

Russ Decker
State Senator

December 17, 2008

Attorney General J.B. Van Hollen
State Capitol, Room 114 East
Madison, Wisconsin

Dear Attorney General Van Hollen,

DEPT. JUSTICE--
17 DEC 08 10:01
The Committee on Senate Organization is writing to request that the Department of Justice review the attached communication that the Committee has received. Specifically, we are asking for clarification on two issues that have arisen from this letter: the applicability of the prevailing wage law and the applicability of statutory competitive bidding requirements to intergovernmental, public works or public construction contracts.

We appreciate your consideration of this matter at your earliest convenience.

Sincerely,

Senator Russ Decker
Chair, Committee on Senate Organization



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December 8, 2008



Senate Majority Leader Russ Decker
Senate Organization Committee
PO Box 7882
Madison, WI 53707

Re: Request for Opinion

Dear Senator Decker and Committee Members:

As Executive Director of Construction Business Group (“CBG”), I request that, pursuant to Section 165.015(1), *Wis. Stats.*, the Committee on Senate Organization seek a formal Attorney General’s opinion on the applicability of Wisconsin’s competitive bidding and prevailing wage statutes to intergovernmental contracts. *See Wis. Stat. §§ 62.15, 61.55, 59.52, 66.0901 and 66.0903.* CBG is a joint labor-management industry trust fund established in 1992 by the Operating Engineers Local 139 and its signatory contractors represented by Associated General Contractors of Wisconsin, Wisconsin Transportation Employers Council/Wisconsin Transportations Builders Association, and Wisconsin Underground Contractors Association. CBG has numerous purposes including, without limitation, addressing issues of mutual concern related to the preservation of work opportunities for our labor and management members throughout Wisconsin.

Specifically, we raise the following questions:

1. Under what circumstances are intergovernmental contracts for “public works” or “public construction” authorized by Sections 66.0301 or 83.035, *Wis. Stats.*, subject to:
 - A. the competitive bidding requirements of Sections 62.15, 61.55, 59.52(29)(a), and 66.0901, *Wis. Stats.*; and/or
 - B. the prevailing wage requirements of Section 66.0903, *Wis. Stats.*

A discussion of these issues appears below. For your consideration, I have summarized the authority on each question presented, along with CBG’s interpretation as to the outcome.¹

¹ All further references to statutes are to the *Wisconsin Statutes* (updated through June 30, 2008) unless otherwise noted.

Question 1.A.

Question Presented

Under what circumstances are intergovernmental contracts for “public works” or “public construction” authorized by Section 66.0301 or 83.035, *Wis. Stats.*, subject to the competitive bidding requirements of Sections 62.15, 61.55, 59.52(29)(a) and 66.0901, *Wis. Stats.*?

Relevant Statutes

Section 66.0301(2), *Wis. Stats.*, enabling intergovernmental cooperation, provides:

In addition to the provisions of any other statutes specifically authorizing cooperation between municipalities, unless those statutes specifically exclude action under this section, any municipality may contract with other municipalities and with federally recognized Indian tribes and bands in this state, for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law. If municipal or tribal parties to a contract have varying powers or duties under the law, each may act under the contract to the extent of its lawful powers and duties. A contract under this subsection may bind the contracting parties for the length of time specified in the contract. This section shall be interpreted liberally in favor of cooperative action between municipalities and between municipalities and Indian tribes and bands in this state.

Section 83.035, *Wis. Stats.*, enabling county construction of municipal streets and highways, provides:

Any county board may provide by ordinance that the county may, through its highway committee or other designated county official or officials, enter into contracts with cities, villages and towns within the county borders to enable the county to construct and maintain streets and highways in such municipalities.

Section 62.15 (1), *Wis. Stats.*, pertaining to cities, provides:

CONTRACTS: HOW LET; EXCEPTION FOR DONATED MATERIALS AND LABOR. All public construction, the estimated cost of which exceeds \$25,000, shall be let by contract to the lowest responsible bidder; all other public construction shall be let as the council may direct. If the estimated cost of any public construction exceeds \$5,000 but is not greater than \$25,000, the board of public works shall give a class 1 notice, under ch. 985, of the proposed construction before the contract for the construction is executed. This provision does not apply to public construction if the materials for such a project are donated or if the labor for such a project is provided by volunteers. The council may also by a vote of three-fourths of all the members-elect provide by ordinance

that any class of public construction or any part thereof may be done directly by the city without submitting the same for bids.

Section 61.55, *Wis. Stats.*, pertaining to villages, provides:

All contracts for public construction, in any such village, exceeding \$25,000, shall be let by the village board to the lowest responsible bidder in accordance with s. 66.0901 insofar as said section may be applicable. If the estimated cost of any public construction exceeds \$5,000, but is not greater than \$25,000, the village board shall give a class 1 notice, under ch. 985, of the proposed construction before the contract for construction is executed. This provision does not apply to public construction if the materials for such a project are donated or if the labor for such a project is provided by volunteers, and this provision and s. 281.41 are not mandatory for the repair and reconstruction of public facilities when damage or threatened damage thereto creates an emergency, as determined by resolution of the village board, in which the public health or welfare of the village is endangered. Whenever the village board by majority vote at a regular or special meeting declares that an emergency no longer exists, this exemption no longer applies.

Section 59.52(29)(a), *Wis. Stats.*, pertaining to counties, provides:

All public work, including any contract for the construction, repair, remodeling or improvement of any public work, building, or furnishing of supplies or material of any kind where the estimated cost of such work will exceed \$25,000 shall be let by contract to the lowest responsible bidder. Any public work, the estimated cost of which does not exceed \$25,000, shall be let as the board may direct. If the estimated cost of any public work is between \$5,000 and \$25,000, the board shall give a class 1 notice under ch. 985 before it contracts for the work or shall contract with a person qualified as a bidder under s. 66.0901 (2). A contract, the estimated cost of which exceeds \$25,000, shall be let and entered into under s. 66.0901, except that the board may by a three-fourths vote of all the members entitled to a seat provide that any class of public work or any part thereof may be done directly by the county without submitting the same for bids. This subsection does not apply to public construction if the materials for such a project are donated or if the labor for such a project is provided by volunteers. This subsection does not apply to highway contracts which the county highway committee or the county highway commissioner is authorized by law to let or make.

Section 66.0901, *Wis. Stats.*, pertaining to municipal public works, addresses certain procedural requirements applicable to public works contracts and bids.

Discussion

Wisconsin has two enabling statutes that allow governmental units to contract with one another. As discussed below, under current law, the intergovernmental contracts authorized by these statutes are not exempt from the competitive bidding requirements of Sections 62.15, 61.55, 59.52(29)(a), and 66.0901, *Wis. Stats.*, by virtue of the enabling statutes.

The two enabling statutes are housed in Sections 66.0301 and 83.035, *Wis. Stats.* The first of these statutes concerns intergovernmental cooperation. This general statute “empowers municipalities ... to enter into contracts for the receipt or furnishing of services required or authorized by law” and is entitled to liberal construction in favor of cooperative action between municipalities. *Tanck v. Dane County Reg'l Planning Comm'n*, 81 Wis. 2d 76, 86, 260 N.W.2d 18, 24 (1977); Wis. Stat. § 66.0301(2). However, if the municipal parties to a contract have varying powers or duties under the law, each may act only to the extent of its lawful powers and duties. Wis. Stat. § 66.0301(2). The second, narrower enabling statute is found at Section 83.035, *Wis. Stat.*, concerning street and highway construction. This statute authorizes a county to enter into contracts with cities, towns, and villages within its boundaries to enable the county to construct and maintain the streets and highways within such municipalities. The terms governing such work, including compensation, are a matter of contract between the two governmental units. 36 Op. Att’y Gen. 69, 70 (1947).

The question presented here is: under what circumstances are intergovernmental contracts for “public works” or “public construction” enabled by these statutes subject to the competitive bidding requirements of Sections 62.15, 61.55, 59.52 (29)(a), and 66.0901, *Wis. Stats.*? Intergovernmental construction contracts enabled by Section 83.035, *Wis. Stats.*, by definition, are contracts for public construction. However, that may not always be the case under the broader Section 66.0301, *Wis. Stats.* Thus, the question presented applies to all contracts enabled by Section 83.035, *Wis. Stats.*, as well as those contracts enabled by Section 66.0301, *Wis. Stats.*, for “public works” or “public construction.”

Municipalities (including counties) cannot exempt themselves from the competitive bidding requirements simply by invoking an enabling statute described above. Wisconsin’s competitive bidding laws impose a duty upon municipalities. Competitive bidding laws were enacted to “prevent fraud, collusion, favoritism and improvidence in the administration of public business, as well as to insure that the public receives the best work or supplies at the most reasonable price practicable.” *Aqua-Tech, Inc. v. Como Lake Prot. & Rehab. Dist.*, 71 Wis. 2d 541, 550, 239 N.W.2d 25, 30 (1976). Under Section 66.0301, *Wis. Stats.*, each contracting party may act only to the extent of its lawful powers and duties. Although this statute is to be liberally construed, it cannot be so construed as to contradict its plain terms. See *State v. Martin*, 162 Wis. 2d 883, 893-94, 470 N.W.2d 900, 904 (1991). Thus, it appears that Section 66.0301, *Wis. Stats.*, does not exempt municipalities that procure construction services from fulfilling their duties

under the competitive bidding laws.² See *Adams v. City of Beloit*, 105 Wis. 363, 370, 81 N.W. 869 (1900) (a unit of government cannot contract out its duties); *Probst v. City of Menasha*, 245 Wis. 90, 94, 13 N.W.2d 504 (1944) (a municipality “cannot become liable on a contract except in some manner authorized by law”); *State v. Stenklyft*, 281 Wis. 2d 484, 697 N.W.2d 769 (2005) (the word “shall” in a statute, as found in Section 62.15(1), 61.55 and 59.52(29)(a), *Wis. Stats.*, is presumed to be mandatory). For some of the same reasons, it does not appear that a municipality may avoid its duty under the competitive bidding laws by contracting with the county for street construction under Section 83.035, *Wis. Stats.* See *Adams*, 105 Wis. at 370. This is the only interpretation that harmonizes the enabling statutes with the competitive bidding statutes. *Estate of Gonwa v. D.H.F.S.*, 2003 WI App 152, ¶30, 265 Wis.2d 913, 668 N.W.2d 122. (“When construing multiple statutes, we seek to harmonize them. It is a cardinal rule of statutory construction that conflicts between statutes are not favored and will be held not to exist if the statutes may otherwise be reasonably construed.” (Citations and internal quotations omitted)). Furthermore, the enabling statutes are general statutes and the competitive bidding statutes are specific statutes. To the extent there is any conflict between the statutes, the more specific competitive bidding statutes must control. *Notz v. Everett Smith Group, Ltd.*, 2008 WI App 84, ¶ 25, --- Wis. 2d ---, 754 N.W.2d 235 (“It is a canon of statutory construction that a specific statute controls a general statute.”)

This conclusion was reached by the Attorney General in 38 Op. Att’y Gen. 175 (1949). In that opinion, the Attorney General determined that a county could perform road work “as a contractor for the city” under Section 59.08(35) [now 83.035], but that “the city cannot enter into the contract, the estimated cost of the work being in excess of \$500 [now \$25,000], except by compliance with sec. 62.15.”³ 38 Op. Att’y Gen. at 177. The Attorney General’s Opinion noted that, even though competitive bidding requirements must be complied with in intergovernmental contracts: “As a practical matter, there is little likelihood that the county would engage in competitive bidding with private contractors under sec. 62.15, **assuming that it may do so**.... We know of no instance where this has ever been done....” 38 Op. Att’y Gen. at 177 (emphasis added).

² Section 66.0131(2), *Wis. Stats.*, does not alter this conclusion. Section 66.0131(2), *Wis. Stats.*, provides: “Notwithstanding any statute requiring bids for public purchases, any local governmental unit may make purchases from another unit of government, including the state or federal government, without the intervention of bids.” Section 66.0131(2), formerly Section 66.299, *Wis. Stats.*, was enacted by Laws of 1945, c. 108. Senate Bill 48 was originally introduced as follows:

Notwithstanding any statute requiring bids for public purchases **or for the performance of public work**, any city, village, town, county or other local unit of government may make purchases from, **or have work, services, or facilities performed or provided by**, another unit of government, including the state or federal government, without the intervention of bids. (Emphasis added.)

However, Substitute Amendment 1 to S.B. 48 removed the “or for the performance of public work” and “or have work, serve or facilities performed or provided by” language, evidencing the Legislature’s intent that the exemption from competitive bidding may only be applied to commodities and not to public works.

³ Notably, the Attorney General reached this conclusion despite the enactment of Section 66.299, *Wis. Stats.* (now Section 66.0131, *Wis. Stats.*) in 1945. See n.2, *supra*.

While the legal conclusions of 38 Op. Att’y Gen. 175 continue to apply, things have changed since 1949. Specifically, counties now attempt to participate in competitive bidding, a development specifically not anticipated in 38 Op. Att’y Gen. 175. This raises the threshold question, left unanswered in 38 Op. Att’y Gen. 175, of whether counties have the authority to submit competitive bids for other municipalities’ public works projects. “A county is a creature of the legislature and as such, it has only those powers that the legislature by statute provided.” *Jackson County v. State Dep’t of Natural Res.*, 2006 WI 96, ¶ 16, 293 Wis. 2d 497, 717 N.W.2d 713. Unlike home rule power of cities, “the authority of county boards is limited.” *Id.* (citation and internal quotations omitted). Therefore, the counties’ authority to compete with private enterprises for public works “must be found in a statute or necessarily be implied from a statute.” *Id.* at ¶ 17. We have been unable to locate any statutory authority authorizing counties to engage in competitive bidding.

However, even if Sections 66.0301 and 85.035, *Wis. Stats.*, could be interpreted as authorizing, by implication, counties to engage in competitive bidding, counties’ current participation in competitive bidding is highly problematic. Counties often participate by submitting an “estimate” for the work which does not meet all of the statutory bid requirements. *See* Wis. Stat. §§ 61.56, 61.0907, 62.15(3), and 779.14(1m)(d). We understand that counties are awarded contracts based on such estimates, but that the actual total cost of the work charged months later to the municipality often exceeds the estimate and exceeds the low bid from the private contractor. This allows counties to take work from private contractors who are in fact the true lowest responsible bidders in violation of statutory bid requirements.⁴ If counties have the authority to submit bids like a private contractor, counties should be obligated to comply with bid requirements just like a private contractor for their bids to be validly considered by the municipality that requested bids.⁵

The so-called “three-fourths” provision of the competitive bidding statutes does not alter the conclusion that intergovernmental contracts authorized by Sections 66.0301 and 83.05, *Wis. Stats.*, must comply with the competitive bidding statutes. Section 62.15(1),

⁴ A conclusion that counties are not authorized to engage in competitive bidding would not render Sections 66.0301 or 83.035, *Wis. Stats.*, superfluous. In addition to counties furnishing non-construction services, performing construction work that falls under the \$25,000 bid law threshold, and the exception found in Section 60.47(4), *Wis. Stats.*, there are circumstances under which a municipality requests bids and it does not receive any bids meeting the bid requirements. In such circumstances, contracting with another municipality pursuant to Sections, 66.0301 or 83.035, *Wis. Stats.*, would appear to be appropriate. *See, e.g.,* Wis. Stat. § 86.31(2)(b).

⁵ Compliance with bid requirements raises the possibility that a county could do work on a project where the actual cost exceeds the county’s bid. The county, just like a private contractor, would be obligated to incur the difference between the bid amount and the actual cost of the work. In other words, the taxpayers of the county could be charged with the losses the county incurred while engaging in essentially a private for-profit enterprise on a public works project that does not benefit them. “[E]xpenditure of public funds for a private purpose is unconstitutional.” *Heimerl v. Ozaukee County*, 256 Wis. 151, 155, 40 N.W.2d 564 (1949). This possible result underscores why Sections 66.0301 and 83.035, *Wis. Stats.*, should not be interpreted as authorizing by implication counties to engage in competitive bidding.

Wis. Stats., provides: “The council may also by a vote of three-fourths of all the members-elect provide by ordinance that any class of public construction or any part thereof may be done **directly by the city** without submitting the same for bids.” *See also* Wis. Stat. §§ 61.54(1) and 59.52(29)(a) for the village and county statutory equivalents. As the League of Wisconsin Municipalities has advised its members for over 25 years, the competitive bidding requirements cannot be skirted by municipalities contracting with third parties for public works or construction under the guise of performing the work “directly”:

...[I]t has been the position of this office that the authority of the council under s. 62.15(1) to adopt an ordinance by three-fourths vote of all members providing that any class of public construction or any part thereof be done directly by the city without submitting the same for bids is intended to allow the city to undertake any class of public construction utilizing its own employees and not to permit the city to completely ignore the bidding requirements of the statute.... This interpretation is based, in part, upon the language of s. 62.15(14) which requires the board of public works to keep an accurate account of and report to the council the cost of public work done directly by the city in accordance with such an ordinance “including the necessary overhead expense.” It seems unlikely that the board would have access to overhead expense information if the work were done under a negotiated contract.

Another reason for our conclusion that the second sentence of s. 62.15(1) does not permit the city to completely ignore the bid laws is the fact that such an interpretation appears to fly in the face of the clear statutory language of s. 62.15(1) which states that the council may provide “that any class of public construction or any part thereof may be done directly by the city . . .” If the city after enacting such an ordinance merely turns around and negotiates such class of public construction rather than submitting it for bids, it can hardly claim to have done the work directly.

League of Wisconsin Municipalities, Contracts #323 Opinion Letter dated June 23, 1976 (attached hereto).

When a municipality performs work itself, there is less need to protect against “fraud, collusion, favoritism and improvidence.” *Aqua-Tech, Inc.*, 71 Wis. 2d at 550. When the municipality does not perform the work directly, the legislature has enacted competitive bidding requirements to ensure that such protections are in place. Under a different reading of Section 62.15(1), *Wis. Stats.*, a city would be allowed to circumvent the competitive bidding statutes and the tenets of open government by merely voting to carry

out the work “directly” and thereafter operating outside the purview of the competitive bidding requirements by “subcontracting” with a county or, for that matter, a friendly private contractor who has the right political connections.⁶

Finally, the statutes prescribe specific circumstances under which the competitive bidding requirements are not to be applied. These include minimum cost thresholds, exceptions for donated materials and labor, and an exception for emergency repair and reconstruction. *See* Wis. Stat. §§ 62.15(1), 62.15(1b), 59.52(29)(a), 59.52(29)(b), and 61.55. A notable exception relates to other governmental units performing work for towns. Like other municipalities, towns are generally required to follow competitive bidding requirements. *See* Wis. Stat. § 60.47. However, under Section 60.47(4), *Wis. Stats.*, the competitive bidding duty imposed on towns does not apply to public contracts with other governmental units. This contracting would again be the very type authorized by Section 66.0301 and 83.035, *Wis. Stats.* When the legislature intends to exempt municipalities from competitive requirements, it does so with precise statutory language. No such language is found in the statutes regarding cities, villages and counties, providing further evidence that competitive bidding is intended to apply in those contexts. *See State v. Welkos*, 14 Wis. 2d 186, 192, 109 N.W.2d 889 (1961) (“[w]here a statute with respect to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant in showing that a different intention existed”).⁷

For the reasons set forth above, the following conclusions may be drawn:

- Intergovernmental contracts for *city* “public works” or “public construction” authorized by Sections 66.0301 or 83.035, *Wis. Stats.*, must comply with the competitive bidding requirements of Sections 62.15 and 66.0901, *Wis. Stats.*, when the estimated cost for the public improvements or facilities exceeds the threshold amount specified in Section 62.15(1), *Wis. Stats.*, the materials for the project are not donated nor the labor provided by volunteers, the project is not for emergency repair or reconstruction, and the exception set forth at Section 86.25(4), *Wis. Stats.*, does not apply; and
- Intergovernmental contracts for *village* “public works” or “public construction” authorized by Sections 66.0301 or 83.035, *Wis. Stats.*, must comply with the

⁶ This idea was contemplated by the Attorney General in 38 Op. Att’y Gen. 175 as part of a hypothetical discussion. It was suggested that the county could work as a subcontractor for a city on any street or highway construction project which the city itself might undertake. *Id.* However, the opinion fails to place the appropriate emphasis on the word “directly,” particularly in light of the purpose of the competitive bidding statutes. *See Cuellar v. Ford Motor Co.*, 2006 WI App 210, ¶ 11, 296 Wis. 2d 545, 723 N.W.2d 747, *rev. denied*, 2007 WI 59, 299 Wis. 2d 326, 731 N.W.2d 636 (“In analyzing the statute, we apply rules of statutory construction. Our analysis begins with an examination of the plain language of the statute, with the goal to give effect to the legislature’s intent. If the plain language is unambiguous, we apply the ordinary meaning of the statutory language to the facts before us.” (Citation Omitted.)).

⁷ The statutes also provide an exception for municipal contributions to highway or bridge construction projects benefiting from state or federal aid. *See* Wis. Stat. § 86.25(4).

competitive bidding requirements of Sections 61.55 and 66.0901, *Wis. Stats.*, when the estimated cost for the public improvements or facilities exceed the threshold amount specified in Section 61.55, *Wis. Stats.*, the materials for the project were not donated nor the labor provided by volunteers, the project is not for emergency repair or reconstruction, and the exception set forth at Section 86.25(4), *Wis. Stats.*, does not apply.

- Intergovernmental contracts for *county* “public works” or “public construction” authorized by Sections 66.0301 or 83.035, *Wis. Stats.*, must comply with the competitive bidding requirements of Section 59.52 (29)(a), *Wis. Stats.*, when the estimated cost for the public improvements or facilities exceed the threshold amount specified in Section 59.52(a), *Wis. Stats.*, the materials for the project were not donated nor the labor provided by volunteers, and it is not a contract which the county highway committee or commissioner is authorized by law to let or make.

Question 1.B.

Question Presented

Under what circumstances are intergovernmental contracts for “public works” or “public construction” authorized by Section 66.0301 or 83.035, *Wis. Stats.*, subject to the municipal prevailing wage requirements of Section 66.0903, *Wis. Stats.*?

Relevant Statutes

Section 66.0903(3)(am), *Wis. Stats.*, concerning municipal prevailing wage rates, provides:

A local governmental unit, before making a contract by direct negotiation or soliciting bids on a contract, for the erection, construction, remodeling, repairing or demolition of any project of public works, including a highway, street or bridge construction project, shall apply to the department to determine the prevailing wage rate for each trade or occupation required in the work contemplated. The department shall conduct investigations and hold public hearings as necessary to define the trades or occupations that are commonly employed on projects that are subject to this section and to inform itself as to the prevailing wage rates in all areas of the state for those trades or occupations, in order to determine the prevailing wage rate for each trade or occupation. The department shall issue its determination within 30 days after receiving the request and shall file the determination with the requesting local governmental unit.

Section 66.0903(4)(a), *Wis. Stats.*, concerning covered employees, provides:

...[A]ll of the following employees shall be paid the prevailing wage rate determined under sub. (3) and may not be permitted to work a greater number of

hours per day or per week than the prevailing hours of labor, unless they are paid for all hours worked in excess of the prevailing hours of labor at a rate of at least 1.5 times their hourly basic rate of pay:

1. All laborers, workers, mechanics and truck drivers employed on the site of a project that is subject to this section.
2. All laborers, workers, mechanics and truck drivers employed in the manufacturing or furnishing of materials, articles, supplies or equipment on the site of a project that is subject to this section or from a facility dedicated exclusively, or nearly so, to a project that is subject to this section by a contractor, subcontractor, agent or other person performing any work on the site of the project.

Discussion

The question presented here is similar to that posed as Question 1.A., above, except that it concerns the application of the municipal prevailing wage requirements under Section 66.0903 *Wis. Stats.* The question applies to all contracts enabled by Section 83.035, *Wis. Stats.*, as well as those contracts enabled by Section 66.0301, *Wis. Stats.*, for “public works” or “public construction.”

As above, intergovernmental contracts authorized under these statutes are not exempt from the prevailing wage requirements by virtue of the enabling statutes. The prevailing wage requirements were enacted to protect the economic interest of the individual worker performing work on public work projects. *Green v. Jones*, 23 Wis. 2d 551, 559–61, 128 N.W.2d 1, 4–5 (1964). For reasons parallel to those discussed in Question 1.A., above, Section 66.0301, *Wis. Stats.*, does not exempt municipalities from fulfilling their duties under the requirements. Likewise, a municipality subject to prevailing wage requirements for road construction would not seem able to avoid its duty simply by contracting with the county under Section 83.035, *Wis. Stats.*

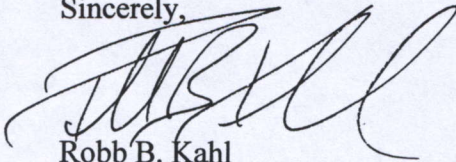
This interpretation is in accord with a decision in a Chippewa County Circuit Court case No. 06CV664, attached hereto. In the decision, Chippewa County was hired under contract by the City of Stanley to resurface a portion of Franklin Avenue/County Highway H. The Circuit Court affirmed the decision of the Department of Workforce Development (represented in the Circuit Court by the Department of Justice) and ruled that prevailing wage requirements applied to the work. Consistent with the foregoing, the Department of Workforce Development has also applied prevailing wage requirements to public construction work performed by one county for another county.

As with competitive bidding, the prevailing wage statute prescribes minimum cost thresholds for the prevailing wage requirements affecting municipalities to apply. *See* Wis. Stat. § 66.0903(5). Taking these requirements and the above discussion into account, the following conclusion may be drawn: intergovernmental contracts for municipal “public works” or “public construction” authorized by Sections 66.0301 or

83.035, *Wis. Stats.*, are subject to the prevailing wage requirements when the estimated project cost of completion exceeds the threshold amount specified in Section 66.0903(5), *Wis. Stats.*, for a single-trade project or multiple-trade project, as applicable.

Given the foregoing, we respectfully request the Committee on Senate Organization seek a formal opinion from the Attorney General on the issues discussed above. If you need any further information, please feel free to contact me at any time. Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robb B. Kahl', written in a cursive style.

Robb B. Kahl
Executive Director
Construction Business Group

Enclosures