

Spousal Conflicts Of Interest

Conflict of interest questions are recurring issues for many school districts, and arise frequently when the spouse of a school board member or an administrator is employed by the school district. The spousal relationship presents special risks for board members and school district employees with regard to ethical and criminal liability for improper participation in district business that provides a benefit to the board member or school district employee, or to the spouse of the board member or school district employee. This Legal Comment will review the various laws and legal principles governing the conflicts of interest arising out of marriages between school district employees and school board members or administrators.¹

Spousal Conflicts of Interest

A spousal relationship between a school board member or an administrator and a school district employee could result in a conflict of interest in violation of the common law, criminal statutes, or the Wisconsin Code of Ethics because of the responsibilities of the school board member or the administrator and the benefits provided to the spouse by the school district. Each of these laws or legal principles defines and

governs conflicts of interest in a different way, and are briefly described below.

Common Law—The common law conflict of interest doctrine is premised on the public official's undivided duty to the public he or she serves and that the public official may not place himself or herself in a position that would subject the official to conflicting duties or expose him or her to the temptation of acting in any manner other than in the best interest of the public. Thus, as a general rule, a public official may not participate in decisions concerning issues in which he or she has a direct, personal, financial interest.²

Wisconsin Criminal Statutes—Wisconsin law provides that a public official or employee, acting in his or her official capacity, is guilty of criminal conduct if he or she participates in the making of a contract in which he or she has a private pecuniary interest, direct or indirect, or performs in regard to that contract some function requiring the exercise of discretion on his or her part. A public official or employee is also guilty of criminal conduct if he or she, in his or her private or personal capacity, discusses, negotiates, bids for, or enters into a contract with the school district when the public

official or employee has a direct or indirect private pecuniary interest in the contract.³ The Wisconsin Attorney General has explained that a public official or employee has a private, pecuniary interest in his or her spouse's employment.⁴ Thus, an example of a public official violating the criminal statute would be if a school board member took action related to his or her spouse's employment contract with the school district.

The statute provides for several exemptions from criminal liability, including, but not limited to, an exemption for contracts that do not involve receipts or disbursements aggregating more than \$15,000 in any year. This exemption would allow a school board member to avoid criminal liability if he or she voted to offer an employment contract to his or her spouse for a salary of \$10,000; however, this exemption pertains only to the criminal statute and does not exempt the board member from the dictates of the common law (discussed above) or the Wisconsin Code of Ethics (discussed below).

A violation of the criminal statute is a felony punishable by a fine of up to \$10,000, imprisonment for up to three years and six months, or both.⁵ This criminal statute is a strict liability statute,

which means that the county district attorney is not required to prove that the officer or employee intended to violate or knew he or she was violating the law.⁶ Further, "the contract entered into in violation of the statute is void and the ... political subdivision on whose behalf the contract was made incurs no liability thereon."⁷ This language has been interpreted as giving the governmental body the prerogative of either voiding the contract or allowing it to stand.⁸

Wisconsin Code of Ethics—
The Wisconsin Code of Ethics for local government officials also governs the conflicts of interest of school board members and school district administrators (and, in limited cases, other school district employees). Unlike the criminal statute described in the previous section, the Code of Ethics governs an individual's actions in his or her official capacity only, and not acts undertaken in the individual's private capacity. The Code of Ethics prohibits an official from:

1. Using his or her public position to obtain financial gain or anything of substantial value for the private benefit of himself or herself or the official's immediate family, or for an organization with which the official is associated.
2. Taking official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.
3. Using his or her position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for

the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.⁹

The Code of Ethics does not define "anything of substantial value," and it does not include a safe harbor like the \$15,000 threshold contained in the criminal statute. Further, the Wisconsin Ethics Board has not identified a specific monetary figure to define "anything of substantial value;" however, it has consistently interpreted the phrase "anything of substantial value" to mean anything of more than nominal, token or inconsequential value in light of the totality of the circumstances; therefore, anything worth more than several dollars may violate the law.¹⁰ Thus, while a conflict regarding a contract involving less than \$15,000 will not violate the criminal statutes, such a conflict could violate the Code of Ethics.

The Code of Ethics is enforced by county district attorneys. Unintentional violations may be penalized by civil forfeitures of up to \$1,000 per offense, and intentional violations may be penalized criminally by fines of \$100 to \$5,000, imprisonment for up to one year, or both.¹¹

Areas of Potential Conflict

With regard to the laws and legal principles discussed above, it is important to recognize that, for the purposes of a school board member's or school district employee's involvement in district business that provides a benefit to the member, employee, and/or his or her spouse, the term "participating" will be applied and

interpreted broadly, including, but not limited to, discussing, deliberating, negotiating, giving advice, offering an opinion, and, of course, voting. Areas of potential conflicts of interest resulting from a school board member or school district administrator "participating" in district business that provides a benefit to the board member, the employee, and/or his or her spouse include, but are not limited to, situations such as the following examples.¹²

Collective Bargaining Agreements—A school board member or administrator whose spouse is a teacher employed by the district may not participate in discussions, negotiations, or vote on the district's labor agreement with teachers. An individual's salary and benefits are things of substantial value and of personal benefit. As such, a school board member or administrator must not participate in discussions or decisions concerning a labor agreement that will establish the salary and benefits of his or her spouse because such action would violate not only the criminal statute if the spouse earns more than \$15,000 per year, but also the Code of Ethics and the common law conflict of interest principle, assuming the spouse is paid more than a few dollars.

A school board member or administrator, whose spouse is a teacher employed by the district, may participate in discussions, negotiations, or vote on the district's labor agreements with employees other than teachers, unless the terms of another labor agreement will serve as precedent for the terms of the teachers' labor agreement, in which case the school board member or administrator should not participate in

such negotiations, discussions, or votes on any of those labor agreements. Yet, if the effect of the other labor agreement's terms on the spouse is merely conjectural, or inconsequential, then the school board member or administrator may participate in discussions or decisions concerning that labor agreement.

A school board member, whose spouse is an administrator in the school district, may not participate in the discussions, negotiations and votes related to the labor agreements covering the teachers or other school district employees, if, by established practice or agreement, the school board provides its administrators with the same or better wages, benefits, or working conditions as the school board establishes in its labor agreement with teachers, because the board member would have a personal financial stake in the labor agreement the board member was negotiating on the school board's behalf. Additionally, an administrator, whose benefits and/or salary are tied to the benefits and/or salary provided to other school district employees, may not participate in the discussions, negotiations and votes related to the labor agreements covering those school district employees with which his or her salary and/or benefits are tied.

Health Benefits—A school board member or administrator who is covered by the district's health benefits plan through his or her spouse's employment with the school district may not participate in discussions, negotiations or votes related to labor agreements that include health benefits or participate in selecting the benefit provider or benefit plan design. Health insurance is likely some-

thing of substantial value and of substantial benefit to the insured. As such, the private interest of a school board member or administrator, who is covered by the school district's insurance directly, conflicts with the interest of the public whom the official serves.

School District Budget—A school board member whose spouse is employed by the district may not participate in discussions and vote on the district's annual budget if the school district's budget will substantially affect employees' salaries and benefits. However, if, prior to acting on a budget, the school board has already entered into a labor agreement(s) that establishes employees' salaries and benefits for the period covered by the budget, then acting on a budget that merely appropriates moneys for costs already approved is unlikely to substantially affect the school board member's financial interests. In such an instance, a school board member may vote on the budget, so long as the member does not participate in discussions or vote on amendments to the budget specifically affecting the salary, benefits or employment status of the spouse.

On the other hand, if the school board has not entered into a labor agreement(s) that establishes employees' salaries and benefits for the period covered by the budget, then acting on a budget that sets parameters for collective bargaining is likely to substantially affect the school board member's financial interests. In these instances, board members should not participate in discussions or vote on the budget.

Avoiding Conflicts of Interest

When a conflict of interest arises,

it is advisable for a school board member or administrator to remove himself or herself from any meeting wherein the school board intends to gather information, discuss, or deliberate about a contract in which he or she has a personal or private financial interest. The school board member or administrator should make sure that his or her abstention and departure are recorded in the minutes.

If the school board member or administrator remains present for the discussion and vote, he or she could communicate his or her opinion by virtue of nonverbal responses. Accordingly, the school board member or administrator could be accused of "participating" in the discussion and vote, even though he or she never said a word. Moreover, even if the school board member or administrator does not participate in the original contracting process, he or she may violate the law for taking subsequent action on the contract, such as authorizing payment under a contract or negotiating disputes over contract terms. Thus, it is advisable for the school board member or administrator to not only abstain from discussions, negotiations and votes, but also to remove himself or herself from the meeting in which such action is occurring.

That said, Wisconsin law does not allow the exclusion of a school board member from a meeting.¹³ Therefore, if a school board member with a conflict of interest refuses to abstain from discussions, negotiations and votes, and/or refuses to leave the meeting during which the board intends to discuss an issue in which the board member has a private pecuniary interest, the school board member

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should not be escorted out of the meeting. Rather, in order to protect the school board and the other board members from liability, the alleged conflict of interest should be declared, and the board member should be asked to abstain and leave the meeting. Then, if the board member refuses to leave, his or her refusal should be recorded for the minutes. This is important because when a board member has a conflict under the statute, and it can be proven in a taxpayer's suit that other board members knew of the conflict, such board members can be held accountable for funds expended illegally.

Further, when making committee assignments, it is advisable for school boards to avoid assignments that will result in frequent conflicts of interest for a school board member or school district employee. For example, an administrator should not be assigned to the committee responsible for negotiating the teacher's labor agreement, if his or her spouse is a teacher in the district.

Conclusion

Conflicts of interest questions involving a board member or administrator whose spouse is employed by the school district are

often complex and fact specific. When confronted with such questions, it is important to consider the legal and ethical issues that are implicated, as well as to review any applicable board policies, which may be even more restrictive than the statutory mandates. Further, it is important to remember that, for purposes of a school board member or employee's involvement in district business that provides a benefit to the member, employee or his or her spouse, the term "participating" will be applied and interpreted broadly. Therefore, if potential conflicts arise between the duties and responsibilities of school board members or employees and their spouses, it is advisable to consult with legal counsel.

References

* This *Legal Comment* was written by Michael J. Julka, Shana R. Lewis, and Joanne Harmon Curry of Lathrop & Clark LLP, WASB Legal Counsel.

1. For additional information regarding conflicts of interest, see the following articles in *Wisconsin School News*: "Board Member Conflicts and Incompatibility of Offices" (July 2003); "School Board Member Conflict of Interest" (May 1998); "Incompati-

bility of Offices and Positions" (May 1983); "Public Interest in Private Contracts" (October 1981).

2. *Board of Supervisors of Oconto County v. Hall*, 47 Wis. 208, 2 N.W. 291 (1879).
3. Wis. Stat. S. 946.13(1).
4. 76 Wis. Op. Att'y Gen. 15 (Feb. 25, 1987).
5. Wis. Stat. S. 939.50(3)(i).
6. *State v. Stoehr*, 134 Wis. 2d 66, 396 N.W.2d 177 (1986)
7. Wis. Stat. S. 946.13(3).
8. *Washington County v. Froehlich Mercantile Co.*, 198 Wis. 56, 223 N.W. 575 (1929).
9. Wis. Stat. S. 19.59(1)(a), (c)1, (c)2.
10. 7 Wis. Op. Eth. Bd. 14 (1983); 5 Wis. Op. Eth. Bd. 101 (1982); 4 Wis. Op. Eth. Bd. 95 (1981).
11. Wis. Stat. Ss. 19.58(1), 19.59(7).
12. This *Legal Comment* focuses on conflicts of interest arising out of employment contracts with the spouse of a board member or school district administrator; however, conflicts of interests involving the spouse of a board member or school district administrator could also arise in other circumstances, such as the school board entering into a contract with a business owned by the spouse of a board member or school district administrator.
13. Wis. Stat. S. 19.89.

Wisconsin Ethics Board

For county, city, village, town, school district and other local officials

Local officials' receipt of food, drink, favors, services, etc.

Wisconsin law forbids a public official to use free or discounted transportation, traveling accommodation, or communication services for which the supplier would usually charge [§946.11, Wisconsin Statutes; Art. 13, §11, Wisconsin Constitution],¹ otherwise—

Consistent with the statutes administered by the Ethics Board, **local public officials² may accept and retain:**

a. ITEMS AND SERVICES UNRELATED TO PUBLIC POSITION.

Food, drink, transportation, lodging, items, and services which are offered for a reason unrelated to the recipient's holding a public position [§ 19.59(1)(a)] and which could not reasonably be expected to influence an official's vote, official actions or judgment, nor reasonably be considered a reward for any official action or inaction;

b. EXPENSES PROVIDED BY OR FOR THE BENEFIT OF THE LOCAL GOVERNMENTAL UNIT.

Food, drink, transportation, lodging, or payment or reimbursement of costs that are provided by or for the benefit of the local governmental unit, not for a private benefit; and

c. ITEMS OF INSUBSTANTIAL VALUE.

Mere tokens and items or services of only nominal, insignificant, or trivial value.

See other side 

¹ Consult local ordinances and other state law not administered by the Ethics Board for any additional restrictions.

² "Local public officials" include: (a) elected officers of political subdivisions and special purpose districts of the state; (b) county administrators or administrative coordinators; (c) city or village managers; (d) individuals appointed to a position in a political subdivision or special purpose district for a specified term; and (e) individuals appointed to a position by the governing body, executive, or administrative head of a political subdivision or special purpose district and serving at the pleasure of the appointing authority.

This is a guide. For authoritative information consult Wisconsin Statutes.

Specific questions may be directed to your local governmental attorney or local ethic board.

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Wisconsin Ethics Board

For county, city, village, town, school district and other local officials

Restraints on local officials' receipt of food, drink, favors, services, etc.

STATUTORY RESTRAINTS

Except as noted on the other side of the page, ***local public officials should not accept:***

1. ITEMS OR SERVICES OFFERED BECAUSE OF PUBLIC POSITION.

Any item or service, including food, drink, and travel, of more than nominal value offered because of the person's holding a public office [§ 19.59(1)(a)];

2. ITEMS THAT COULD INFLUENCE JUDGMENT.

Any item or service that could reasonably be expected to influence an official's vote, official actions or judgment [§19.59(1)(b)];

3. REWARDS FOR OFFICIAL ACTION.

Any item or service that could reasonably be considered a reward for any official action or inaction [§19.59(1)(b)]; and

4. TRANSPORTATION OR TRAVELING ACCOMMODATIONS.

Discounted transportation, traveling accommodations, or communication services for which the supplier would usually charge [§946.11; Art. 13, §11].

To analyze a situation in which you are offered items or services, ask yourself these questions:

1. With respect to the item or service offered:

a. Is it being offered because of my public position?

b. Is it of more than nominal or insignificant value?

c. Is it primarily for my personal benefit rather than for the benefit of my local unit of government?

If you answer "**yes**" to all three questions, you may not accept the item or service.

2. Would it be reasonable for someone to believe that the item or service is likely to influence my judgment or actions or that it is a reward for past action?

If you answer "**yes**," you may not accept the item or service.

If you have any doubts about a situation, seek advice from your local governmental attorney.

See other side 

by Lathrop & Clark LLP

Board Member Conflicts and Incompatibility of Offices

It is common for those who are actively involved in schools to seek election to school boards. A local businessperson who deals with the school on a regular basis, a coach, a teacher, a volunteer or a parent (or the spouses of any of these persons) may develop special insights into the operations and functioning of local schools that would enhance a person's interest in becoming a school board member. However, legal issues may arise when an individual wishes to maintain his or her relationships with a school district while seeking to serve on the school board or when a board member wishes to enter into new relationships with a school district.

Depending upon the nature of a school board member's present or prospective school relationships, a school board member may violate the common law conflict of interest doctrine or the common law doctrine of incompatibility of offices or positions.

This Legal Comment discusses these two legal doctrines with several examples designed to illustrate the application of the doctrines to school board members in a variety of situations.¹ It does not address the civil and criminal statutes that prohibit board member conflicts of interests and have been addressed in prior Legal Comments.²

The Doctrine of Conflict of Interest

The conflict of interest doctrine

developed through the common law is premised on the idea that a public officer, such as a school board member, owes an undivided duty to the public he or she serves. As such, a public officer is not permitted to place himself or herself in a position that will subject him or her to conflicting duties or expose himself or herself to the temptation to act in any manner other than in the best interest of the public. The conflict of interest doctrine requires public officers to "be absolutely free from any influence other than that which grows out of the obligations that he owes to the public at large."³

A school board member's violation of the conflict of interest doctrine could result in the invalidation of a contested vote by an individual, or the voiding of any agreement voted on by the board.⁴ Board members may find that their other relationships to the school districts they serve give rise to conflicts of interests.

Incompatibility of Offices or Positions

A board member may also be prohibited by law from continuing his or her existing relationship with a school district by the doctrine of incompatibility of offices or positions. The doctrine of incompatibility is a common law doctrine that is an aspect of, but distinct from, the common law conflict of interest doctrine. Incompatibility of offices or positions requires the involvement of

two governmental offices or positions. The doctrine of incompatibility bars a person from holding two offices where (a) one office is superior to another such that the duties exercised under each might conflict with the other; or (b) where the nature and duties of two offices are such that public policy considerations bar one person from discharging the duties of both.⁵

Stated simply, the doctrine of incompatibility is designed to preclude the possibility of conflicts or inconsistency in carrying out the functions of two offices. Generally speaking, it is well recognized that where one office is subordinate to another, they will frequently be incompatible. For example, the attorney general of Wisconsin has opined that the office of town board supervisor and commissioner of a sanitary district are incompatible where the town is served by the sanitary district and the town board has the authority to appoint commissioners of the sanitary district.⁶

However, even where one office is not subordinate to the other, the offices may still be incompatible if the two offices impose conflicting duties upon the holder or there are substantial or many conflicts of interests between the two offices.⁷ The consequence for violating the doctrine of incompatibility of offices is severe—by accepting a second office that is incompatible with a person's first office, the person loses his or her first office.

The doctrine of incompatibility

also prohibits a person from holding a public office and an incompatible position of public employment. For example, a city alderman cannot hold a public office while also remaining employed as a residential appraiser for the same city because the alderman, as a member of the common council, has the power to vote on the approval of the appraiser's employment contract.⁸ However, in contrast to the general rule that incompatibility of offices causes the automatic loss of the first office, a person who holds a public office and an incompatible position of public employment may generally choose whether to surrender the office or the position.

Examples

The following examples illustrate the application of the doctrines of conflict of interest and incompatibility of offices or positions. Because these are general illustrations, the reader is reminded that the facts of any individual case may alter the analysis and outcome, which may require the assistance of legal counsel regarding any specific situation.

1. *Teacher and School Board*

Member: The attorney general has opined that the position of teacher and the office of school board member are incompatible.⁹ The office of school board member is superior to the position of teacher because board members have the collective authority to hire, discharge and negotiate the wages, hours and conditions of employment for teachers. Teachers who are elected to a school board will be required to relinquish their employment or decline to take office.

2. *Substitute Teacher, Part-Time*

Teacher or Coach and School

Board Member: This analysis is similar to that of a teacher and school board member; that is, the employment positions and the office of school board member are incompatible. It is understandable that some might view substitute teachers, part-time teachers or coaches differently from full-time employees, arguing that the doctrine of incompatibility should not bar board members from being employed by the school district they serve in these more time-limited positions. However, the attorney general has stated that it is "general public policy that public officials have a complete personal disinterest in public contracts" and that "the appearance of malfeasance" presented by a board member acting as a substitute teacher is, "in itself, reason for determining that it is not sound policy for a school district to employ one of its board members in any capacity."¹⁰

3. *Teacher and Board Member (Spouse)/District Administrator (Spouse):*

Wisconsin jurisprudence has not extended the doctrine of incompatibility to situations in which a board member's or administrator's spouse holds a position of public employment in the same school district as the board member. Such an extension seems unlikely because the doctrine of incompatibility generally applies to one person who attempts to hold two different offices or positions. However, the conflict of interest doctrine would require the board member or administrator to abstain from discussion or voting on various topics,

including matters affecting his or her spouse's employment. Criminal and civil statutes may also be directly implicated by such relationships.

4. *Sports Official and Board*

Member: It is currently unclear whether the doctrine of incompatibility applies to a sports official employed by the district in which he or she is a school board member. The analysis may depend on whether the sports official is considered an employee of the school district. The law is ambiguous and unsettled with this regard. Although the Internal Revenue Service (IRS) may consider a school sports official an independent contractor, sports officials have been considered employees for the purpose of unemployment compensation. Caution is recommended, and the concerned board member should avoid such incompatibility by declining to officiate events for the district that he or she serves. The doctrine of incompatibility would not apply, however, to board members officiating at sports events for other school districts.

5. *City Council, Town Board, or County Supervisor and Board*

Member: The attorney general of Wisconsin has opined that the doctrine of incompatibility likely does not bar one person from holding the offices of city council member and board member.¹¹ The attorney general also noted that, although there is a potential for conflicts of interests, generally, the potential for conflicts is not substantial enough nor probable enough to warrant the imposition of the doctrine of incompatibility. The board member should be cog-

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nizant of conflicts of interests and abstain from discussing matters or voting when appropriate. It is likely that the offices of town board member and county supervisor are also compatible with the office of school board member. However, a detailed evaluation of the duties of any public position, the statutory authority governing the duties and the relationships between any two local governmental units should be undertaken to ensure that the doctrine of incompatibility does not apply.

6. *K-8 School Board Member and Union High School Board Member*: It is not clear whether the doctrine of incompatibility would bar a person from holding the offices of school board member of a K-8 school and a union high school, but they are probably compatible. As is the case with membership on a school board and other municipal boards, determining whether the doctrine of incompatibility bars the holding of two offices will turn on an analysis of the duties of the positions and whether there are substantial conflicts in exercising the respective duties. One potential concern is the issue of transportation services, where the duties of the union high school to provide transportation may be affected by the K-8 school board's decision to operate its own transportation system.¹² However, this may be insufficient to support a finding of incompatibility of offices. In those limited circumstances that might arise in which the board member identifies a conflict of interest between the two positions, he or she should consider

abstaining from participation in the decision-making.

7. *Volunteer Lunch Room Monitor and Board Member*: An analysis of the application of the doctrine of incompatibility to volunteers in the school and board membership requires knowledge of the nature and duties of a particular volunteer in order to compare them to a board member's duties. In certain situations, a volunteer may have a subordinate position to the board member that would create an incompatibility of office and position. However, in the example of the volunteer lunchroom monitor, the conflicts of interests are likely to be minimal or infrequent such that the office and position are compatible. As with other offices and positions determined to be compatible, board members who volunteer must remain aware of potential conflicts of interests that may arise in the course of fulfilling the respective duties.

Summary

Board members should be aware of legal issues arising out of their other relationships with the districts they serve and evaluate the nature of the relationships—seeking legal advice to determine whether the doctrine of incompatibility requires the board member to discontinue his or her office or position. Additionally, board members who choose to continue or pursue other relationships with the districts they serve should be aware not only of conflicts of interests, but also that criminal and civil statutes, other ethical rules, and board policies may govern a board member's conduct, with the potential for criminal lia-

bility. Finally, it is advisable to make other district officials and employees aware of these potentially troublesome legal issues. ■

References

* This Legal Comment was written by Michael J. Julka and Mark A. Herman of Lathrop & Clark LLP, WASB Legal Counsel.

1. For additional information regarding this topic, see the following articles in *Wisconsin School News*, "School Board Member Conflict of Interest" (May 1998); and "Incompatibility of Offices and Positions" (May 1983).
2. For additional information regarding this related topic, see the following articles in *Wisconsin School News*, "School Board Member Conflict of Interest" (May 1998); "Recurring Questions Concerning Criminal Conflicts of Interest" (Oct. 1981); and the WASB Legal Note, "The New Code of Ethics for Public Officials and Employees" (Oct.-Dec. 1991).
3. *Heffernen v. Green Bay*, 266 Wis. 534, 541, 64 N.W.2d 216 (1954).
4. *Pickett v. School Dist. No. 1*, 25 Wis. 551 (1870).
5. *Otradovec v. City of Green Bay*, 118 Wis. 2d 393, 396, 347 N.W.2d 614 (Ct. App. 1984).
6. 69 Op. Att'y Gen. 108 (1980).
7. 74 Op. Att'y Gen. at 52; see also *Otradovec*, 118 Wis. 2d at 397.
8. *Otradovec*, 118 Wis. 2d at 396-97.
9. 67 Op. Att'y Gen. 177 (1978).
10. Office of the Attorney General, Informal Opinion to John J. Hogan (May 9, 1986).
11. 74 Op. Att'y Gen. 50 (1985).
12. Wis. Stat. § 121.54(2).