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April 2, 2008

Mr. J.B. Van Hollen  
Wisconsin Attorney General  
Wisconsin Department of Justice  
P.O. Box 7857  
Madison, WI 53707-7857

Re: Request for formal opinion

Dear Mr. Van Hollen:

I am the county corporation counsel for Portage County. I am requesting that your office review the issue presented and issue a legal opinion on a matter of statewide importance.

#### Facts

Portage County enacted the county executive position in 2005. Portage County has a single Health Department which is not joined with another county or city health department. The Health Department itself is co-located and combined as the Portage County Department of Health and Human Services, with legislative oversight by the Health and Human Services Board. Prior to the election of the County Executive, the Portage County Health officer was supervised in all aspects by the Director of Health and Human Services. The practice continued after the election, with the exception that the Director of Health and Human Services is supervised by the Portage County Executive.

#### The Law

Wisconsin law, s. 251.06 (4)(b), Wis., Stats., mandates that "[i]n any county with a county executive that has a single health department, the county executive shall appoint and supervise the county health officer...The county health officer appointed under this paragraph is subject *only* to the supervision of the county executive."(emphasis added).

Portage County Code of Ordinances, section 3.11.1.2 provides the following definitions: Department - A division of the services provided by Portage County headed by

management personnel who report directly to the County Executive. This does not include smaller organizational and management units established within a Department.

Department Head - Includes all elected officials, program directors, and administrators who supervise and implement their respective programs with direct supervision (for appointed officials) and oversight review (for elected officials) by the County Executive.

#### Issue

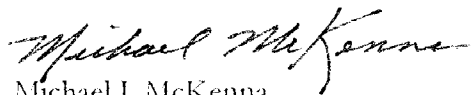
Because the law under s. 251.06 (4)(b), Wis. Stats., mandates that the county health officer is subject only to the supervision of the County Executive, the issue is whether that statute mandates the creation of a separate department with department head status for the Public Health officer in Portage County.

There is no case law or legal analysis directly on point. As a matter of general black letter law, the County Executive may delegate some functions and responsibilities. The complexity of administering executive branch agencies necessitates delegation of functions and authority within the agency; this delegation has become a common feature in modern government. 2 Am.Jur.2d, Administrative Law, § 221.

I have opined that the law mandates the creation of a separate department, based on the above statute that "only" the County Executive can supervise the Public Health officer. The plain reading of the statute does not seem to allow or permit delegation of the County Executive's supervisory duties in this regard. With Public Health as a separate department, its department head would have full responsibilities for managing the department, including the preparation and submission of its budget, which would be directly supervised by the County Executive.

Thank you for your attention to this important issue.

Sincerely,



Michael J. McKenna  
Corporation Counsel

cc: Mark Maslowski, Portage County Executive  
O. Philip Idsvog, County Board Chair  
Ray Przybelski, Director, Health and Human Services Dept.  
Faye Tetzlaff, Public Health Officer, Division of Health Services  
Members, Space and Properties Committee  
Laura Belanger Tess, Human Resources Director  
Jeanne Dodge, Chair, Health and Human Services Board