is preempted if (1) the legislature has expressly withdrawn the power of municipalities to act; (2) it logically conflicts with state legislation; (3) it defeats the purpose of state legislation; or (4) it violates the spirit of state legislation. Should any one of these tests be met, the municipal ordinance is void.

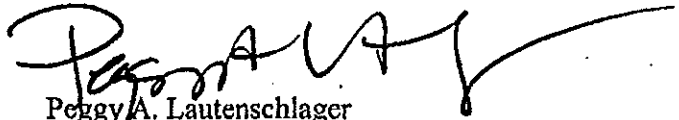
DeRosso Landfill Co. v. City of Oak Creek, 200 Wis. 2d 642, 651-52, 547 N.W.2d 770 (1996) (footnotes omitted).

Wisconsin Stat. §§ 64.09(3) and 64.11(6) expressly withdraw power from cities operating under a city manager form of government to adopt residency requirements as a condition of continued employment. Imposing such requirements also would conflict with and defeat the purpose of such legislation because the basic premise underlying the city manager form of government is that employees must be selected "purely on merit and with a view to securing the best available appointee for the place." Wis. Stat. § 64.11(5). Imposition of a residency requirement for continued employment would be inconsistent with that basic premise. I therefore conclude that a city with a city manager form of government may not exercise its home rule authority under Wis. Stat. § 62.11(5) so as to impose a residency requirement as a condition of continued employment for its city manager or for other city employees.

Mr. James A. Flader
Page 8

In summary, a city organized under the city manager form of government is prohibited by Wis. Stat. §§ 64.09(3) and 64.11(6) from requiring the city or any of the city's employees to reside within the city as a condition of employment and such a city may not elect to impose a residency requirement by charter ordinance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Peggy A. Lautenschlager", with a long horizontal flourish extending to the right.

Peggy A. Lautenschlager
Attorney General

PAL:FTC:cla