

# CITY OF MILWAUKEE

Form CA-43

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January 16, 2002

Alderman Michael S. D'Amato, Chair  
Judiciary & Legislation Committee  
Room 205, City Hall  
Milwaukee, WI 53202

**RE: Proposed Revision of the City Code of Ethics, Common Council File  
No. 010941**

Dear Alderman D'Amato:

This is in response to your December 14, 2001 letter requesting our opinion on Common Council File No. 010941, an ordinance to revise the City's Code of Ethics – Chapter 303 Milwaukee Code of Ordinances ("MCO"). You request that we address two particular provisions of the proposed revised ordinance: 1) the revision in Part 16 that deals with identification of those individuals wishing to examine statements of economic interests on file with the City's Board of Ethics, and 2) a change under Part 1 revising the definition of "anything of value" by reducing the threshold amount from \$100 to \$50 for reporting of fees and expenses. Finally, you also request that we inform you of any other legal issues that need be brought to your committee's attention.

With respect to your first question, the issue of whether the City may by ordinance require that persons requesting to inspect or copy statements of economic interests, filed with the City's Board of Ethics by those designated public officials under Chapter 303, disclose their name and address or name and address of the person they represent. This wording tracks sec. 19.55, Stats. – the requirement for such requester disclosure for Wisconsin Ethics Board files (the state agency). However, we are unable to find any provision in state statute that allows the City by ordinance to make an exception to the right of inspection of public records. Section 19.35(1)(a) expressly sets out, "except as otherwise provided by law, any requester has a right to inspect any record." Further, under sec. 19.35(1)(i), Stats., the law provides that "no request

under pars. (a) and (b) to (f) may be refused because the person making the request is unwilling to be identified or to state the purpose of the request.” (Emphasis added).

As such, it is our opinion that state law does not authorize a local government to enact an ordinance that calls for denial of such a request based upon the refusal of the requester to provide identifying information. If the Common Council should wish to pursue amendment of sec. 19.59, Stats., to allow local governments to enact a provision similar to that for state government, we would be happy to assist in drafting such.

On the second question, whether the proposed change in the definition of “anything of value” is required because of the wording of the state statute, we observe the following:

- 1) The state definition of “anything of value” in 19.42(1) does not contain a dollar threshold amount for reporting of fees and expenses. It simply references the provisions of 19.56 (which then sets the \$50.00 reporting requirement). Since the proposed ordinance announces the \$50.00 amount in Part 1 and also makes the same change in Part 6 with respect to reporting, the wording in Part 1 could be considered surplusage. The proposed ordinance could delete the words “of more than \$50” in Part 1 and conform completely to the statutory language without changing the intent of the provision.
- 2) 19.59(1m) provides that counties and municipalities may establish an ethics ordinance that is “in addition to the requirements of sub. (1).” 19.59(1) then sets out the minimum standards of conduct for local government officials. As a result, a municipal ordinance could supplement the minimum standards set forth in 19.59(1), i.e., be more restrictive; however, the ordinance could not be more permissive than the standards set out in 19.59. In setting the minimum standards for local government officials, 19.59(1) uses the term “anything of substantial value” and also the term “anything of value”. Under 19.42(1) the term “anything of value” is defined. It therefore follows that the City could not alter the definition of “anything of value” to make it less encompassing than the statute.<sup>1</sup>
- 3) The reporting of honorariums, fees, and expenses found at 19.56, Stats., and currently at 303-9 MCO provides a threshold requirement for such reporting, i.e., \$50 at the state level and \$100 in the City ordinance. In order to be at least as restrictive as the State statute, the City needs to amend its ordinance as proposed (reducing the threshold reporting amount to \$50) or strike 303-9-2-a. entirely

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<sup>1</sup> We note that the Wisconsin Ethics Board has opined that the term “anything of substantial value” means anything of more than nominal, token, or inconsequential value in light of the totality of the circumstances. 7 Op. Eth. Bd. 2 (1983); 5 Op. Eth. Bd. 100, 99 (1982).

(thereby eliminating the exception and making all honorariums, fees, and expenses reportable).

In general, the proposed ordinance changes are an effort to make the City's Code more consistent with the State code of ethics for state public officials. Since the last major substantive changes to the City's Code were in 1984-85, and the State has amended its provisions for state public officials numerous times, the City's Code has not kept pace with the changes made in the State code. While the City need not have adopted any ethics ordinance at all and simply chosen to have its public officials subject to the minimum provisions of 19.59, it made the policy decision to adopt a local ordinance and to pattern it after the ethics code for state public officials. Should the Common Council wish to continue such a local code patterned after the code for state public officials, there is good reason to adopt the proposed changes. By so doing, the City has the collateral advantage of having available those opinions regarding state public officials as set out by the Wisconsin Ethics Board. Any deviation from the patterns set by the State ethics code for state public officials should be as a result of peculiar local circumstances (and provided that such deviation does not affect the minimum standards set out in 19.59).

One such area where the City Ethics Code has in the past deviated from the State ethics code for state public officials has been in the area of entering into, and reporting, any contracts with the City that exceed \$3,000 within a 12-month period. This provision is found under 303-5-6 MCO and finds its counterpart in 19.45(6), Stats. However, the state provides that the contracts referred to are those contracts which exceed the \$3,000 amount "in whole or in part derived from State funds". Similar language is now proposed to be inserted by Part 4 of the proposed ordinance with insertion of the words "in whole or in part derived from City funds". The Common Council may wish to consider whether the proposed language is sufficient to give guidance to City officials in order to avoid violations of this provision and whether it is clear for enforcement purposes. For example, are Community Development Block Grant Funds, City funds? Further, if such funds, or programs funded by the Community Relations-Social Development Commission, various Business Improvement Districts, projects of the Redevelopment Authority of the City of Milwaukee, or the Milwaukee Economic Development Corporation, are "City" funds, would City officials know that a particular agency they may be dealing with in a private capacity is funded in whole or in part with such "City" funds.

One technical suggestion we make is to insert the words "in Circuit Court" between the words "section" and "which" in Part 17 of the proposed ordinance. We believe that this insertion will clarify that any forfeiture action is to be prosecuted through the Circuit Court rather than the Municipal Court as a collections activity.

Finally, we wish to take this opportunity to alert the Common Council that the relationship between the City's Board of Ethics and the Common Council has not been clarified by the proposed ordinance revisions. While the current 303-27 MCO provides for referral to the

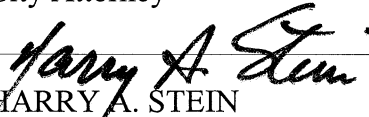
Common Council of determinations by the Board of Ethics of misconduct or malfeasance of certain City officials, the role of the Common Council is left somewhat ill-defined, i.e., is it to be just an appellate body or is the hearing described in 303-29 to examine the underlying determination of the Board of Ethics. The proposed revision in Part 14 does little, if anything, to clarify this issue. Should the Common Council wish to examine this issue, we would offer to assist in developing the ordinance wording that implements your policy directive.

Very truly yours,



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