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December 3, 2009

Ronald D. Leonhardt
City Clerk
City Hall, Room 205

Alderman Michael J. Murphy
Tenth Aldermanic District
City Hall, Room 205

Re: Common Council File No. 090411
Legal Status of Individuals Seeking Licenses

Dear Mr. Leonhardt and Alderman Murphy:

Both of you have asked for a legal opinion relating to the above subject.

By letter dated October 5, 2009, City Clerk Ronald Leonhardt asked: whether his office is required to enforce the provisions of 8 U.S.C. § 1621(a) and (c)(1) (relating to the eligibility of illegal residents for licenses, etc.), in the absence of an ordinance establishing procedures for applications, appeals, and revocations; whether his office has the authority to establish those procedures; and what legal concerns are presented if an ordinance is not enacted.

By letter dated October 6, 2009, Alderman Michael Murphy asked whether an ordinance is necessary since there is no legal requirement to verify the status of applicants for licenses, and inquired about the applicability of *Lozano v. City of Hazelton, Pennsylvania*, 496 F. Supp. 2d 477 (M.D. Pa., 2007).

It is indisputable that the federal law, the Personal Responsibility Act of 1996, 8 U.S.C. § 1601, *et seq.*, declares that individuals not legally in the United States are not eligible for certain state or local public benefits, unless a subsequent state law is enacted expressly making those individuals eligible. Wisconsin has not enacted such a law. As a result, legal resident status is an eligibility requirement for many City licenses.

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As you know, the Wisconsin Attorney General issued an opinion stating that the Department of Regulation & Licensing (DRL) must create "some kind of procedure practicably designed" "to reasonably ensure" that licenses are not issued in violation of federal law. While the federal government does not state what these procedures must be, the federal law permits local entities to verify legal verification status. Federal law does not require such verification.

Nonetheless, the Attorney General has recommended that DRL implement verification procedures. He referred DRL to the U.S. Department of Justice's interim guidelines applicable to federal public benefits, where verification of legal status is required. (Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity & Reconciliation Act of 1996. 62 FR 61344).

We have reviewed the DOJ guidelines. Again, they are only applicable in situations where verification is required (for federal benefits).

To determine eligibility, the guidelines state that the application form should ask for a declaration of status, under penalty of perjury. To verify that status, the DOJ guidelines state that "a benefit provider could do any one of the following:"

1. Ask the applicant for a document demonstrating legal status, or
2. Accept a written, sworn declaration from one or more third parties indicating a reasonable basis for personal knowledge that the applicant has legal status, or
3. Accept the applicant's written declaration, made under penalty of perjury and possibly subject to later verification, that the person is legally in the U.S.

To summarize, under federal law, people who are in the United States illegally are not eligible for certain City licenses. The City must, at a minimum, seek information from an applicant as to whether he or she is eligible for a license. The federal law does not require the City to verify that status, although the law does permit verification. The verification can be as simple as accepting a statement under oath, or asking for some documentary proof.

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To answer your specific questions, even in the absence of an ordinance directly related to this subject, it is our opinion that the City Clerk still must determine whether all applicants are legally eligible to receive a particular license. A policy of requiring a declaration from every applicant as to legal status would be a legally acceptable and nondiscriminatory way to achieve this result, with the understanding that there are other, more certain methods that could be used. If a question is raised that truly casts doubt on the veracity of the declaration, or any other representation in the application, the City would need to reasonably assure itself that the individual is eligible for the license.

An aggrieved applicant could appeal under the provisions applicable to that license.

At a minimum, ordinance revisions should be adopted to include the declaration of legal status as a requirement for license eligibility. We would be available to work with you to identify these ordinance changes.

Concerning the *Lozano v. Hazelton* case (an appeal is pending), the draft ordinance pending before the Milwaukee Common Council is much different than the ordinance at issue in that case. In that case, Hazelton was attempting to add to sanctions already created by federal law regarding employment of illegal aliens. The ordinance was found to be preempted by federal law.

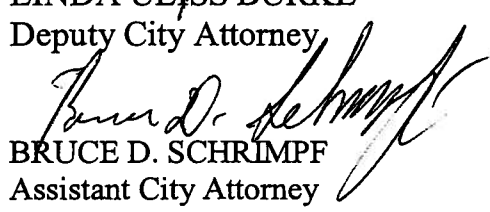
Very truly yours,



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