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December 13, 2010

Alderman Robert Donovan
Chair, Public Safety Committee
Room 205 – City Hall

Re: Validity of Subpoena to MPD, et al., regarding Open Sky

Dear Alderman Donovan:

In your capacity as Chairman of the Common Council's Public Safety Committee, you have issued a subpoena to the Milwaukee Police Department, Chief Flynn, and various members of his present and past staffs, for all records relating to the "Open Sky" contract for a new radio system. We have indicated informally that we have some concerns about its legality and enforceability. You have asked for a written opinion, which we now provide.

Wisconsin Statutes § 885.01(3) provides that a subpoena ". . . may be signed and issued. . . By the chairperson of any committee of any. . . common council. . . to investigate the affairs of the. . . city. . . or the official conduct or affairs of any officer thereof." It is our opinion that the statute describes the process by which a committee chair may issue a subpoena on behalf of the committee. An essential condition precedent to the exercise of this power is that an investigation be authorized by the committee and in existence prior to the issuance of the subpoena.

According to Black's Law Dictionary (9th ed. 2009), "subpoena" is defined as: "A writ or order commanding a person to appear before a court or other tribunal. . . ." The core requirement that a "tribunal" exist indicates that there is a matter to investigate by the committee. The Wisconsin Statute itself recognizes this; each of the other officials authorized to issue a subpoena does so in the context of matters pending before them. Public policy dictates that officials cannot issue subpoenas without an underlying matter formally before them.

Our opinion does not mean that you cannot ultimately issue a subpoena to these persons for these items. It simply means that an investigation must be authorized by a committee prior to its chairman issuing the subpoena. This can be done under its usual rules and procedures.

Alderman Robert Donovan
December 13, 2010
Page 2

Please do not hesitate to contact me if you have any additional questions or concerns.

Very truly yours,



GRANT E. LANGLEY
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GFL:dms
c: Ronald Leonhardt
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