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July 25, 2019

Mr. Jeff Polenske
Commissioner of Public Works
City of Milwaukee Department of Public Works
841 North Broadway, Room 501
Milwaukee, WI 53202

Re: Legality of Service of Parking Citations by First Class Mail

Dear Commissioner Polenske:

The DPW Parking Section recently asked for a legal opinion regarding the legality of serving parking citations by first class mail. For the following reasons, we believe serving parking citations by first class mail is legal under Wisconsin law.

The City of Milwaukee parking rules and regulations are established by Chapter 101 of the Milwaukee City Ordinances. Therefore, a violation of these parking regulations is a municipal ordinance violation, meaning the service requirements and procedures for prosecuting the violation are governed by Chapter 800 of the Wisconsin Statutes.

Wis. Stat. § 800.01, governing the commencement of actions in municipal court, provides, in relevant part, that:

- (2) The municipal court has jurisdiction over a defendant when any of the following conditions is met:
 - (a) The defendant is served with a citation or a summons and complaint as provided under s. 801.11 (1) (a) to (c), (5), and (6).
 - (b) The defendant is arrested and brought before the court personally or through interactive video and audio transmission conducted in accordance with the rules of the supreme court.
 - (c) The defendant voluntarily appears before the court.
 - (d) The court finds that the defendant has acknowledged receipt of the citation or summons and complaint.



Mr. Jeff Polenske
Commissioner of Public Works
July 25, 2019
Page 2

(e) The summons and complaint or citation are sent to the defendant by 1st class mail.

Wis. Stat. § 800.01(2)(a)-(e). Accordingly, in cases involving a violation of a municipal ordinance, proper service occurs when a citation is issued, either by first class mail, personal service, or the other methods enumerated in the statute. *Cty. of Fond du Lac v. Derksen*, 2004 WI App 1, ¶ 4, 268 Wis. 2d 846, 673 N.W.2d 412. As stated, this includes the issuance of parking citations.

However, municipal citations must also contain sufficient information to provide notice of the alleged violation to the defendant. The contents of a citation, or in other words the form of the citation, is governed by Wis. Stat. § 800.02; however, the statute is written quite broadly.

The statute provides that a municipal citation shall contain “substantially” the following information:

1. The name, address and date of birth of the defendant.
- 1m. The identification of any permit issued to the defendant, or license number of the defendant, if applicable.
2. The name and department of the issuing officer.
3. The violation alleged, the time and place of the occurrence of the violation, a statement that the defendant committed the violation, the ordinance violated, and a description of the violation in language that can be readily understood.
4. A notice to appear at a date, time and place for the court appearance, and a statement as to whether the appearance is mandated by the judge.
5. Provisions for amount of deposit and stipulation in lieu of a court appearance, if applicable.
6. Notice that the defendant may make a deposit and thereby obtain release if an arrest has been made.
7. Notice that the defendant may, in writing, prior to the court appearance, enter a plea of not guilty.
8. Notice that, if the defendant makes a deposit and fails to appear in court at the time fixed in the citation, the defendant is deemed to have tendered a plea of no contest and submits to a forfeiture, plus costs, fees, and surcharges imposed under ch. 814, not to exceed the amount of the deposit. The notice shall also state that the court may decide to summon the defendant rather than accept the deposit and plea.
9. Notice that if the defendant does not make a deposit and fails to appear in court at the time fixed in the citation, the court may issue a summons or

Mr. Jeff Polenske
Commissioner of Public Works
July 25, 2019
Page 3

a warrant for the defendant's arrest or may enter a default judgment against the defendant.

9m. In an action against a corporation organized under ch. 180 or 181, or against a limited liability company organized under ch. 183, a statement of the corporate or company existence and whether the corporation or company is a domestic or foreign corporation or limited liability company.

10. Any other pertinent information.

Wis. Stat. § 800.02(2)(ag)1-10. The statute further provides that a municipality may designate other municipal officials, such as parking enforcement officers, who are authorized to issue citations with respect to ordinances which are directly related to the official responsibilities of those individuals.

Parking citations issued by the City of Milwaukee generally include the date, time, and location of the violation, the issuing agency, the name of the parking enforcement officer who issued the citation, a description of the alleged violation, the cost of the citation, appellate rights and procedures, a detailed description of the vehicle in violation, and relevant remarks from the parking official. Considering Wis. Stat. § 800.02 is drafted fairly broadly, the information generally provided in a parking citation is likely sufficient information to satisfy the statute's requirements.

While the parking citations contain identifying information for the vehicle in violation, there is no information provided concerning the defendant, which is a piece of information considered by the statute. When issuing parking citations on an individual's vehicle, concerns exist regarding leaving an individual's personal information available for public view. Efforts to avoid unnecessary dissemination of private driver information are important in light of the federal Driver's Privacy Protection Act, the purpose of which is to "limit the release of an individual's personal information contained in his or her driver's license record to those who had a legitimate and lawful need for the information." *New Richmond News v. City of New Richmond*, 2016 WI App 43, ¶ 5, 370 Wis. 2d 75, 881 N.W.2d 339. However, such concerns do not exist when mailing parking citations by first class mail. Therefore, it may be prudent for parking citations issued by mail to include identifying information of the defendant in order to further satisfy the considerations of Wis. Stat. § 800.02.

Ultimately, based on the clear language in the Wisconsin Statutes, parking citations issued by the City of Milwaukee may be served via first class mail. However, we suggest that additional evidence, such as photographs of the violation, be included with the citation when mailed to alleviate the likelihood of owner "amnesia" regarding the violation. In other words, when a vehicle driver finds the parking citation on their windshield, they may readily discern that they were parked closer than 10 feet from the intersection, that they were in violation of a nearby sign, or that their appointment ran

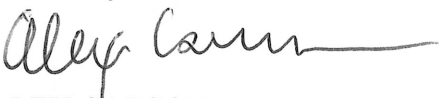
Mr. Jeff Polenske
Commissioner of Public Works
July 25, 2019
Page 4

longer than the 2-hour posted limit. The after-the-fact mailing of a citation removes that ability to recognize the violation in the moment and may lead to a greater number of disputed citations.

Very truly yours,



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