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December 5, 2007

Alderman Robert G. Donovan, Chair  
Public Safety Committee  
Room 205 – City Hall

Re: Liability Arising Out of Grant-Funded Police Services

Dear Alderman Donovan:

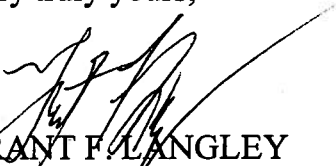
This opinion is in response to your letter of November 6, 2007. You ask about liability that might arise out of the grant-funded police services. You are particularly concerned with that aspect of the program that permits the police department to accept grant funds from establishments that serve alcoholic beverages under a City license. You ask about the City's liability arising out of assigning police officers to licensed premises, and about the City's liability arising out of the Chief of Police's denial of a request for grant-funded police service.

Under Wis. Stat. § 895.46, the City is liable to provide a legal defense to, and to pay any judgment rendered against, a City officer or employee who was acting within the scope of employment at the time of the incident giving rise to the claim or lawsuit. Police officers assigned to patrol a tavern under the grant-funded police service program would be acting within the scope of their employment so long as the officers actions were to further the interest the City; that is, in furtherance of law enforcement goals. Accordingly, we do not believe that the nature of the liability is any different from any other police assignment. Assigning police officers to taverns, however, might increase the number of liability claims filed because of the circumstances of the assignment. Also, the severity of the claims might be greater because, at times, officers confined inside a tavern might be compelled to take action to protect themselves and others without a route of escape or backup, which could result in the use of more force than would be used under other circumstances.

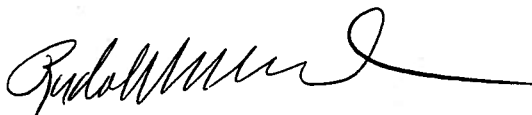
Alderman Robert G. Donovan, Chair  
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We do not believe that the Chief of Police would be found liable for denying a request for grant-funded police services based upon the merits of the request or upon the operational needs of the department. Under state law, the Chief's decision to grant or deny a request would be a discretionary decision subject to immunity from liability under Wis. Stat. § 893.80(4). Under federal law, there is no federally protected right to receive police services. *DeShaney v. Winnebago County Dept. of Social Services*, 489 U.S. 189 (1989) (“[N]othing in the Due Process Clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors.”) The Chief of Police, however, could be held liable under the Equal Protection Clause of the United States Constitution or under state law if he or she denied grant-funded police services on the basis of race, gender, national origin, speech, or other federally or state protected classifications.

Very truly yours,



GRANT F. LANGLEY  
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RMK:lmb  
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~~James Owczarski~~  
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