

GRANT F. LANGLEY
City Attorney

RUDOLPH M. KONRAD
PATRICK B. McDONNELL
LINDA ULISS BURKE
Deputy City Attorneys



THOMAS O. GARTNER
BRUCE D. SCHRIMPF
ROXANE L. CRAWFORD
SUSAN D. BICKERT
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ELOISA DE LEÓN
ADAM B. STEPHENS
KEVIN P. SULLIVAN
VINCENT D. MOSCHELLA
Assistant City Attorneys

May 24, 2006

Terry MacDonald, Staff Assistant
City Clerk Office
City Hall, Room 205

Re: All Saints Cathedral Corporation

Dear Ms. MacDonald:

By e-mail recently sent to the office of the City Attorney, you posed the following question:

“Our understanding is that Section 245-12 of the Code of Ordinances states that a surety bond is the only bond we can accept, if that is so, Ald. D’Amato would like to know if the ordinance can be repealed and recreated to change the requirement to include cash bonds and what would be the pros and cons in doing so.”

You are correct that Chapter 245-12, MCO, provides for only surety bonds. 245-12-3, MCO, provides, in pertinent part:

3. PROVISIONS. A special privilege shall be granted only on condition that by acceptance of such special privilege the grantee shall:
 - a. Become primarily liable for damages to persons or property by reason of the granting of such special privilege.
 - b. File with the city clerk a **bond of a surety company** duly incorporated in the state of Wisconsin or duly licensed to do business in this state, in such sum as the common council may require but not exceeding \$10,000, such bond to be approved by the city attorney. Individual sureties shall not be deemed in compliance with this section. (Emphasis added).

The language of § 245-12-3, MCO, as set forth above, is clear and unambiguous. It offers no option other than the filing of a surety bond with the City Clerk.

When interpreting statutes, the analysis begins with the plain meaning of the language chosen by the legislative body; if the language employed is clear and

Terry MacDonald
May 24, 2006
Page 2

unambiguous, that is conclusive of the legislative body's intent, and the inquiry ends. *Cemetery Services, Inc. v. Wisconsin Dept. of Regulation and Licensing*, 221 Wis. 2d 817, 586 N.W.2d 191 (Wis. App. 1998). Here it is clear and unambiguous that the Common Council intended to require that bonds filed with the City Clerk pursuant to 245-13-3, MCO, be surety bonds.

Had the Common Council intended that a cash bond also be acceptable, it could have so stated. But it did not.

Rules governing interpretations of ordinances are the same as rules governing interpretation of statutes. *County of Adams v. Romeo*, 191 Wis. 2d 379, 528 N.W.2d 415 (1995). Bearing that in mind, note that Wisconsin appellate courts have long held that the statutory expression of one thing is exclusive of another. *Lang v. Lang*, 161 Wis. 2d 210, 467 N.W.2d 772 (1991).

Here, the Common Council might have drafted an ordinance that required merely the filing with the City Clerk of a bond of any type or, in the alternative, the Common Council might have said "either a surety or cash bond." (See. § 66.045(2)). But because the Common Council did not do so, the above-referenced rules of statutory construction can yield no other result than the absolute requirement of the filing of a surety bond. This result cannot be changed by resolution because a resolution cannot alter an ordinance.

You further inquire whether the ordinance can be repealed and recreated to permit cash bonds. Although we know of no lawful reason why that could not be done, we would urge caution in making that change.

Surety bonds are a better vehicle for protecting the City's interest. Surety bonds, as part of the insurance industry, are regulated pursuant to Wis. Stat. § 627.15, thereby providing legal protection and an assurance that the surety is financially capable of meeting its obligation. Further, a cash bond would require the City, or perhaps a third party, to become a stake holder. And, the monies posted as bond might become an attractive target to a zealous trustee attempting to marshal the assets of a bankrupt, thereby exposing the City to a loss that would be unnecessary, and preventable by the use of a surety bond. Further, should there be a claim on the bond, the City, instead of a bonding company, would be responsible for deciding the dispute, and could be sued in that capacity. As a result, we strongly recommend that due consideration be given before making any change to the ordinance as it is presently drafted.


Terry MacDonald
May 24, 2006
Page 3

If you need any additional information, or if you have any further questions or concerns, please do not hesitate to contact the undersigned.

Very truly yours,



GRANT E. LANGLEY
City Attorney



EDWARD M. EHRLICH
Assistant City Attorney

EME:wt105807:
1055-2006-1494