

June 22, 2004

Common Council
200 East Wells, Room 205

RE: Resale of Tickets to Entertainment or Sporting Events

Dear Council Members:

Deputy City Attorney Linda Burke and Assistant City Attorney Kathy Zalewski met with Aldermen Hines and Donovan on May 27, 2004 to discuss the impact of 2003 Wisconsin Act 191 on Section 105-56-2 of the Milwaukee Code of Ordinances. Since that meeting, further research indicates that there is significant doubt as to whether the City can enforce this ordinance in light of the newly created state statute.

2003 Wisconsin Act 191 created sec. 66.0410, Stats., which provides, in part, that “[a] political subdivision may not enact an ordinance...prohibiting the resale of any ticket for an amount that is equal to or less than the ticket’s face value.” Section 66.0410(2)(a), Stats. That section further provides, “[i]f a political subdivision...has in effect on the effective date of this subsection [April 22, 2004] an ordinance...that is inconsistent with par. (a), the ordinance...does not apply and may not be enforced.” Section 66.0410(2)(b), Stats. “Ticket” is defined as “a ticket that is sold to an entertainment or sporting event.” Section 66.0410(1)(b), Stats.

Section 105-56-2 of the Milwaukee Code of Ordinances currently provides that it is “unlawful for any person to sell or offer for sale any goods, merchandise, foodstuffs, tickets or any other articles of any kind” either “on public premises reserved for specific public purposes and posted as such without the express written consent of the custodian of such premises,” or “on any public street or

public sidewalk within 500 feet of the premises of the Midwest Express Center, the Auditorium, the Arena, the Milwaukee public museum, the Bradley Center, the Performing Arts Center, the Eagle's Auditorium, the Riverside Theater, Summerfest, the circus grounds, as may be specified annually, on the day of the circus parade and the 3 days prior to the parade, or Miller Park parking facilities, for the period of time beginning 2 hours immediately before the commencement of any scheduled event therein and ending one hour immediately after the conclusion of the event.”

2003 Wisconsin Act 191 casts doubt on the enforceability of that portion of Section 105-56 which prohibits the resale of sports or entertainment tickets at or below face value on posted premises and within 500 feet of the places enumerated. For some time, our Supreme Court has held that “a municipality cannot lawfully forbid what the legislature has expressly licensed, authorized or required...” *Fox v. City of Racine*, 225 Wis. 542, 545 (1937) (citation omitted). “The principle announced in *Fox* has been the rule in Wisconsin and still is the rule when addressing the question of whether state legislation preempts a municipal ordinance.” *DeRosso Landfill Co., Inc. v. City of Oak Creek*, 200 Wis. 2d 642, 651 (1996) (citation omitted). We note that the drafter of the Act at the Legislative Reference Bureau in Madison is of the opinion that portions of Section 105-56 are now unenforceable.

In light of 2003 Wisconsin Act 191, and in order to resolve any doubt as to the enforceability of our ordinance, we have recommended that Chief Hegerty not enforce Section 105-56 to prohibit the resale of tickets at or below face value. Further, we are attaching a draft amendment to Section 105-56, and ask that it be scheduled for a hearing as soon as possible. If you have any questions, please do not hesitate to contact us.

Very truly yours,

GRANT F. LANGLEY
City Attorney

KATHRYN M. ZALEWSKI
Assistant City Attorney

KMZ:kmz

c: Alderman Willie L. Hines, Jr.
Alderman Robert G. Donovan
Ronald Leonhardt
Barry Zalben

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