

**WISCONSIN ECONOMIC DEVELOPMENT ASSOCIATION  
LEAGUE OF WISCONSIN MUNICIPALITIES  
WISCONSIN COUNTIES ASSOCIATION  
WISCONSIN ALLIANCE OF CITIES**

COPY

August 22, 2008

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

Dear General Van Hollen:

The undersigned respectfully request that the Attorney General provide clarification and guidance regarding the ability of local economic development corporations to determine whether or not they meet the definition of "quasi-governmental" subject to the open meetings and public records in Wisconsin.

In *State of Wisconsin v. Beaver Dam Area Development Corporation et al.*, a divided Wisconsin Supreme Court concluded that the Beaver Dam Area Development Corporation (BDADC) was a quasi-governmental corporation. The Court reviewed a number of factors (circumstances) that led to its decision but the Court stated that no one of these factors alone was sufficient to reach its conclusion.

Writing for the Court, Justice Bradley penned the following finding/determination:

*"We determine that an entity is a quasi-governmental corporation within the meaning of Wis. Stat. ss.19.82 (1) and 19.32 (1) if, based on the totality of the circumstances, it resembles a governmental corporation in function, effect or status. Such a determination requires a case-by case analysis."* (We have supplied italics for emphasis.)

We need not elaborate on the importance of economic development to local communities and to the economic vitality of the state of Wisconsin. Nor do we need to reinforce the critical role that private sector individuals play in volunteering their time and expertise to local economic development efforts or performing their professional economic development functions. The business of economic development has historically been a

private enterprise. More recently (perhaps spanning two decades or more) there has been greater government involvement in public-private partnerships formed for the betterment of the community, including government.

We support the application of open meetings and public records laws to governmental entities. We have contended, however, that a determination of quasi-governmental status in the case of local economic development corporations should be limited to those entities that are either controlled by government or have the authority to bind government. The Supreme Court did not limit its determination to those factors and has opined that quasi-governmental status for local economic development corporations shall be determined on a *case by case basis* based on *the totality of the circumstances*. This is a very vague standard which creates uncertainty and trepidation

Economic development corporations (EDCs), which operate throughout the State of Wisconsin, are generally private, non-profit corporations, which are organized by private sector individuals for the purpose of promoting economic growth and development in the communities where they operate. There are differences in the way EDCs operate in different communities. As with numerous other private organizations who serve the public interest, EDCs often receive some amount of public funding to support their activities. The amount of public funding varies among different EDCs. The composition of different EDC governing boards also typically varies. EDC boards and officers are, however, usually comprised of a majority of private citizens. Some EDC boards include a minority of its members from local governments, either *ex officio* or by appointment, many of whom have no vote in EDC matters.

EDCs often contract with governmental bodies to perform specific services related to local economic development efforts by those governmental entities. Importantly, however, EDCs also work with private businesses and perform services for the business community as a whole.

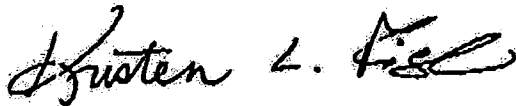
Application of the open meetings and public records statutes to the activities of private, non-profit EDCs also represents a substantial cost in time and money on those entities, especially those with one or two person staffing—burdens that we believe were not meant for private entities.

In assisting businesses with retention, expansion and location decisions, local economic development corporations are constantly faced with confidentiality demands or potential projects are shut down or never pursued in that community. A determination of the entity's status (quasi-governmental or not quasi-governmental) dictates how it may operate with these demands. If wrong, private sector individuals may be subject to significant penalties. Some penalties are clear but there is also ambiguity in the Court's decision as to the extent of liability that could attach.

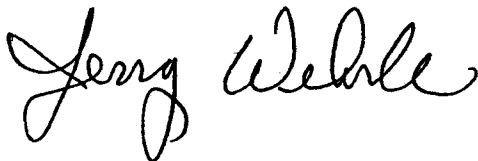
With the current lack of guidance, local economic development corporations are simultaneously faced with determining whether or not they are covered by open meetings and public records laws; how to comply if they are; and, what are the consequences if they are wrong.

We request your guidance. Thank you.

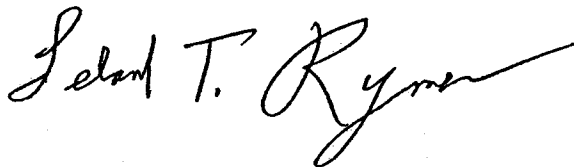
Respectfully,



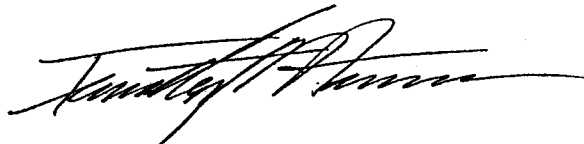
*Kristen L. Fish, President  
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*Jerry Wehrle, Mayor of Lancaster, President,  
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*Leland T. Rymer, Oconto County Board Chair, President  
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