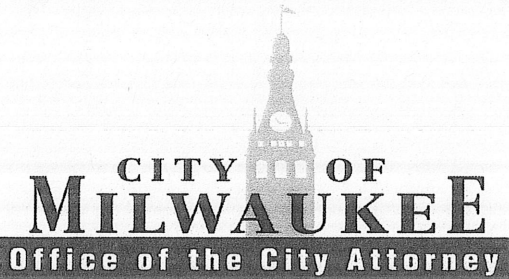


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October 4, 2023

Commissioner Erica Roberts  
Department of Neighborhood Services  
Zeidler Municipal Building  
841 North Broadway, Room 104  
Milwaukee, WI 53202

RE: Questions Related to DNS' Enforcement of Code Violations for Properties  
Owned by the Housing Authority of the City of Milwaukee

Dear Commissioner Roberts:

You requested a legal opinion on four questions related to DNS's enforcement of code violations at properties owned by the Housing Authority of the City of Milwaukee (HACM). Please find below the questions and the corresponding answers.

*Question 1: To whom and where should orders and other service be made to in relation to HACM-owned properties?*

Housing Authorities law is found in Wis. Stat. ch. 66, and provides that "[a]n authority is a public body and a body corporate and politic." Wis. Stat. § 66.1201(9).

Personal jurisdiction and the manner of serving summons for court as applied to HACM is provided for under Wis. Stat. § 801.11:

A court of this state having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in s. 801.05 may exercise personal jurisdiction over a defendant by service of a summons as follows:

...

(4) OTHER POLITICAL CORPORATIONS OR BODIES  
POLITIC.

(a) Upon a political corporation or other body politic,  
by personally serving any of the specified officers, directors,  
or agents:

...

7. If against any other body politic, an officer,  
director, or managing agent thereof.

(b) In lieu of delivering the copy of the summons to  
the person specified, the copy may be left in the office of  
such officer, director or managing agent with the person who  
is apparently in charge of the office.

Wis. Stat. § 801.11(4).

The Director for Housing Authority of the City of Milwaukee (HACM) is Willie Hines, Jr., and orders, etc., should be directed to his attention at HACM's administrative offices.

*Question 2: After the compliance time has expired and owner contacts have been made, a re-inspection occurs. If violations remain, a re-inspection fee is charged to the owner. I am unclear how a re-inspection fee, which is typically tax-rolled, would apply to a HACM property. It's my understanding that HACM pays a PILOT payment and therefore I need clarity on how additional fees factor into this process.*

Although HACM's properties are "exempt from all taxes of the state or any state public body politic" the City "may fix a sum to be paid annually in lieu of taxes by the authority for the services, improvements or facilities furnished to the property of the authority by the city." Wis. Stat. § 66.1201(22). Requiring HACM to pay a special charge is not impacted by its tax exempt status.

Additionally, a special charge is not a tax. Special charge is defined in Wis. Stat. § 74.01(4) as follows:

[A]n amount entered in the tax roll as a charge against real property to compensate for all or part of the costs to a public body of providing services to the property. "Special charge" includes any interest and penalties assessed for nonpayment

of the special charge before it is placed in the tax roll.  
“Special charge” also includes penalties under s. 70.995  
(12).

In *City of River Falls v. St. Bridget’s Catholic Church of River Falls*, 182 Wis. 2d 436, 513 N.W.2d 673 (Ct. App. 1994) the court emphasized that the dispositive question for determining whether a charge is a fee or a tax is whether the charge raises revenue or recoups costs for “services, supervision or regulation.” *Id.* at 442; *see also*, Wis. Op. Att’y Gen. (2015) OAG-01-15 (the attorney general concluded that the fire protection special charge was a fee, not a tax, and therefore the fee could be assessed against the county under Wis. Stat. § 60.55).

A re-inspection fee, defined in Milwaukee Code of Ordinances (MCO) § 200-33-45, is a special charge. It states:

REINSPECTION FEE. a. To compensate for inspectional and administrative costs, a fee of \$200 may be charged for any re-inspection to determine compliance with an order to correct conditions of provisions of the code under the jurisdiction of the department of neighborhood services or assigned to the department, except no fee shall be charged for the re-inspection when compliance is recorded. A fee of \$400 may be charged for each subsequent re-inspection. Re-inspection fees shall be charged against the real estate upon which the re-inspections were made, shall upon delinquency be a lien upon the real estate and shall be assessed and collected as a special charge for payment and settlement as provided in chapter 19 of the city charter.

However, MCO § 200-32-4 prohibits charging the housing authority any fee provided in MCO § 200-33.

Thus, the only legal impediment to re-inspection fees being charged to HACM-owned properties according to DNS’s ordinary process is city ordinance – which could potentially be amended to remove the impediment.

*Question 3: The order would then be referred to municipal court for adjudication. I am meeting with the municipal judges tomorrow to discuss this and other topics with them. The outcome of court cases often times results in court fines being levied against the property owner. Again, clarification is needed on this process would apply to HACM.*

Under Wisconsin law, HACM “shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the housing



project is situated". Wis. Stat. § 66.1201(12). The statute uses the word "shall" and HACM must comply with the code and it is subject to the enforcement mechanisms that support them—unless the ordinances exempted them, such as with MCO § 20-32-4 regarding fees. To conclude otherwise would render the statute meaningless.

*Question 4: Is it a conflict of interest for the City Attorney's Office to prosecute and the Municipal Court Judges to preside over HACM matters in Milwaukee Municipal Court?*

It is not a conflict of interest for the City Attorney's Office to prosecute HACM matters in Milwaukee Municipal Court. Wisconsin supports this conclusion and asserts:

The conflicts of a lawyer currently serving as an officer or employee of the government are not imputed to the other lawyers in the agency. However, where such a lawyer has a conflict that would lead to imputation in a nongovernment setting, the lawyer shall be timely screened from any participation in the matter to which the conflict applies.

SCR 20:1.11(f). If the City Attorney Office's prosecutes HACM for DNS code violations it must first screen any assistant city attorney representing HACM from any assistant city attorney representing DNS.

Whether it is a conflict of interest for a Municipal Court Judge to preside over HACM matters in Milwaukee Municipal Court depends on the individual judge's experiences and biases. The following legal authority and analysis should be relied on to reach an answer.

Wisconsin SCR 60.04 mandates that a judge shall perform the duties of judicial office impartially and diligently. Specifically, the rules provide:

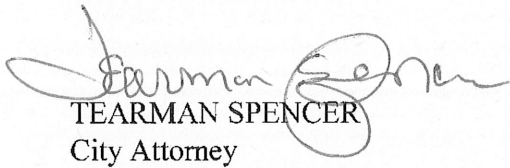
4. Except as provided in sub. (6) for waiver, a judge shall recuse himself or herself in a proceeding when the facts and circumstances the judge knows or reasonably should know establish one of the following or when reasonable, well-informed persons knowledgeable about judicial ethics standards and the justice system and aware of the facts and circumstances the judge knows or reasonably should know would reasonably question the judge's ability to be impartial:

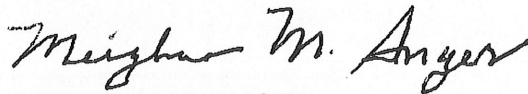
(a) The judge has a personal bias or prejudice concerning a party or a party's lawyer or personal knowledge of disputed evidentiary facts concerning the proceeding.

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SCR 60.04(4)(a). The comments for these sections provide additional guidance. Also, Wisconsin State Statute §757.19 sets forth the circumstances and procedures for disqualification and waiver. While there is no specific conflict that applies, each Municipal Court Judge would need to determine for themselves if there was a basis for recusal.

Very Truly Yours,

  
TEARMAN SPENCER  
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MMA

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