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July 14, 2014

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

RE: Request for Opinion Relating to Section 946.13 (1)(a), Wisconsin Statutes

Dear Attorney General Van Hollen:

I am seeking an Opinion of the Attorney General relating to a matter that has come to my attention. It appears that I will be asked at some point to consider potential criminal charges relating to the circumstances, depending upon what action is taken by the local elected official involved.

Please see the attached statement of facts. By way of summary, an elected alderman in the City of Oconomowoc is involved in development property ownership with his parents and siblings. The property is located within the City of Oconomowoc and the owners are currently negotiating with the City for a zoning modification relating to the property.

The alderman has not been directly involved in any of the negotiations regarding the development since he became an Alderman, but he does still maintain a share in the ownership and will share in any profits derived from the development. The Alderman desires to retain his share in ownership and also wishes to retain his position as an Alderman.

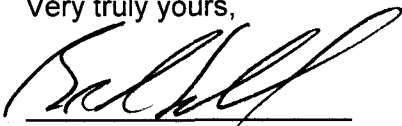
The concern is whether he may avoid a violation of Section 946.13 (1)(a), Wisconsin Statutes, by abstaining from taking any vote and removing himself from the room during any discussions relating to the zoning issue. It appears from a plain reading of the statute and Attorney General Opinion 75 O.A.G. 172, that this may not be enough and that the Alderman may need to give up either his ownership interest in the property or his elected position if he is to avoid violating the statute. The Alderman wishes to follow the law, and will make the difficult decision if he is required to do so, however, he is not convinced that the 1986 Attorney General Opinion resolves the legal issue. Nor am I.

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The Alderman is an honorable public servant who makes his living from real estate sales, property management and property development. He will not in the end risk committing a crime, however, I can certainly understand his reluctance to give up either of these things that are important to him. Therefore, I am requesting an opinion interpreting Section 946.13 (1)(a), Wisconsin Statutes as it applies to the circumstances set forth in the attached statement of facts.

Thank you in advance for your assistance with this legal dilemma. If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Brad Schimel', written over a horizontal line.

Brad D. Schimel
District Attorney
Waukesha County

jad

enclosures