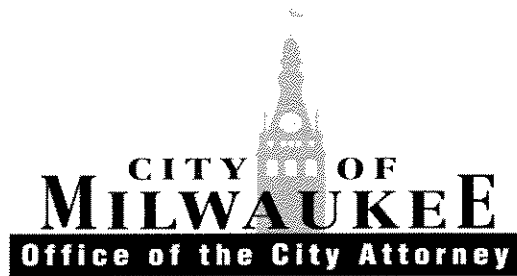


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September 21, 2007

Honorable Common Council
City Hall, Room 205

Re: File No. 070417 – Substitute 1
Increases in fees for various licenses

Dear Council Members:

We have had an opportunity to review the above referenced file for legality and enforceability.

It is an elemental rule of governmental administration that the cost of providing a service may be recovered by the fees charged, but only to that extent. Any other charge in addition to the charges for the recovery of costs of providing a service, would be viewed as a tax and would thus be illegal. *State ex rel. Attorney General, et al. v. Wisconsin Constructor's, Inc., et al.*, 222 Wis. 279, 268 N.W. 238 (1936). (Citing *City of Milwaukee v. Milwaukee Electric Railway and Light Company*, 147 Wis. 438, 133 N.W. 593, 595)). See also, *River Falls v. St. Bridgett's Catholic Church*, 182 Wis. 2d 436, 442, 513 N.W.2d 673 (Ct. App. 1994) "[I]f the primary purpose of the charges to cover the expense of providing services, supervision or regulation, the charge is a fee and not a tax." *Id.*

License regulations are an exercise of the police power. (Wis. Stat. § 62.11(5)). As was stated in *City of Milwaukee v. Kaun*, 204 Wis. 103, 235 N.W. 551 (1931). The police power may be exercised for the regulation of an occupation for the purpose of law enforcement, securing the public health, safety and welfare. (*Id.*, 235 N.W. at 552, 553). Where the revenue and not the regulation is the aim, no power is given to license, and, as a corollary therefore, to charge for such a license. *Wisconsin Telephone Company v. City of Milwaukee*, 126 Wis. 1, 104 N.W. 109, 113 (1905).

Absent any evidence to the contrary, legislative actions are presumed to be regular and legal. *State ex rel. Boroo v. Town Board of Barnes*, 10 Wis. 2d 153, 160, 102 N.W. 2d '238 (1960). As a result, we presume that the fee increased reflected in the above

Honorable Common Council
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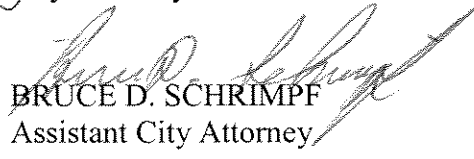
referenced correspondence reflect the actual cost of providing the license and the attended regulation.

With those provisos we approve the fee increases as to legality and enforceability.

Very truly yours,



GRANT E. LANGLEY
City Attorney



BRUCE D. SCHRIMPF
Assistant City Attorney

BDS:123810

c: Ronald D. Leonhardt, City Clerk