

CITY OF MILWAUKEE

Form CA-43

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December 12, 2002

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Alderman Thomas G. Nardelli
15th Aldermanic District
Chair, Public Safety Committee
Room 205 - City Hall

Re: Proposed "Linkage" Arrangement with Planned Parenthood of Wisconsin

Dear Alderman Nardelli:

On November 26, 2002, you requested the opinion of this office as to whether a proposed "linkage" arrangement between the Milwaukee Health Department and Planned Parenthood of Wisconsin ("PPWI"), whereby PPWI would occupy the Northwest Health Center one day per week in order to provide family planning and public-health counseling services to low-income residents on the northwest side would require the approval of the Common Council. We are pleased to respond to this request. We conclude that prior Common Council approval for such an arrangement may or may not be required depending upon the particular nature of the arrangement.

There are essentially two methods available for accomplishing this form of arrangement: (1) a conventional lease agreement between the City and PPWI providing for the rental of physical space within the Northwest Health Center for use by PPWI; or (2) a professional-services contract between the City and PPWI authorizing PPWI to provide specified professional services to City residents on behalf of the Health Department. Although your letter and an article appearing in the *Milwaukee Journal Sentinel* on this subject dated November 4, 2002 (copy attached), seem to speak in

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terms of a "lease," the precise form of arrangement is not addressed, and indeed it appears that no decision on that issue has even been reached by the Health Department.

In any event, we shall now proceed to answer your question in terms of these two potential forms of arrangement. If the City chooses to enter into a lease arrangement, it is clear that prior Common Council approval would be necessary for any such lease to be effective. The Health Department does not possess independent leasing authority. Under such circumstances, the only mechanism available for lease of space or facilities within the Northwest Health Center would be in accordance with § 304-49, *Milwaukee Code of Ordinances*. This provision applies "whenever real property becomes surplus to the needs of any city department, board or commission." § 304-49-1. The most appropriate course of action would then be to invoke the provisions of § 304-49-17, *Milwaukee Code of Ordinances*, which states as follows:

17. CONVEYANCE OF PROPERTY TO DESIGNATED ENTITIES.

The city of Milwaukee adopts ss. 62.22(1) and 62.23(17), Wis. Stats., pursuant to the common council's authority under s. 62.03(2), Wis. Stats. Pursuant to these provisions and the provisions in s. 62.11(5), Wis. Stats., and the provisions of s. 4-10 of the city charter, and notwithstanding the provisions of subs. 1 to 16 and s. 308-23, whenever the common council determines that city-owned real estate, acquired by any means, is surplus to the needs of any city department, board or commission, the common council may, by duly adopted resolution, direct the appropriate city officers to convey such property, by lease, deed or other appropriate form of conveyance, to a designated entity for adequate fair market consideration which may be monetary or non-monetary in form.

(Emphasis added). Therefore, if the Health Department chooses to lease this space to PPWI, prior approval of the Common Council, by resolution adopted under the terms of § 304-49, *Milwaukee Code of Ordinances*, and more particularly § 304-49-17 (quoted above), would be required.

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The result is quite different if the Health Department chooses to utilize a professional-services contract in which PPWI would agree to provide services for the City. In that case, the Health Department would be required to utilize the purchasing and procurement process set forth in § 16-05, *Milwaukee City Charter*. We note that this section of the Charter has been repealed and recreated by charter ordinance file number 020885, adopted on November 8, 2002, and effective January 27, 2003 (copy attached). This ordinance provides that the City's purchasing and procurement functions shall, as of January 27, 2003, be conducted by a new Division of Business Operations located within the Department of Administration (prior to that date, that authority continues to be exercised by the Central Board of Purchases). In either event, the responsible purchasing official or body "shall have full power, subject to s. 16-02, to purchase or to provide for the purchase of all materials, supplies, equipment, and services for the use of all departments, boards, or commissions comprising the city government" (Emphasis added). This would include a contract for the purchase by a city department of professional services.

Under this method of procurement, no prior Common Council approval is required. We must caution, however, that any purchase or procurement made under authority of § 16-05 of the Charter must be "made upon requisition by the proper officials of said boards, commissions or departments from funds provided by the Common Council." § 16-05-1, *Milwaukee City Charter*. In other words, the purchasing or procuring entity (here, the Health Department) must have money in its budget sufficient to fund the purchase and the funds must be appropriated for this specific purpose.

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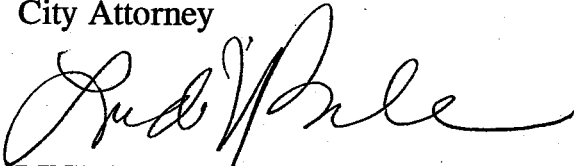
In conclusion, our opinion is that the answer to your inquiry is "yes" if a lease is contemplated between the Health Department and PPWI, but "no" if instead a professional-services agreement is contemplated. If you have any further questions, please do not hesitate to contact this office.

Very truly yours,



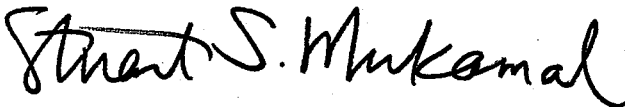
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enclosures

c: Dr. Seth Foldy, Commissioner of Health (w/encs.)

Ron Leonhardt, City Clerk (w/encs.)

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City lease plan opens abortion debate

Health Department might rent space to Planned Parenthood

By TOM HELD and KAWANZA GRIFFIN
theld@journalsentinel.com

Last Updated: Dec. 4, 2002

A proposal to put a Planned Parenthood office in a Milwaukee Health Department clinic promises to add a new element to the debate over public funding of abortions and abortion counseling.

And it could force the Common Council to decide whether Planned Parenthood of Wisconsin is allowed to lease space in a city building.

City Health Commissioner Seth Foldy touted the proposal Tuesday as a way to provide needed family planning and public health counseling to low-income residents on the northwest side.

But Barbara Lyons, executive director of Wisconsin Right to Life, said the arrangement would result in the city "facilitating abortions."

The plan as outlined by Foldy would have Planned Parenthood lease space in the Northwest Health Center, 7630 W. Mill Road. Open just one day per week initially, Planned Parenthood would offer counseling on natural family planning and contraceptive use and examinations for sexually transmitted diseases and cervical cancer.

Foldy said the terms of the lease were being negotiated, but he hoped to move a proposal through the Common Council by the end of the year.

Planned Parenthood's work with the low-income clients would be funded with money from Federal Title X, leaving some question about the type of abortion counseling that the agency would offer.

Restrictions on the federal funding prohibit it from being used to pay for abortions or to facilitate access to abortions.

But the federal rules also require the agencies receiving Title X money to provide clients with information on all of their reproductive health options, including abortion.

Foldy said Planned Parenthood would offer "no abortion counseling." However, Lyons said they are required to do just that.

"What we're setting up with tax dollars is a program that will funnel women into the Planned Parenthood abortion clinics, where they will extract a payment for the abortion," Lyons said. "It uses our city-owned buildings for that purpose."

Part of larger expansion

Jim Stewart, president and CEO of Planned Parenthood of Wisconsin, said the clinic staff, in keeping with the Title X rules, would not encourage abortion or provide abortions at the Northwest Health Center. Patients will be informed of

all their health options, as well as where services are available, he said.

The move into the city clinic is part of a larger expansion of Planned Parenthood services in the Milwaukee area. Using \$200,000 in federal funding, Planned Parenthood has worked with the YWCA of Greater Milwaukee to open two community-based clinics - one is within the YW Vel Phillips Center, 3940 N. 21st St, and the other, the Brown Street Clinic, is inside the YW Works facility, 326 W. Brown St.

The Planned Parenthood clinic would be the first in a city-owned building in Milwaukee, but the debate over its services and public support has a precedent in Jefferson County.

In 1996, the agency sued Jefferson County after the County Board voted to end its lease in the Health Department building. The decision was based on the same issues that Lyons has raised about the Milwaukee proposal.

Through an agreement, Planned Parenthood stayed in the leased space in Jefferson County until 1998.

Education is needed

While there is debate over the Planned Parenthood services, there is little doubt about the need for action to combat unplanned pregnancies and sexually transmitted disease in Milwaukee.

"Given where Milwaukee is healthwise and statisticswise, we need to focus on how to provide preventive health care," said Joyce Mallory, director of Start Smart Milwaukee and a board member for Planned Parenthood.

"The clinic is needed," she said. Preventive health care "is needed now, and it's needed to make sure women and men in the community have access to health care, particularly to services that will help reduce some of the health problems in the community."

The rate of gonorrhea in Milwaukee rose 5.4%, from 538.9 cases per 100,000 people in 1999 to 567.8 cases in 2000. The city previously had the 13th-highest rate nationally; now it ranks 10th. A total of 5,146 cases of gonorrhea were reported in Milwaukee during 2000, and officials say many more weren't diagnosed and went unreported.

One community health worker wondered, though, if a Planned Parenthood clinic on W. Mill Road would have much positive impact.

Patricia McManus, executive director of the Black Health Coalition, said she was more concerned about how the services will be presented to and accepted by the people in the communities the programs are intended to serve.

For example, some residents may have preconceived notions about Planned Parenthood because they advocate abortion and may not want to seek services through them, she said.

In addition, only providing services once a week at the Northwest Health Center may not reach as many people as expected, particularly if services are offered only when most residents are at work or in school, McManus said.

"We need to make sure this plan is workable" by first speaking with leaders and other representatives from the community before the programs are implemented, she said.

A version of this story appeared in the Milwaukee Journal Sentinel on Dec. 4, 2002.

City of Milwaukee
Office of the City Clerk
200 E. Wells Street
Milwaukee, Wisconsin 53202
Certified Copy of Charter Ordinance

FILE NO: 020885

A substitute charter ordinance relating to implementation of various provisions of the 2003 city budget.

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 8-05 of the charter is repealed.

Part 2. Section 16-02 of the city charter is repealed and recreated to read:

16-02. Purchasing Appeals Board: Members, Meetings.

1. MEMBERS. a. The purchasing appeals board shall be composed of the mayor, the commissioner of public works, the chair of the common council committee on finance and personnel, the director of administration, the city comptroller, the president of the common council; and 2 city employes, one each appointed by the mayor and the president of the common council. The mayor and common council president shall make their respective city employe member appointments within 60 days after assuming office or within 60 days after a vacancy occurs in such board position, whichever is later.

b. Members, with the exception of the 2 city employe members, may designate alternates in writing by filing with the city clerk's office. Such alternates may represent their respective principal members and exercise all powers of principal members when such members are unable to attend board or committee meetings.

2. VOTING PROCEDURES. Each board member shall have one vote. The mayor shall be chair of the board and shall call all meetings except such as may be provided for by the action or rules of the board. In the absence of the mayor, the vice chair of the board shall preside. Five members shall constitute a quorum.

3. DUTIES AND RESPONSIBILITIES. The board: a. Shall hear bidder, common council member and city department specification appeals as provided herein.

b. Shall hear bidder award appeals of recommendations made by the city purchasing director as to the apparent low responsive bidder as provided herein.

c. Shall adopt bylaws for conduct of board business.

Part 3. Section 16-05 of the city charter is repealed and recreated to read:

16-05. Purchasing.

1. DUTIES, POWERS. a. Authority to purchase. There is created a division of business operations in the department of administration. The division shall be under the direction and control of the city purchasing director who shall be subject to the direction and control of the director of administration. The city purchasing director shall have full power, subject to s. 16-02, to purchase or to provide for the purchase of all materials, supplies, equipment and services for the use of all departments, boards or commissions comprising the city government, including materials, supplies and equipment and services funded through such special purpose accounts as the common council may indicate, except when otherwise specifically provided by local or state law. Such purchases shall be made upon requisition by the proper officials of said boards, commissions or departments from funds provided by the common council, provided that nothing in this section shall be construed to prevent the city purchasing director from making purchases or contracts in anticipation of the needs of departments, boards and commissions or from maintaining store of commodities in anticipation of needs. This power and authority to make all purchases shall not be construed to include contracts for public works where materials, supplies or equipment are furnished by the contractor as part of the requirements of a contract or to include demolition of any building or structure or part thereof which is being razed pursuant to the provisions of s. 66.0413 or 823.22, Wis. Stats., as such sections now exist or as they may read by reason of amendment, or for the abatement of nuisances in accordance with applicable city ordinances. The commissioner of neighborhood services shall have full power and authority to provide for the demolition of any building or structure or part thereof being razed pursuant to the Wisconsin statutes, or for the abatement of nuisances in accordance with applicable city ordinances.

b. Special equipment, etc. Any department, board or commission comprising the city government may with the authorization of the city purchasing director purchase independently such materials, supplies equipment or services of a special character as are used only by it, or which may be decided by the city purchasing director may be more efficiently purchased by any such department, board or commission than by the city purchasing director. If a department, board or commission acts pursuant to the authority set forth herein, any written contract resulting therefrom shall be executed by the head of the department or the chair of the board of commission as the case may be and to be countersigned by the city purchasing director and the city comptroller. The city purchasing director is authorized to promulgate such standards and rules as he or she deems necessary to effectuate the provisions set forth herein.

2. CONTRACTS, BIDDING. a. All such work, items, materials, supplies, equipment and services, except as otherwise provided herein, when the estimated cost thereof shall exceed \$30,000, shall be purchased from the lowest responsible bidder, subject to bidding requirement exceptions under sub. 3, after due notice inviting proposals. Such notice shall be published in at least one official paper for at least 2 days preceding the last day set for the receipt of proposals. All such contracts where the actual cost exceeds \$30,000 shall be awarded by the city purchasing director and shall be purchased by formal written contract.

b. All contracts required to be purchased from the lowest responsible bidder under this subsection shall be purchased from the lowest responsible bidder determined in accordance with

any applicable city ordinances for participation of emerging business enterprises which are in force.

2.5. APPEALS. Appeals as to specifications and recommendations for awards shall be filed and heard in the manner prescribed by the code.

a. Specifications. Appeals involving purchases estimated to exceed \$30,000 on specifications established by the city purchasing director shall be heard and determined by the purchasing appeals board.

b. Recommendations. Appeals from recommendations made by the city purchasing director for awards involving purchases which exceed \$30,000 for which bids were advertised shall be heard and determined by the purchasing appeals board. Appeals involving purchases under \$30,000 may be heard by the purchasing appeals board.

3. EXCEPTION TO BID REQUIREMENTS. a. The city purchasing director may, decide to negotiate, contract for and purchase work, services, materials, supplies, equipment, items or commodities without the necessity of securing formal competitive bidding whenever such work, services, materials, supplies, equipment, items or commodities are of such a nature as to make it impossible or impracticable to draw specifications satisfactorily to permit competitive bidding, can be furnished from only one source, constitute a special adaptation for a special purpose, or the performance of the work or services requires creative and individual talents, scientific knowledge, special skills or training, or artistic or professional skills, or is of a technical or experimental nature.

b. The purchasing director may negotiate amendments to any existing contracts.

c. Bidding requirements shall not be applicable to any purchase of materials, supplies, equipment, items or commodities from the federal or state government, another municipality or any of the agencies thereof.

4.COOPERATIVE PURCHASING. a. The provisions of this section shall not apply whenever the city purchasing director on behalf of the city by agreement with another political subdivision of the state, the state and the federal government, agrees to enter into cooperative purchasing of any item or service which the director could purchase on behalf of the city acting alone. When the city purchasing director approves an agreement for participating with any such political subdivision or government entity as aforesaid in cooperative purchasing and such body purchases the item or service through competitive bidding, the city purchasing director may participate in the purchase of such item or service with such entity as aforesaid without necessity of securing competitive bids on such item or service.

b. The city purchasing director may, acting on behalf of the city, enter into agreement with any political subdivision of the state of Wisconsin or association of public purchasers with respect to cooperative purchase of any item or service which the city purchasing director could purchase on behalf of the city acting alone. When the city purchasing director approves a cooperative purchasing agreement with any political subdivision of the state of Wisconsin or association of public purchasers, any item or service may be purchased by the director in accordance with the

provisions of the charter pursuant to the cooperative purchasing agreement. For purposes of this paragraph, an "association of public purchasers" means any group consisting of 2 or more political subdivisions of the state of Wisconsin.

6. **ARBITRATION OF DISPUTES.** The city purchasing director is authorized to incorporate in, or make applicable to any one or all contract documents to purchase or procurements, the provisions of ch. 788, Wis. Stats., (arbitration), whenever the city purchasing director deems it proper.

7. **ESCALATOR PROVISIONS.** Bid invitations and contracts upon approval of the city purchasing director may include escalator provisions for additional charges for goods, supplies, materials or equipment if as a result of limited supplies or general inflation the rates and prices of the same to the contractor increase during the performance of the contract. Such escalator provision, if utilized, shall be applicable to all bidders and shall not exceed 15% of the firm bid per year during the period of the performance of such contract; however, in no event shall any such escalation amount exceed the amount of increase actually incurred during the year by the contractor, and only if sufficient funds have been appropriated or are available therefor. Such increase shall be substantiated to the satisfaction of the city purchasing director and shall not be effective until approved by the director. Each bid on a contract which is to contain multiple items and which is to include an escalator provision only as to some items shall be accompanied by a schedule enumerating the estimated rates or prices of items or goods, materials, supplies or equipment used in arriving at the bid, and only as to such items so enumerated shall an increased charge be allowed to the contractor.

8. **SUPPLIES PURCHASED WITH FEDERAL AND STATE GRANTS.** Whenever materials, supplies, equipment or services are to be acquired in connection with federal or state assistance or a grant funded program, the provisions of the city charter, or general ordinances, rules, regulations or guidelines for procurement relating thereto shall apply, provided, that such provisions meet the minimum requirements of federal and/or state laws, rules, regulations and guidelines applicable to such assistance or grant funded program. If any provisions of the city charter, or its ordinances, rules, regulations or guidelines contravene such federal and/or state provisions relating to such assistance or grant funded program so that the result does not meet the minimum requirements of the federal and/or state laws, rules, regulations and guidelines, then, to that extent, the provisions of the charter, local ordinances, rules, regulations and guidelines shall be deemed to be superceded by the federal and/or state laws, rules, regulations or guidelines applicable to such assistance or grant funded programs.

9. **DE-ESCALATOR PROVISIONS.** Bid invitations and contracts upon approval of the city purchasing director may include de-escalator provisions which would provide that any goods, supplies, materials or equipment being purchased by the city will be subject to any price reductions which are announced by the bidder within the 6 months following execution of the purchase contract, and such price reductions are then to be passed on to the city as reductions in the total costs of the goods, supplies, materials or equipment purchased or being purchased.

10. **FUTURES CONTRACT.** The city purchasing director may purchase and sell future contracts in heating, oil, crude oil or gasoline on the New York Mercantile Exchange as a means of protecting the cash market price on a future date. Such purchases and sales may be made in

an amount not exceeding 100% of the funds budgeted annually for purchasing such commodities. In this subsection, "futures contract" means a legally binding commitment to make or take delivery of a given quantity and quality of a commodity at a price agreed upon in the trading pit or ring of a commodity exchange at the time the contract is executed.

Part 4. Section 16-12 of the charter is repealed.

Part 5. In the following section the term "disadvantaged" is replaced by "emerging": 7-14-2-b.

Part 6. This is a charter ordinance and shall take effect 60 days after its passage and publication unless within such 60 days a referendum petition is filed as provided in s. 66.0101(5), Wis. Stats., in which event this ordinance shall not take effect until submitted to a referendum and approved by a majority of the electors voting thereon.



I, Ronald D. Leonhardt, City Clerk, do hereby certify that the foregoing is a true and correct copy of a(n) Charter Ordinance passed by the COMMON COUNCIL of the City of Milwaukee, Wisconsin on November 8, 2002, effective January 27, 2003.

Ronald D. Leonhardt

Ronald D. Leonhardt
City Clerk

November 21, 2002

Date Certified