



Office of the City Manager

312 W. Whitewater Street, P.O. Box 178
Whitewater, Wisconsin 53190

www.whitewater-wi.gov

Telephone: (262) 473-0104

Fax: (262) 222-5901

MEMORANDUM

To: Common Council
From: John Weidl, City Manager
Date: 11/1/2023
Re: Explanation for Sharing Info on Conflict of Interest

In summary: Two council members donated to the library's capital campaign, along with 250+ other community members, and one is a member of the Capital Campaign Leadership Committee – an ad-hoc committee created and authorized by the library board to raise funds through the capital campaign process. Further, the committee has no direct authority over the expenditure of funds raised and will disband when the campaign closes.

As City Manager, I was asked to look into this matter and seek the analysis of the City Attorney – which is attached. After a comprehensive review with the City Attorney, we've established that there's no direct conflict of interest. The funding mechanisms are overseen by the library board and the city council, ensuring no financial or personal gain from either the donation or leadership committee participation. Simply, the criteria for determining a conflict of interest have not been satisfied under established legal standards.

Dear Council Members,

The City Manager recently shared an analysis (attached) regarding potential conflicts of interest that staff was asked to review by Council person Gerber about the library expansion (attached). After this, Council person Hicks asked a follow-up question (attached) and then Council President Allen then twice responded to the entire governing body with his opinion (attached), thus potentially creating a walking quorum about a topic that is likely to come up at a future public meeting. In an effort to increase transparency, this memo is to release all of the relevant material related to.

Therefore, it is best if everyone sees the full analysis and supporting documentation to avoid any miscommunication or the spread of incorrect information. When you review the additional documents and various email correspondence will you find that the City Staff is not only professional but also provides analysis of the concern that was brought forward.

Please note that the staff/attorneys who provided the analysis for inquired topics are seasoned and knowledgeable. With this being said I would like to thank the staff for their commitment to professionalism and their continued passion for providing research and analysis that hold the city's best interest at heart. Without the staff, the City would not be able to champion half of the accomplishments that we completed in the past year.

As the City Council you have the ability to foster a respectful environment for the City Manager and the rest of the staff. I understand that you as an elected official may have a differing opinion than the analysis provided; however, I ask that you at the very least treat staff with respect when they present the researched analysis to you. For it is the staff that dedicates their time, professional knowledge, and energy for the benefit of the City of Whitewater.

Warm regards,

John S. Weidl, City Manager



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MEMORANDUM

To: Council person Jill Gerber and Common Council
From: John Weidl, City Manager
Date: 10/30/2023
Re: Clarification on Potential Conflict of Interest Concerns Regarding Library Donations

Jill,

I am in receipt of your communication with concerns about a potential conflict of interest, specifically pertaining to two council members that are on a donor list of over 250+ community members supporting the Irvin L. Young Memorial Library Capital Campaign. I have attached that email to this memo directly as well as the list of donors supplied by the Capital Campaign team. In addition, please see a full copy of the Good Governance Manual and the State Statutes pertaining to Libraries.

I appreciate your diligence in raising the question of potential conflict of interest with regards to council members' donations to the library's capital campaign. After discussing with the city attorney and reviewing the pertinent details, it's clear that the donation to the library's fundraising by a council member does not constitute a conflict of interest, nor would it preclude participation and/or action related to the City's borrowing choices, including to support any Irvin L. Young Memorial Library expansion. Please find below a brief review of the situation and its alignment with our ethical guidelines

Authority Separation: The library board operates autonomously from the common council, maintaining its own governing jurisdiction.

Nature of Donation: The contribution to a broader community-wide cause, impacting many taxpayers (including outside Whitewater) and without direct personal gain, doesn't create a conflict, especially in light of the Common Council's overarching responsibility for city-wide financial decisions.

Direct Benefit: For a true conflict of interest, the council member would need to gain uniquely or benefit as an individual significantly from the library's expansion. Given the widespread list of donors and impact of tens of thousands of user per year, this doesn't appear to be the situation.

Gifts Vs. Donations: The potential issue usually arises when officials accept gifts of value. In this case, the council member is making a donation to a capital campaign, which is an entirely different context.

Decision Influence: If the council member's involvement in the fundraising campaign would skew their judgment, it might raise concerns. However, the donation construct has a separate Capital Campaign team and the separation of the Library Board's sole jurisdiction of Library matters, indicating no undue influence.

Deciding on recusal is often rooted in the specificities of an official's role and ethical parameters. From the information at hand, there's no evident conflict. The City Attorney has before and will provide his thoughts again on the matter – outlining a similar conclusion.

Regards,

John S. Weidl, City Manager

From: [Jill Gerber](#)
To: [John Weidl](#)
Subject: Fw: Irvin L. Young Memorial Library Capital Campaign
Date: Monday, October 30, 2023 10:50:54 AM

John,

Looks like Brienne and Lisa both gave money for the Library, I would like to see how Johnathan McDonnell weighs in, and I believe this is also part of the Good Governance manual in term of if they should abstain or both abstain/recuse from the vote/discussion.

Jill Gerber
Common Council Representative
Aldermanic District 4
Voting Wards 6,7,8
City of Whitewater
262.949.9370

From: Jim Winship <jim.winship@gmail.com>
Sent: Monday, October 30, 2023 7:39 AM
To: Jill Gerber <jgerber@whitewater-wi.gov>
Subject: Irvin L. Young Memorial Library Capital Campaign

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Jill, we want to thank you for your service to the City of Whitewater. Like you, we are committed to making Whitewater a great place to live and work.

Over the past year we've worked to fulfill the promise of a newly renovated public library and we are writing with good news!

The City challenged the community to raise the matching funds for the library expansion/transformation projects. We needed to raise \$3,000,000. Utilizing previous donations and the sale of properties that the library owned, the fundraising goal was \$2,225,000. As of last week, we have successfully raised over \$2,300,000 in gifts and pledges in less than 12 months thanks to more than 260 donors. Our Committee has fulfilled their charge!

Our community has supported the Capital Campaign in an historic fashion and we are pleased that the City's commitment for funding the library is included in the 2024 budget. To further illustrate Whitewater's support of the capital campaign, attached please find a list of campaign donors. These supporters are from all walks of life and live in every neighborhood in our City as well as those living outside the city limits. Looking through the list, you will see the names of friends, neighbors, and constituents. These supporters have made the commitment to ensure that the Irvin L. Young Library's physical footprint is transformed to support learners of all ages.

If you have any questions about the campaign, the renovation itself, or the Library's bright future, please contact me-- Jim Winship, the Capital Campaign Chair at 262-215-1492/jim.winship@gmail.com.

Kind regards,

The Capital Campaign Leadership Committee:

Doug Anderson
Brienne Brown
Kelly Davis
Richard Haney
Anne Hartwick
Jon Kachel
Ginger Katzman

Jennifer Motszko
Gayle Stettler
Jim Winship

Donor List (10/26/2023)

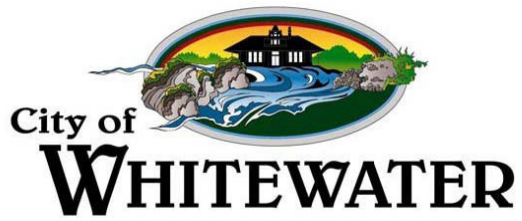
Amy Curtis
Amy Green Fienga
Anna Vo
Anne Hartwick
Arlene Newhouse
Ashleigh Bruns
Atlee & Julie Svanoe
Aurelio & Diana Callope
Banco Insurance Agency
Barbara Bren
Barbara Jean Bromley
Barbara Penington
Barbara Vodak
Bernice Sheahen
Betty M. Brown
Blaze Gries
Bob McCullough
Bonita Schauder
Bonnie Wood
Brian & Mary Taggart
Brienne Diebolt-Brown
Carey Fero
Carla Cheek
Carol Jones Holford
Carol M. McLernon
Caroline Pate-Hefty
Carolyn Haas
Carrie Oster
Caryl Yasko
Catherine J Engler
Charlotte Kuenning
Cheryl Benedict
Cheryl Binnie

Cheryl Bresnahan
Chuck & Barb Taylor
Claire McCullough
Cozette Moffatt
Dale Kuster
Dan Sable
Danielle Frawley
Dave Stimpson
David & Jane Roberts
David Drexler
David Yochum
Dawn Hunter
Dawn Millard
Deborah Gamble
Debra Roland
Deidre Simon
DeWind Family
Diane Jaroch
Diane Wendorf
Dianne Dunham
Donald & Nancy Hoepfner
Donald W Triebold
Donna Cornwell
Donna Marshall
Dorothy Otting
Edward Erdmann
Eileen Burke
Elizabeth Miller
Ellen Long
Emily Scheunemann
Erica Schepp
Everett Long
Fort Community Credit Union
Francis & Diane Cahill
Gayle Corcoran Stettler
Germaine & Mark Olm
Ginger Katzman
Glenn Hayes
Greater Whitewater Lake Property Owners Association
Hannah M. Greenhill
Hans Hahn
Harry & Barb Essock
Heather Kuhl
Holly Crowley
Hope Winship
Isabel & John Erickson
Jacqueline Amundson
James & Julie Caldwell
James Mulcahy
Jan Bilgen
Janet Muzatko
Janie Anderson
Jay Craggs

Jean Truesdale
Jen Kaina
Jennifer Lauren Zamora
Jennifer Motszko
Jennifer Visser
Jerry & Shirley Grant
Jessie Dugan
Jim & Louise Fuerstenberg
Jim Winship
Jodi Sweeney
John & Tammy Koebler
John and Suzanne Chenoweth
John Heyer
John L. Chaplock
Jon Erickson
Jon Kachel
Joseph & Rebecca Hogan
Joseph Coburn
Joyce Swartwood
Julia Ross
Julie Caldwell
Kachel Family Foundation
Karen Mayer
Karin Campbell
Karl & Janet Olson
Karolyn Alexander Tscharnack
Kat Mawhinney
Kate DeLazzer
Kathie Kaina
Kathleen Granum
Kathryn M Ewalt
Kathy Haven
Kathy M Ross
Katie M Lehman
Katy Wimer
Kay Drexler
Kelly Davis
Ken & Virginia Knuteson
Kerri Kachel
Kevin and Nancy Brunner
Kim Simes
Kristin Carpenter
Kristina McCullough
Kristine S Cameron
Kristine Zaballos
Laura Masbruch
Lauree Miller
Lauren Smith
Lawrence & Gwendda
Harrison
Lawrence Scheunemann
Lin Tortomasi
Linda Holmes

Linda J Heesch
Linda Kachel
Linda Loomer
Linda Robinson
Lindsey Meisner
Lisa Dawsey Smith
Marcia James
Marion J Burrows
Marjorie Stoneman
Martin & Eileen Harrison
Mary A Ehrike
Mary Beth Byrne
Mary Dalee
Mary Mawhinney
Mary Salverson
Mary Sue Reutebuch
Meg Waraczynski
Megan Matthews
Melanie & Steven Ryan
Michael & Kathy Harenza
Michael & Laura Grubb
Michael Annessi
Molly Fuller
Molly Parrish
Monica Brown
Nancy & Jerry Wendt
Nancy Blake Brunner
Nancy Cooper
Nancy Stanford
Nels J Madsen
Pam Ellingson
Pamela Van Doren
Patricia Blackmer
Patricia Harmon
Peggy Hooper
Pope Transport Inc
Premier Bank
Ralph & Betty Jane Lemke
Randy Cruse
Rebecca Draeger
Rebecca Hogan
Regina Foucault
Richard Haney
Richard Helmick
Richard Telfer
Rick & Jeanine Fassl
Rick Halvorson
Rita Richardson
Roberta Wedl
Ron & Nelda Bergsten
Richard & Roni Telfer
Rose Awuor
Rosemary Green

Ruth & Larry Flescher
Ruth Ann Kromholz
Ryan & Kathryn Weston
Sally Lange
Sally Neustedter
Sara Kuhl
Sarah French
Sarah Hoots
Sarah Pieper
Shannon Frye
Sharon Martin
Sharon McCullough
Sonia Kachel
Stacey Lunsford
Steve & Mindy Wade
Sue Scherer
Sue Wildermuth
Susan Messer
Susan Patnaude
Susan Willmann
Terrie Parenteau
Terry & Marilyn Schwebke
Thayer Coburn
The Reading Group
Theresa Kachel
Therese Kennedy
Tia Schultz
Tincher Realty Inc.
Tom & Bev Ganser
Tom & Karen Christofferson
Tracy Hawkins
Valerie Vesely
Vicki Devitt
Virginia Coburn
Wallace & Kimberlee McDonell
Whitewater Cinemas
Whitewater Lions Club
Women of WUSD
Woody & Lynn Coyle



Good Governance Manual



Prepared by: Common Council/City Manager

Approved: April 17, 2018

Revised: May 21, 2018

Minor Updates: June 8, 2020

Municipal Official Orientation Manual
A Guide for Elected and Appointed Public Officials in the City of Whitewater

A Welcome to Public Officials

Welcome to the world of public service. As a newly elected or appointed official in the City of Whitewater, there is much to learn about the inner workings of city government and the city organization as a whole. However, do not be intimidated; any effort you put forward in learning the ins and outs of municipal government operations will be greatly rewarded through the positive impact you will be able to make on the Whitewater community. Citizenship demands the shouldering of civic responsibility by all those who would preserve the freedoms we all enjoy. By virtue of your appointment, you have become an example of true citizenship for your peers in the Whitewater Community.

While government is often thought of as redundant or inefficient, good government actually makes all our lives better by preserving a sure foundation on which to build our families, businesses, and communities. By giving of your time and talents to benefit your community, you will serve as a positive example to your fellow community members, but you will also have the opportunity to leave a valuable legacy for those that will follow after you.

This manual has been prepared to aid you in gaining a basic understanding of some of the fundamentals of conduct and operations within city government. Please feel free to refer to this manual often. City ordinances and city staff can also be valuable resources in helping to guide you in your efforts to serve the community.

Welcome and congratulations on your new role as a public official!

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**City of Whitewater
Public Official Code of Conduct
Good Conduct for Effective Governance**

Statement of Purpose

It is the goal and expectation of the City of Whitewater that all public officials (elected or appointed) strive to uphold, exhibit, and promote civil and ethical conduct in public forums and maintain the highest standards of personal conduct, integrity, truthfulness, and fairness in carrying out their public duties. To this end, the following code of conduct has been developed to help illustrate the characteristics public officials are encouraged to emulate while in office.

Code of Conduct for Public Officials

As a representative of the City of Whitewater, public officials are encouraged to help strengthen the community by building public trust, encouraging open dialogue, maintaining transparency and actively sharing ideas and opinions with others in thoughtful and considerate ways. The following list of behaviors and practices helps to illustrate the high standards expected of those in public office.

1. **Be Informed:** Endeavor to read the packet material provided before each meeting, keep informed on all local, state and national developments of municipal significance, and arrive at each meeting prepared to conduct City business in a meaningful manner.
2. **Pay Attention:** Strive to be aware of others and sensitive to the immediate context of actions taken.
3. **Listen Closely:** Strive to understand other points of view, to seek first an understanding of what other individuals or groups may have to say before making any final decisions related to business being conducted.
4. **Be Inclusive:** Welcome and encourage participation of all parties involved in the discussion on any issue, excluding none.
5. **Avoid Gossip:** Discourage and avoid the spread of gossip, which can undermine the public process.
6. **Be Agreeable:** Actively look for opportunities to agree on community issues and in all other cases, be civil and cordial, agreeing to disagree without being disagreeable.
7. **Show Respect:** Show respect for the viewpoints of others and refrain from abusive conduct, personal charges, derogatory remarks or verbal attacks upon the character, actions, or opinions of others, whether they be elected or appointed officials, city staff, or the public. Avoid pursuing any conduct or action calculated to embarrass another public official or any member of the public. Praise in public and reprimand in private. When debating or commenting in a meeting, focus on the issue and avoid negative comments regarding the groups or individuals involved.
8. **Be Honest and Transparent:** Practice and encourage full and open disclosure by participating openly and transparently in meetings and activities as required by law. Practice and encourage this same openness by providing full explanations of the intent and motives behind actions to fellow board or committee members. Refrain from withholding or concealing any information or matter in which fellow committee members should be concerned.

9. **Maintain Confidentiality:** Respect and maintain the confidentiality of information that cannot be disclosed (i.e. information from a closed or executive session) by not divulging said information at any time while outside of a closed or executive session. In all ways protect and maintain the security of confidential records.
10. **Demonstrate Proper Meeting Etiquette:** Observe proper decorum and behavior in meetings and refrain from interrupting other speakers, making personal comments not related to the discussion or otherwise interfering with the orderly conduct of the meeting.
11. **Accept Responsibility and Be Sincere:** When mistakes or misunderstandings occur, the best way to move beyond the incident and to restore public trust is to be honest. Accept full responsibility for personal actions and opinions, avoid shifting blame to other groups or individuals. Be open and upfront regarding disagreements. Endeavor to repair damaged relationships, including openly and promptly apologizing where appropriate.
12. **Put City Interests First:** Always strive toward achieving the common good for the community by pursuing those decisions, actions and initiatives that are best for the community. Avoid conflicts of interest. At all times, place duty to uphold the law and duty to pursue organizational goals and objectives above personal interests.
13. **Seek No Personal Advantage:** Public officials, especially those that are elected, stand as agents of the public purpose and should conduct themselves in an open, fair and impartial manner. When it comes to municipal rules, laws, or services, do not seek special treatment for others, whether they be neighbors, friends, coworkers, employers, or family. Do not use the municipality or any part of a municipal program for personal advantage or for the advantage of others. Strive to live and serve in a manner that is above reproach and avoid the appearance of impropriety.
14. **Uphold the Democratic Process:** Perform duties with diligence and in accordance with the rules of order established by the common council, board, commission, or committee conducting business. Recognize that the authority to take formal action to direct or recommend rests with the common council or its designated committee in legal session and not with any individual members of said bodies. Public officials may express opposition to an action made by their respective committee(s). However, do not publicly criticize individual committee members or the committee as a whole for said action when the action has been properly presented, voted on, and passed by a majority vote. Ensure that citizen involvement and citizen opinions regarding public policy issues are fully considered.

Municipal Official Orientation Manual
A Guide for Elected and Appointed Public Officials in the City of Whitewater

General City Information

Municipal Government Structure in Wisconsin

Cities in Wisconsin are incorporated municipalities that are created at the request of their inhabitants to perform local services. The Wisconsin Supreme Court has stated that municipalities are, “established by law to assist in the civil government of the state and to regulate and administer the internal or local affairs of the territory within their corporate limits.” Because municipalities were created by the state, they have been referred to as “creatures of the state.” As creatures of the state, municipalities have no inherent powers and have only the powers given them. Wisconsin cities are fortunate in that they have been granted extensive “home rule” powers. Home rule is the ability of cities to govern themselves in local matters without state interference. Wisconsin municipalities have two sources of home rule authority: (a) constitutional and (b) statutory or legislative. For more information on home rule, see the *Handbook of Wisconsin Municipal Officials*.

Class of Cities

The municipality of the City of Whitewater is organized as a 4th Class City under Wis. Stats. Chapter 64.

Council-Manager Form of Government

Per Municipal Code of Ordinances Chapter 2.04.010, the City of Whitewater is organized under the city manager plan of government as outlined in Wis. Stats. Chapter 64. This means that the city is governed by a common council composed of seven members, one councilmember from each aldermanic district in the city and two councilmembers at large. The city manager oversees the day-to-day operation of the city government and labors to ensure that policy direction provided by the common council is carried out efficiently and effectively.

The City Manager

The city manager serves as the chief executive officer for the City and oversees the day-to-day operation of all city departments. The city manager carries out the policy direction provided by the common council. The city manager possesses the sole responsibility for the creation and elimination of employment positions within the city and the discipline and/or termination of employees with the exception of those positions falling under the authority of the Police and Fire Commission. The city manager, together with the common council president, reviews and then recommends the appointment of individuals to serve on the various boards, committees, and commissions of the city government. The city manager is appointed and serves at the pleasure of the common council.

For more details regarding the office of city manager, see Whitewater Municipal Code of Ordinances Chapter 2.12 and Wis. Stats. Chapter 64.

The Common Council

The common council is composed of one councilmember from each of the five aldermanic districts in the City and two councilmembers at large. The term of office for each councilmember is two years, at which point the councilmember can seek reelection.

The common council is the highest legislative body in the local government of the City of Whitewater. As such, the common council has full legislative authority over all aspects of city government. Unless otherwise stated in local ordinance or state statute, the common council is responsible for final approval of all recommendations and actions proposed by standing and/or ad hoc committees. The common council appoints the city manager and confirms committee appointments recommended by the city manager and common council president. The common council possesses authority to enact ordinances, adopt resolutions, and otherwise establish policies for the long-term benefit of the City of Whitewater.

It is important to note that the common council is only empowered to act on behalf of the City when a majority of councilmembers is present. Individual members of the common council possess no legislative authority in and of themselves.

The Common Council President

The common council president is elected at the first meeting after the election of new councilmembers. This occurs on the second regularly scheduled meeting of April each year. A president pro tem is also elected to serve the role of president when the common council president is absent. The common council president presides over and conducts meetings of the common council. As the first among peers, the common council president is responsible for preserving “order and decorum” at each meeting.

Boards, Committees and Commissions

The common council is the policy-making body for the City. Unless otherwise endowed with specific decision-making authority, all committees serve in an advisory capacity to or for the common council.

City ordinances allow for a number of standing boards, committees, and commissions that provide direction and input on policy development for specific areas of city administration. Membership requirements vary by the type and purpose of each committee. However, these committees are typically comprised of at least one councilmember and a number of community members that reside within the City’s jurisdictional boundary. The following list includes all standing committees currently established by ordinance.

- Alcohol Licensing Review Committee (Ch. 5.20.025)
- Birge Fountain Committee (Ch. 2.53)
- Board of Review (Ch. 2.60)
- Board of Zoning Appeals (Ch. 19.72)
- Community Development Authority (Charter Ord. No. 4)
- Community Involvement & Cable TV Commission (Ch. 2.50)
- Disability Rights Commission (Ch. 2.46)
- Ethics Committee (Ch. 7.04)
- Finance Committee (Ch. 2.47)
- Landmarks Commission (Ch. 17.08)
- Library Board (Ch. 2.56)
- Parks & Recreation Board (Ch. 2.52)
- Pedestrian & Bicycle Advisory Committee (Ch. 2.51)
- Plan & Architectural Review Commission (Ch. 19.06)
- Police and Fire Commission (Ch. 2.28)
- Public Works Committee (Ch. 2.45)

- Urban Forestry Committee (Ch. 2.12)
- Whitewater University Technology Park Board
- Public Art Commission

Committee Appointments

Individual committee appointments occur annually, typically at the first common council meeting following the Spring Election. However, due to unexpected vacancies or resignations, appointments can occur at any time throughout the year. The process for filling committee vacancies is as follows:

1. Vacancies are announced via the city website, social media, and the official newspaper prior to any appointment being made.
2. A standard application form shall be provided in electronic and hard copy for use by all applicants (including incumbents wishing to be reappointed).
3. Once applications are received, they are compiled by the city clerk and delivered to the city manager and common council president for review.
4. The common council president and city manager review applications and arrange for face-to-face meetings with applicants. If schedules do not permit a face-to-face meeting, this step can be completed by phone or web conference.
5. The common council president and city manager convene to discuss applicants and select candidates for recommendation to the common council. Recommended appointments are placed on the agenda for the next common council meeting for approval.
6. The common council deliberates on the recommended appointments and approves or denies the appointments.
7. Individuals who have been successfully appointed to a committee are then contacted by the City Manager's designee and a date is set for orientation.
8. The new committee member attends a committee member orientation as soon as possible following appointment.

Criteria for the Appointment of Committee Members

When considering applicants for appointment to a committee, the city manager and common council president will look at a variety of factors that includes, but is not limited to the following:

Availability: Regular attendance at committee meetings is mandatory. If a committee member fails to attend three consecutive regular meetings, or fails to attend at least three-fourths of the regular meetings during the preceding 12 months, s/he may be replaced.

Number of Previous Terms (Incumbents): Unless otherwise stated in ordinance, no member of any committee can serve for more than two consecutive terms. If an applicant has served for two consecutive terms, s/he must have been off said committee for at least one term before reapplying for appointment.

Knowledge and Life Experience: Relevant life experience, whether personal or professional, can provide added value to the composition of a committee and is often viewed favorably in the selection process.

References: References are an important resource in helping to identify applicant strengths and weaknesses as part of the selection process.

Residency: While some committees do not require residence within city limits, the majority will require residency within the boundaries of the Whitewater Unified School District or within the municipal limits of the City of Whitewater.

Other Factors: The ultimate goal of the city manager and common council president when making committee appointments is to ensure committees are filled by diverse and competent individuals capable of making sound decisions and capable of working together even when opinions may differ. With this goal in mind, a full range of additional factors may be considered with each appointment, and some factors may vary depending on the vacancy needing to be filled. Things such as political background, prior public service experience, and professional and personal relationships with current committee members may all be relevant.

All about Public Meetings

All meetings of the common council or any other established committee must be open to the public pursuant to open meetings law, with few exceptions (see Closed Sessions, page 8). The intent of the law is to ensure that council action and deliberation is conducted openly. All regular and special meetings must be publicly noticed with an agenda that includes a specified time and date in advance of the meeting.

Public meetings, whether of the common council or another municipal committee, serve as a showcase of municipal government for the people of Whitewater. Meeting attendees can often include journalists and reporters for local news outlets, university students, representatives from community groups, and interested residents. Common council meetings are broadcast live and meeting business is often the subject of newspaper articles the following day. In short, many eyes are on each meeting with the public often basing its opinion of the entire City on how efficiently committee meetings operate.

The following subsections provide important information regarding the conduct of common council meetings. The guidance herein given also extends to the many standing committees and commissions established by ordinance.

Meeting Schedules

As established by ordinance, the common council is required to meet at least once per month. Regular meetings are held on the first and third Tuesdays in each month. Meetings begin at 6:30 p.m. If a common council meeting date falls on an election day or a holiday, the meeting is held on the Thursday of the same week instead. All other committees should maintain a regular meeting schedule and make sure the schedule is posted on the committee's webpage. The regular meeting schedule should also be provided to the city clerk for the municipal record.

Special Meetings

When at all possible, municipal committees, especially the common council, should endeavor to conduct business during regular meetings. However, circumstances may, at times, call for a meeting outside of the regular meeting schedule. These meetings are referred to as "special meetings." When circumstances warrant a special meeting, the staff person responsible for the committee should work with the committee chair to establish a meeting time when a majority of committee members can attend. In the case of the common council, the city manager is primarily responsible for arranging the meeting; however, the city manager will typically work with the common council president to arrange the meeting at a time when the largest number of councilmembers are available. Posting of the special

meeting should comply with the requirements set forth in the Whitewater Transparency Enhancement Ordinance (Ord. 2.62).

If a minority of committee members disagree with the calling of the special meeting, said committee members can submit a written objection for the meeting record. In lieu of submitting a written objection, language can be placed on the next regular meeting agenda calling out the objection. This allows the objecting party an opportunity to voice their objection, which is then added to the minutes for the meeting.

Electronic Devices

Electronic devices such as smart phones, tablets, Chromebooks and laptops have become commonplace in the Whitewater community. Use of electronic devices during a public meeting is encouraged when the device is used as an alternative to printed materials, to look up information relevant to the discussion items, or a similar use that supports the discussion at hand. Use of electronic devices for other irrelevant uses is discouraged.

City staff provides all common council members with an electronic copy of posted packet materials in advance of the meeting via email. City departments may also provide an electronic version of packet materials to other committees. The City maintains a number of Chromebooks which can also be used by public officials during meetings to reduce or avoid the need for paper copies of meeting materials. Chromebooks can be made available to public officials upon request. A request must be provided ahead of time so that the device can be ready at the start of the meeting.

Electronic Communications

During public meetings, electronic messaging (text, email, IM, etc.) should not be used for private communication. While use of electronic devices is encouraged, encouragement comes with the expectation that devices will be used for meeting business and personal communications will be avoided. Public officials should not correspond via electronic messaging on agenda items during the meeting, unless the conversation will be publicly shared with the full common council as part of the meeting discussion. If the need to make a personal communication arises during the meeting, public officials should step out of the meeting room to communicate. No device should be used by a public official for personal entertainment while a meeting is in session.

Packet Materials

In general, meeting materials are provided in advance of every meeting. Hard copies of meeting materials are usually distributed three to four days in advance of the meeting. Common council packets, for example, are distributed to common council members on the Friday before the next meeting. Public officials are expected to review meeting materials provided in the packet prior to the meeting so that they can more effectively contribute to the discussion for each item on the agenda.

Questions of Staff

City staff welcomes questions related to agenda items. When questions are shared with staff in advance of the meeting day, additional material to help answer the question can usually be provided by the start of the meeting. Questions during meetings are, of course, welcome also, but some questions may require additional staff research thus delaying a response until the next meeting.

Meeting Records

Meetings of the common council, community development authority, plan and architectural review commission, and police and fire commission are required to be recorded on video per the Whitewater Transparency Enhancement Ordinance Ch 2.62. The common council and the plan and architectural review commission are also broadcast live. In addition, the city clerk, under the direction of the city manager, is responsible for maintaining meeting records including documenting the minutes of the proceedings at each public meeting. Due to the number of potential meetings, most committees are assigned a specific city employee to serve as meeting support, distributing agendas and keeping minutes.

Closed Sessions

While meetings are required to be open by law, there are situations where the best interest of the City demands a confidential discussion. Closed sessions are allowed under Wisconsin Statutes for a limited list of circumstances. Items discussed in closed session should not be shared outside of closed session or with persons not party to the closed session discussion. The importance of maintaining confidentiality surrounding items discussed in closed session cannot be overstated. It is also important to limit closed session discussions to the topic(s) noted on the agenda. Discussion of issues other than what is posted on the agenda and what qualifies as permissible in closed session is a violation of state law with violators subject to a fine.

Rules of Order

The common council has the authority by ordinance to determine its own rules of procedure. However, *Robert's Rules of Order* serves as a general guideline for setting procedures in meetings. Specific details regarding the conducting of meetings can be found in the Whitewater Municipal Code of Ordinances, Chapter 2.08.

Setting the Agenda

By local ordinance, the agenda for meetings of the common council is set by the city manager. Councilmembers wishing to add agenda items should make their request no later than one week prior to the meeting. Councilmembers can make requests by contacting the city manager directly, or by contacting the city clerk who will then notify the city manager. The city manager will honor all legal agenda item requests made by a councilmember. However, if the city manager anticipates a long meeting or that a particular item requested will be contentious and result in a lengthy meeting, s/he may contact the requesting councilmember to discuss setting the item for a future meeting agenda.

For all municipal committees outside of the common council, meeting agendas should be set by the committee chair. In cases where there is a staff person assigned to support a particular committee or commission, the staff member should assist in drafting the agenda, ensuring that the agenda complies with standard formatting guidelines. Just as with requests made by councilmembers, the committee chair should honor requests for agenda items that are submitted by committee members. If a question or concern regarding a potential discussion item arises, the committee chair should consult with the assigned staff person, the city clerk, or the city manager for guidance.

Meeting Attendance and Participation

To ensure that voting members are well versed on the issues facing the board or commission, regular attendance is mandatory. In the event that a member fails to attend three consecutive, regular meetings

or fails to attend at least three-fourths of the regular meetings during the preceding twelve months, the board may request that the common council select another individual to serve out the member's term.

Code of Ethics for Public Officials

The municipal government of the City of Whitewater can only be as effective as it is independent, impartial and responsible to the people. For this reason, all public officials, whether elected, appointed, or otherwise employed by the City of Whitewater are expected to adhere to ethical standards as outlined in Wis. Stats. Secs.19.41-19.59 and as outlined in chapter 7 of the Whitewater Municipal Code of Ordinances, which is included at the end of this manual.

Prohibited Conduct

In general, the state ethics law as referenced above, prohibits the following conduct:

Use of Office for Private Gain: Public officials are prohibited from using their offices to obtain financial gain or anything of substantial value for the private benefit of themselves, their immediate families, or organizations (including employers) with which they are associated (see Sec. 19.59(1)(a), Wis. Stats.).

Offering or Receiving Anything of Value: No person may give and no public official may receive "anything of value" if it could reasonably be expected to influence the local public official's vote, official action or judgment, or could reasonably be considered as a reward for any official action or inaction (see Sec. 19.59(1)(b), Wis. Stats.).

When to Recuse Oneself

While the full code of ethics as outlined in ordinance is at the end of this manual, the subject of recusing oneself is worth mentioning here. To recuse oneself from a discussion essentially means to remove oneself from discussion to avoid a conflict of interest.

Public officials should recuse themselves from discussion when there is a clear conflict of interest. In such cases, recusal does not just mean abstaining from a vote, but means instead to step away from the discussion of an item completely.

When a public official recuses himself or herself from discussion and action on a particular item, the recusal is noted in the minutes of the meeting. In most cases, it is appropriate, though not required, for the recused public official to leave the room where public discussion is taking place to ensure that s/he can have no influence on the discussion or final action in any way.

Ex Parte Communications

The Plan Commission Handbook Second Edition 2012, Rebecca Roberts, University of Wisconsin Extension, pages 15 and 16, describes how public officials should avoid ex parte communications regarding quasi-judicial matters pending or that may come before the council, a committee, commission, or board. These decisions often involve application of laws, such as ordinances, (for example a request for a conditional use permit). It states:

"[Public officials] should not have conversations or receive correspondence regarding a quasi-judicial matter that is pending before [the city] or which may come before [the city] except during a noticed meeting or hearing on the matter. Such outside contacts are known as "ex parte communication." Ex parte communications may not be considered in decision-making

unless it is disclosed and made part of the official record in the matter. The [body] as a whole can then determine the admissibility of the information and individual members can determine its credibility and weight in deciding their vote on the issue.

The reason for exclusion of ex parte information is that parties are entitled to know and examine the source of information used by [the city] in its decision-making. Outside discussion regarding procedural matters such as scheduling a meeting or explaining how to file an application is permissible. Ex parte communication is not a concern when enacting legislation or making administrative decisions (i.e. issuing simple zoning or building permits)."

In order to avoid ex parte communications, the handbook recommends:

1. Suggesting that members of the public present information in an open meeting or hearing or submit a written comment.
2. Disclosing ex parte communications at an open meeting or hearing and make the information part of the record so that it can be considered in decision making.

Open Meetings and Open Records

Wisconsin has a long history of promoting open government. As a local government conducting business that has a direct impact on residents, the City of Whitewater also values and appreciates the importance of maintaining transparency. For this reason, it is imperative that public officials endeavor to comply absolutely with state laws related to public meetings and public records.

Open Meetings Law

Wisconsin's open meeting law is found in Wis. Stat. Secs. 19.81 - 19.98. Essentially, the open meeting law requires that all meetings of all governmental bodies be preceded by public notice and be publicly held in places reasonably accessible to the public and open to all citizens at all times unless otherwise expressly provided by law. For the purpose of this manual, it is safe to conclude that, in general, all discussions, deliberations, actions, or inquiries conducted by a governmental body (meaning the common council or any other municipal committee) should be conducted in an open meeting unless otherwise specifically mentioned in Sec. 19.85(1) (a-j). More information regarding open meetings can also be found in chapter 7 of the League of Wisconsin Municipalities publication, *Handbook for Wisconsin Municipal Officials*.

Whitewater Transparency Ordinance

In addition to open meeting rules as established by state law, the City of Whitewater has enacted a Transparency Enhancement Ordinance (Whitewater Ordinance Chapter 2.62) which provides additional open government requirements such as a seventy-two hour in advance meeting notice posting for meetings and adding agenda items. This is greater than the State statutory twenty-four hour requirement normally applicable to cities. If the seventy-two hour requirement has not been met, the item can only be taken up by the body by an affirmative vote of the members voting.

Walking and Negative Quorums

There are two important circumstances where a group of committee members, less than a quorum in number, could gather together and still violate the open meeting law. These two situations are referred to as "walking quorum" and "negative quorum." The following sections were taken from Chapter 6 of the *Wisconsin Legislator's Briefing Book for 2017-2018* and provide details regarding court cases wherein walking and negative quorums were defined.

Negative Quorum: The applicability of the Open Meetings Law to a gathering of less than one-half of the members of a governmental body has been addressed by the Wisconsin Supreme Court. The case involved an unannounced, private meeting of four members of the 11-member Milwaukee Metropolitan Sewerage Commission. The subject of the meeting was the commission's proposed operating and capital budgets. Adoption of these budgets required a 2/3rds vote of the commission (i.e., eight votes), and four members was a sufficient number to block adoption. Such a gathering of enough members that could be sufficient to block an action of the full body was labeled as a "negative quorum." [State ex rel. Newspapers, Inc. v. Showers, 135 Wis. 2d 77 (1987).]

The court provided a two-part test to determine when a gathering constitutes a negative quorum and triggers the Open Meetings Law. Under the test, such a meeting is subject to the law if: (1) the members have convened for the purpose of engaging in governmental business, whether discussion, decision-making, or information gathering; and (2) the number of members present is sufficient to determine the governmental body's course of action on the subject under discussion.

Walking Quorum: The applicability of the Open Meetings Law to a series of informal discussions between small numbers of the body's members has been addressed by the Wisconsin courts and the state Attorney General. This is commonly referred to as a "walking quorum," and such series of small-group meetings that occur with the implied or express agreement to act uniformly in a sufficient number to reach a quorum may only be held with proper notice and accessibility.

The essential danger identified by the courts with a walking quorum is that it may produce a predetermined outcome and render the public meeting a mere formality. According to an informal opinion by the Attorney General, use of administrative staff to individually poll members regarding how they would vote on a proposed motion is a prohibited walking quorum.

If, however, there is no implied or express agreement to act uniformly in sufficient number to reach a quorum, a series of informal exchanges among separate groups of members may occur without violating the Open Meetings Law.

Open Records Law

Transparency in government in Wisconsin does not relate solely to open meetings, but extends to governmental records as well. The essential takeaway for newly elected or appointed officials is this, unless otherwise specifically identified as an exception by law, all governmental records are public and subject to public examination. It should be noted that all city-related emails, letters and reports produced by, sent from, or received by an elected or appointed official qualify under this broad definition. More detailed information regarding public records can be found in Wis. Stats. Secs. 19.21 - 19.39 and also in chapter 7 of the League of Wisconsin Municipalities publication, *Handbook for Wisconsin Municipal Officials*.

Committee Policing

In general, the president or chair of each committee is the person responsible for maintaining order and proper decorum at meetings, following the example set by ordinance with the role of the common council president. If committee members encounter persistent challenges with maintaining order at meetings due to the behavior of specific members of the public or the committee, the city manager may be called upon to address the issue. Any action to remove or reassign a committee member will not take

place until the city manager has consulted with the common council president and then with the full common council. If the issue involves a common council member, the issue should first be addressed by the common council president and the city manager is excluded from the process. The president will then bring the matter to the full common council for discussion and action.

Effective Decision-Making

Often the decisions made by municipal committees can have a far reaching impact on residents of the Whitewater community. This reality can make the role of a committee member both challenging and rewarding. This is especially true for those serving on the common council, but holds true for other municipal committees as well.

When a committee is tasked with making a decision on a particular issue, it is important to keep emotions and political influences out of the discussion as much as possible. This does not mean that committee members should not be sensitive to the needs and desires of those most closely impacted by a particular decision. However, it does mean that committee members should strive to remain open minded, work together and follow an objective process. Following is a list of questions you should consider asking yourself before making a final decision:

Do you have sufficient information?

The saying, “shoot first, ask questions later” helps illustrate the danger of making quick decisions without first confirming the information on the issue is complete. It is likely impossible to know absolutely everything there is to know about a particular issue, but it is possible to gather a reasonable amount of information from multiple perspectives. While committees should deliberate and take action in a timely manner, not all actions need to be taken immediately. In some cases it may be beneficial to bring an item back for discussion at a future meeting if information on the issue is limited.

Am I separating people and emotions from the issue?

While we like to think we are objective, rational beings, we can often be led by our emotions. It is important to make sure that on committee decisions, emotions are not the basis for decisions made. Be honest with yourself and be sure your own positive or negative feelings about a particular matter or individual take a backseat to the proper weighing of facts related to the issue.

Are you open, honest, and willing to listen?

Examine your own approach to dealing with conflict. Are you really listening to what your colleagues are saying? Are you thinking about the implications? Are you considering them? Don’t be afraid to state your concerns. Be honest by revealing what you see as the options and by explaining what you see as shortcomings in the suggestions of others.

What is the committee’s scope of responsibility?

At times committee members can feel as if they have bogged down and are not progressing on an issue. At such times, it can be helpful to take a step back and review the purpose for which the committee was established or review committee goals. If the discussion has gone off track, focus may need to be redirected. If the problem seems impossible to solve, you may need to come back to it at the next meeting. No matter what action is taken, always remember that everyone on the committee is volunteering their time and shares a common interest in the overall well-being of the City.

Is there a compromise that can be made?

At times when one is wrapped up in a debate on a particular topic, it can be easy to think only in the absolute terms of one's particular position. However, more often than not, win-win solutions exist when committee members are creative enough to discover them. When parties are locked on an issue, take a moment to consider potential routes for a compromise. Think about all that has been said throughout the debate. Can the best aspects of everybody's ideas be incorporated into a plan? Ask your colleagues why a particular approach is not satisfactory and why other approaches are.

Did staff have any thoughts or recommendations?

Most committees have a specific municipal employee assigned to serve as staff support to the committee. Often the person assigned is a department director or manager in the area that most closely associates with the role of the committee. The Neighborhood Services Director, for example, supports and advises the plan and architectural review commission. Assigned staff can be a valuable resource to provide professional guidance and/or recommendations on how to proceed with a decision. Staff can also research the topic under discussion and gather additional information related to the specific case in question. Staff can often also provide insight into best practices used in other communities to address similar issues.

Effective Council, Committee/Staff Relations

People make it all happen. In local government, people are at the heart of the organization, both those that comprise the organization, and those that the organization serves. In the City of Whitewater, cooperation and communication between city employees and committee members is encouraged and can often result in better outcomes and a more rewarding experience for all involved. To ensure that lines of positive communication remain open for all employees and volunteers, it is important to clarify some ground rules regarding communications as well as the role of staff members and committee members.

Everyone is Equal

All committee members are considered equal, including the chair or president of the committee. This means everyone on the committee should receive the same information on a particular matter. When a staff member shares information related to committee business, committee members can be confident the same information is being shared with all committee members. No single member should receive "special" information on an issue. This also means committee members should expect information they request on committee business will be distributed to the entire committee. This is the same for all committees, including the common council.

Use of Staff Resources

Staff time is limited. All positions within the City of Whitewater exist to provide and maintain municipal services, facilities, and infrastructure and to carry out organization priorities as determined by the common council. Committee members, including common council members, should be cognizant of this reality when making requests for information. Requests for information are welcome and encouraged; however, committee members should first consult with the city manager before requesting research that will consume significant staff time or otherwise divert limited resources to a project that falls outside of established common council priorities.

Employee Contact Line of Authority

Unless otherwise established by state statute, city ordinance, or employment agreement, all employees ultimately report to and work for the city manager. The city manager, in turn, works for and reports to the common council.

Common councilmembers as well as committee members are encouraged to learn about the role of each municipal department, to ask the staff questions about municipal operations and get to know employees. As a general practice, employees are expected to copy the city manager on all responses to inquiries made by common council members.

While communication is encouraged, the responsibility to direct the work of municipal employees, as well as prescribing or exacting employee discipline, are strictly the responsibility of the city manager. Therefore, if a committee member, including a common council member, has a concern related to the conduct or performance of an employee, that committee member should address it with the city manager.

However, if the concern were related specifically to the conduct or performance of the city manager, the committee member would be encouraged to bring it to the attention of the common council.

Lobbying Committee Members

Just as committee members should avoid directing work or disciplinary action for employees, employees should refrain from any action or communication that is intended to “lobby” the support of committee members for support of a particular project, budget request, or other initiative. This holds true for department directors, managers, and general employees. If a committee member finds himself or herself in such a position, the committee member is encouraged to direct the employee to his/her immediate supervisor and/or department director to address the issue. Committee members are encouraged to notify the city manager so legitimate issues can be promptly addressed.

Communicating with the Public

The life of a public official is just that, public. Though committee members should feel comfortable speaking their mind and answering questions, what a committee member shares can have an impact on public perception of the entire municipal organization. With that in mind, here are some things to consider when communicating with residents regarding municipal issues.

Representing the Committee

No single committee member, including common councilmembers, can individually commit the city as a whole, or their respective committee to a position on an issue without a vote or consent of that committee. It is inappropriate to commit to things the whole committee may not be aware of or approve. Committee members should refer requests for official positions on an issue to staff for review and recommendation. The matter should then be added to an agenda to obtain the committee’s official position.

Complaints from Citizens

If a committee member receives a complaint not related to employee behavior, s/he is encouraged to share the details of the complaint and complainant contact information with city staff so that any problems can be addressed.

Report or Refer the Complaint: Often the complainant is looking for an understanding ear and agreement from the committee member. While committee members are encouraged to be sensitive to the plight of the complainant, committee members should not attempt to promise a particular outcome or attempt an interpretation of the ordinance or policy related to the complainant's concern. Instead, committee members should commit to passing along the information to the appropriate staff person for resolution.

Avoid Sharing at Meetings: Avoid waiting to bring up citizen complaints until the next committee meeting. While doing so may appear to be a manner of "holding government accountable" the reality is that bringing up complaints at a public meeting can deflate staff, embarrass or annoy other committee members, and ultimately damage the credibility of the organization. This is all in addition to making the complainant wait to have their concern heard thus delaying resolution.

Avoid Private Disputes. Occasionally, a committee member may be asked to get his/her committee involved in what is purely a private dispute. These disputes typically include nuisance complaints, work hours for contractors, boundary line disputes, fence problems, and many, many similar issues. Intercession in such matters will be a drain on resources and will ultimately prove fruitless. If a committee member is unclear as to whether an issue is a private dispute or is within the City's jurisdiction, s/he is encouraged to refer the issue to city staff so that a proper determination can be made and subsequently shared with the complainant.

Complaints Regarding Employee Behavior

Citizen complaints regarding employee behavior or performance should always be referred to the city manager for investigation and resolution.

Media Relations

Common councilmembers, and occasionally other committee members, may be approached by the media and asked for commentary on a council action or position on an issue. To the extent that the common council has taken an official action or position, the city manager, or his/her designee will generally be the spokesperson. Common councilmembers, however, are not prohibited from sharing personal opinions with the media or from referencing previous public actions taken by the common council as a whole. The same applies to other municipal committees.

Represent General Interests

As previously stated in this manual, committee efforts should always focus on what is best for the city as a whole. Common councilmembers and other committee members must be careful to represent the general interests of the City and not special interest groups.

Conclusion

The purpose of this manual has been to provide new committee members, including common council members, with helpful information that clarifies fundamental elements of serving in a public office for the City of Whitewater. Committee members are encouraged to read the manual, *Handbook for Wisconsin Municipal Officials*, produced by the League of Wisconsin Municipalities, and to become familiar with the Whitewater Municipal Code of Ordinances in an effort to gain further knowledge regarding the role of public officials in Wisconsin. As always, feel free to contact the City Manager's office at 262-473-0104 with any additional questions regarding municipal operations or this manual.

Whitewater Municipal Code of Ordinances
Chapter 7.04 Code of Ethics
Appendix A

Sections:

7.04.010 - Declaration of policy.

The proper operation of democratic government requires that public officials and employees be independent, impartial and responsible to the people; that government decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals, there is hereby established a code of ethics for all city officials and employees, whether elected or appointed, paid or unpaid, including members of boards, committees and commissions of the city. The purpose of this code is to establish guidelines for ethical standards of conduct for all such officials and employees by setting forth those acts or actions that are incompatible with the best interests of the city and by directing disclosure by such officials and employees of private financial or other interests in matters affecting the city. The provisions and purpose of this code and such rules and regulations as may be established are hereby declared to be in the best interests of the city.

(Ord. 1203(2/5/91) § 2(part), 1991).

7.04.020 - Definitions.

As used in this chapter:

- (a) "Public employee" means any person excluded from the definition of a public officer who is employed by the city.
- (b) "Financial interest" means any interest which shall yield, directly or indirectly, a monetary or other material benefit to the officer or employee or to any person employing or retaining the services of the officer or employee.
- (c) "Official" means all city officers as defined in Section 62.09 under Wisconsin Statutes and all members of boards and commissions and agencies established or appointed by the city manager or common council, whether paid or unpaid.
- (d) "Personal interest" means any interest arising from blood or marriage relationships or from close business or political associations, whether or not any financial interest is involved.
- (e) "Person" means any person, corporation, partnership or joint venture.

(Ord. 1203(2/5/91) § 2(part), 1991).

7.04.030 - Statutory standards of conduct.

There are certain provisions of the Wisconsin Statutes which should, while not set forth herein, be considered an integral part of any code of ethics. Accordingly, the provisions of the following sections of the Wisconsin Statutes, as from time to time amended, are adopted by reference and shall apply to public officials and employees whenever applicable to wit:

- (a) Sec. 946.10. Bribery of Public Officers and Employees.
- (b) Sec. 946.11. Special Privileges from Public Utilities.
- (c) Sec. 946.12. Misconduct in Public Office.
- (d) Sec. 946.13. Private Interest in Public Contract Prohibited.
- (e) Chapter 11. Campaign Financing.
- (f) Chapter 19. Subchapter IV Open Meetings of Governmental Bodies.

(Ord. 1203(2/5/91) § 2(part), 1991).

7.04.040 - Responsibility of public office.

Public officials and employees hold office for the benefit of the public. They are bound to uphold the Constitution of the United States and the Constitution of this state; to observe the highest standards of law in the exercise of the powers and duties of their office; to impartially carry out the laws of the nation, state and city; to discharge faithfully the duties of their office regardless of personal considerations; and to recognize that the public interest must be their prime concern.

(Ord. 1203(2/5/91) § 2(part), 1991).

7.04.050 - Dedicated service.

All officials and employees of the City of Whitewater should be loyal to the objectives expressed by the electorate and the programs developed to attain these objectives. Appointive officials and employees shall adhere to the rules of work and performance established as the standard for their positions by the appropriate authority.

Officials and employees should not exceed their authority or breach the law or ask others to do so, and they should work in full cooperation with other public officials and employees unless prohibited from so doing by law or by officially recognized confidentiality of their work.

(Ord. 1203(2/5/91) § 2(part), 1991).

7.04.060 - Fair and equal treatment.

(a) Use of Public Property. No official or employee shall request or permit the unauthorized use of city-owned vehicles, equipment, materials or property for personal convenience or profit.

(b) Obligations to Citizens. No official or employee shall grant any special consideration, treatment or advantage to any citizen beyond that which is available to every other citizen.

(Ord. 1203(2/5/91) § 2(part), 1991).

7.04.070 - Conflict of interest.

(a) Financial and Personal Interest Prohibited. No official or employee, whether paid or unpaid, shall engage in any business or transaction or shall act in regard to financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of official duties in the public interest contrary to the provisions of this chapter or which would tend to impair independence of judgment or action in the performance of official duties.

(b) Specific Conflicts Enumerated.

(1) Incompatible Employment. No official or employee shall engage in or accept private employment or render service for private interest when such employment or service is incompatible with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties, unless otherwise permitted by law and unless disclosure is made as hereinafter provided.

(2) Gifts and Favors.

(A) No official or employee shall accept any gift whether in the form of service, loan, thing or promise, from any person which may tend to impair his independence of judgment or action in the performance of his duties or grant in the discharge of his duties any improper favor, service or thing of value. EXCEPTION: Advertising or promotional items having a value of ten dollars or less per gift shall be exempt.

(B) No official or employee may solicit or accept, either directly or indirectly, from any person or organization, money or anything of value if it could reasonably be expected to influence the employee's official actions or judgments or be considered a reward for any action or inaction on the part of the official or employee.

- (C) An official or employee is not to accept hospitality if, after consideration of the surrounding circumstances, it could reasonably be concluded that such hospitality would not be extended were it not for the fact that the guest, or a member of the guest's immediate family, was a city official or employee. Participation in celebrations, grand openings, open houses, informational meetings and similar events are extended from this prohibition. This paragraph further shall not be construed to prevent candidates for elective office from accepting hospitality from citizens for the purpose of supporting the candidate's campaign.
 - (D) Gifts received by an official or employee under unusual circumstances should be referred to the ethics board within ten days of receipt for recommended disposition.
 - (3) Representing Private Interests Before City Agencies or Courts. No official or employee shall appear on behalf of any private person (other than him or herself, his or her spouse or minor children) before any city agency, board, commission or the common council if the official or employee or any board, commission or committee of which the official or employee is a member has any jurisdiction, discretion or control over the matter which is the subject of such representation. However, members of the common council may appear before city agencies on behalf of constituents in the course of their duties as representatives of the electorate or in the performance of public or civic obligations.
 - (A) Ad Hoc Committee. EXCEPTION: No violation of this section shall exist, however, where an individual serves on an ad hoc committee charged with the responsibility of addressing an issue or topic in which that individual, or the employee or a client of that individual, has an interest so long as the individual discloses to the ad hoc committee that such interest exists.
 - (c) Contracts with the City. No city officer or employee who, in his capacity as such officer or employee, participates in the making of a contract in which he has a private pecuniary interest, direct or indirect, or performs in regard to that contract with some function requiring the exercise of discretion of his part, shall enter into any contract with the city unless it falls within the confines of Sec. 946.13, Wis. Stats. "Private Interest in Public Contract Prohibited," or the following:
 - (1) The contract is awarded through a process of public notice and competitive bidding or the common council waives the requirement of this section after determining that it is in the best interest of the city to do so.
 - (2) The provisions of this section shall not apply to the designation of a public depository of public funds.
 - (d) Disclosure of Interest in Legislation.
 - (1) Any member of the common council who has a financial interest or personal interest in any proposed legislation before the common council, shall disclose on the records of the common council, the nature and extent of such interest.
 - (2) Any other official or employee who has a financial interest or personal interest in any proposed legislative action of the common council or any board, commission or committee upon which the official or employee has any influence or input or of which the official or employee is a member that is to make a recommendation or decision upon any item which is the subject of the proposed legislative action shall disclose on the records of the common council or the appropriate board, commission or committee the nature and extent of such interest.
- (Ord. 1529A §§ 1, 2, 2003; Ord. 1203(2/5/91) § 2(part), 1991).

7.04.075 - Disclosure of confidential information.

No official or employee shall without proper legal authorization, disclose confidential information concerning the property, government or affairs of the city.

(Ord. 1529A § 1(part), 2003).

7.04.080 - Ethics board.

- (a) There is hereby created an ethics board to consist of five members and one alternate, all residents of the city. Elected officials or employees will not be eligible for appointment. The city manager shall provide necessary staff assistance to the board. The city attorney shall routinely furnish the board whatever legal assistance is necessary to carry out its functions. However, if a possible, apparent, or actual conflict of interest involving the city attorney should occur, legal counsel shall be furnished the board through the city manager's appointment of other legal counsel after consultation with the chair of the ethics board.
 - (b) The members of the ethics board shall be appointed by the city manager subject to confirmation by the common council. Terms of office shall be three years except that when the initial appointments are made, one member shall be appointed for one year, two for two years, and two for three years. The term of the alternate shall be for three years, except that the initial appointment shall coincide with the ending of the terms of the member appointed for one year.
 - (c) The ethics board shall elect its own chair, vice-chair and secretary and shall develop written rules of procedure which shall be filed with the city clerk.
 - (d) The ethics board may make recommendations to the common council with respect to amendments to the code of ethics ordinance.
- (Ord. 1203(2/5/91) § 2(part), 1991).

7.04.090 - Duties of the ethics board.

- (a) Upon receipt at the city clerk's office of a notarized complaint in writing, which shall state the name of the elected or appointed official or employee alleged to have committed a violation of this chapter and which shall set forth the particulars thereof, the city clerk or designee shall distribute a copy of the complaint along with a copy of the code of ethics ordinance to the respondent within ten working days (i.e., Monday through Friday, excluding holidays). The city clerk or designee also shall send a copy of the complaint to each member of the ethics board. The information contained in the verified complaint shall be kept confidential until a proper disposition of the case occurs.
- (b) The board shall meet in closed session and determine whether the complaint, if true, may constitute a violation of the chapter. If four or more of the members of the board vote to dismiss the verified complaint, a formal dismissal action adopted in open session shall be filed with the city clerk and a copy sent to the complainant and the respondent. If four or more members do not vote to dismiss, the action shall proceed as provided in subsection (c) of this section.
- (c) If the action is not dismissed under subsection (b) of this section, the board shall make preliminary investigations with respect to the alleged violation of the ethics chapter. No preliminary investigation of the activities of any elected or appointed official or employee may be initiated unless such official or employee is notified in writing. The notice shall state the nature and purpose of this preliminary investigation. Information gathered during the preliminary investigation shall be kept confidential until a finding is made by the board.
- (d) If, after the preliminary investigation, three or more of the members of the board vote in open session that no probable cause exists, the board shall issue a formal finding to that effect and dismiss the case. A copy of the formal finding shall be filed with the city clerk and a copy distributed to the complainant and the respondent.
- (e) If the board is unable to come to a conclusion on the subject of probable cause, due to abstentions or the voting of "present," the board shall have further discussion and vote again. If the stalemate continues, the board shall treat it as a dismissal and proceed as in subsection (d) of this section.
- (f) If, after the preliminary investigation, three or more of the members of the board vote that there is probable cause that a violation took place, the board shall file formal findings to that effect with the city clerk and proceed toward the conduct of a hearing. The vote shall be taken in open session.

- (g) In the case of a probable cause finding, the board shall send a notice of due process rights and a notice of hearing on the matter to the respondent. The complainant shall also be notified of the hearing.
 - (h) The board shall then conduct a hearing on the verified complaint, which hearing shall be held not more than thirty days after such finding of probable cause. The board shall give the respondent at least twenty days' notice of the hearing date. Such hearings shall be at open session unless the respondent petitions for a hearing closed to the public. The rules of criminal evidence shall apply to such hearings. All evidence considered by the board, including certified copies of records and documents, shall be fully offered and made part of the record. Every party shall be afforded adequate opportunity to rebut or offer countervailing evidence.
 - (i) During all stages of the proceeding conducted under this section, the elected or appointed official or employee whose activities are under investigation shall be entitled to be represented by counsel of his or her own choosing.
 - (j) The respondent or his/her attorney shall have an opportunity to examine all documents and records to be used at the hearing under subsection (g) of this section at a reasonable time before the date of the hearing; as well as during the hearing, to bring witnesses, to establish all pertinent facts and circumstances, and to question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses.
 - (k) The board shall have the power to compel the attendance of witnesses and to issue subpoenas granted other boards and commissioners under Section 885.01(3) of the Wisconsin Statutes.
 - (l) Determination. Upon conclusion of the hearing the board shall make a decision agreed to by at least four members. It shall file the decision in writing within ten working days after the vote, signed by at least four participating board members stating findings of fact, conclusions of law concerning the propriety of the conduct of the elected or appointed official or employee, and if appropriate, referring the matter to the city council or other proper authority with a recommendation for censure or other disciplinary action. A member of council censured may be subject to recall pursuant to Section 9.10, Wisconsin Statutes, or any other legal process authorized by law. If four or more members are not able to reach an agreement, the complaint shall be dismissed.
- (Ord. 1203(2/5/91) § 2(part), 1991).

7.04.100 - Applicability of code.

This code shall be operative in all instances covered by its provisions except when superseded by an applicable statutory provision and statutory action is mandatory, or when the application of a statutory provision is discretionary, but determined by the ethics board to be more appropriate or desirable.

(Ord. 1203(2/5/91) § 2(part), 1991).

7.04.110 - Distribution of the code.

The city clerk shall provide copies of this code to elected and appointed officials covered by this chapter and shall keep at least one copy permanently on file for the use of the public.

(Ord. 1203(2/5/91) § 2(part), 1991).

7.04.120 - Severability.

- (a) If any provision of this chapter is invalid or unconstitutional, or if the application of this chapter to any person or circumstances is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this chapter which can be given effect without the invalid or unconstitutional provision or application.
 - (b) This ordinance shall be in full force and effect from and after its passage and publication.
- (Ord. 1203 (2/5/91) § 2(part), 1991).

7.04.130 - Penalty for violations.

In addition to any other provisions relating to disciplinary action or censure, any person who violates any of the provisions of this chapter may forfeit and pay a penalty of not less than twenty-five dollars nor more than two hundred fifty dollars for the first offense, together with the costs of prosecution; and for the second and subsequent offenses, not less than fifty dollars nor more than two hundred fifty dollars, together with the costs of prosecution. If respondent fails to pay the penalty and costs within sixty days of imposition of the penalty, the city may collect the penalty by obtaining a judgment in the circuit court and collecting said judgment as provided by law.

(Ord. 1203(2/5/91) § 2(part), 1991).

CHAPTER 43

LIBRARIES

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43.001 Legislative findings and declaration of policy.**(1) The legislature recognizes:**

- (a) The importance of free access to knowledge, information and diversity of ideas by all residents of this state;
- (b) The critical role played by public, school, special and academic libraries in providing that access;
- (c) The major educational, cultural and economic asset that is represented in the collective knowledge and information resources of the state's libraries;
- (d) The importance of public libraries to the democratic process; and
- (e) That the most effective use of library resources in this state can occur only through interlibrary cooperation among all types of libraries and the effective use of technology.

(2) The legislature declares that it is the policy of this state to provide laws for the development and improvement of public libraries, school libraries and interlibrary cooperation among all types of libraries.

History: 1985 a. 177; 1997 a. 150.

Municipal libraries are a matter of statewide concern. Accordingly, home rule provisions will not justify local departures from the provisions of ch. 43. 76 Att'y. Gen. 203.

43.01 Definitions. In this chapter:

- (1) "Department" means the department of public instruction.
- (2) "Division" means the division for libraries and technology in the department.
- (3) "Municipality" means a city, village, town, tribal government or tribal association, or a school district that maintained and operated a public library facility prior to December 17, 1971.
- (4) "Network" means a formal arrangement between libraries or other informational service organizations whereby materials, information and services are exchanged and made available to potential users.
- (5) "Public library system" means a system established as either a federated public library system under s. 43.19 or a consolidated public library system under s. 43.21.
- (6) "State superintendent" means the state superintendent of public instruction.
- (7) "Tribal college" means an accredited college, operated or controlled by a federally recognized American Indian tribe or band in this state, that meets the requirements of 25 USC 1804.

History: 1971 c. 152; 1977 c. 418; 1979 c. 347; 1983 a. 189; 1985 a. 177 ss. 4, 5; 1993 a. 335; 1995 a. 27 ss. 1967, 9145 (1); 1997 a. 27; 2001 a. 48; 2011 a. 158; 2015 a. 306.

43.03 General duties of state superintendent. The state superintendent shall:

(1) Promote, assist and plan the organization, development and improvement of school library media services to provide the resources needed for teaching and learning in the schools.

(2) Promote, assist, plan and coordinate the organization, development and improvement of public library services and public library systems to serve the needs of all citizens in the state.

(3) (a) Promote cooperation and resource sharing among public libraries, school libraries, other types of libraries and related agencies.

(b) Plan, coordinate, evaluate and set statewide priorities for the development of networks to enable library cooperation and resource sharing within this state and between this state and resource providers in other states.

(d) Submit to the council on library and network development a biennial report which describes the programs and policies carried out under pars. (a) and (b) in the preceding biennium and the programs and policies to be carried out under pars. (a) and (b) in the succeeding biennium.

(4) Plan and coordinate the provision of library services to groups with special needs, including institutional residents, the physically and mentally handicapped, the socially and economically disadvantaged and racial and ethnic minorities.

(5) Accept, on behalf of the state, grants from the federal government or any federal agency or gifts or grants from any other source to be used for the purposes designated under this chapter.

(6) Enter into an annual contract with the public library in a 1st class city for the provision of library services to physically handicapped persons, including the blind and visually handicapped, certified by competent authority as unable to read or use conventional printed materials as a result of physical limitations. For the purpose of this subsection, "competent authority" means any member of the medical or allied professions, and professional persons in the fields of public health, education, library service, rehabilitation, social work and public welfare.

(7) Contract for service with libraries and other resource providers in and outside of this state to serve as resources of specialized library materials and information not available from the resources for libraries and lifelong learning service under s. 43.05 (11).

(8) Establish procedures necessary for the internal administrative operation of the division.

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(9) Develop and maintain a computer database containing bibliographic and library holding information for all types of library materials owned by libraries throughout the state to serve as a resource sharing tool and assist libraries in developing computerized bibliographic databases.

(10) Disseminate information regarding appropriate continuing education activities available to librarians, library board members, library support staff and other related professionals.

History: 1979 c. 347; 1985 a. 177; 1995 a. 27; 1997 a. 27; 1999 a. 185; 2011 a. 158.

43.05 General duties of the division. The division shall:

(1) Coordinate and conduct continuing education programs for librarians of school library media programs, public libraries, public library systems and institutional library programs.

(2) As it deems appropriate, assist libraries in the identification and recruitment of qualified personnel.

(3) Provide professional and technical advisory, consulting and informational services to assist:

(a) School districts establishing, maintaining or expanding school library media programs and facilities;

(b) Public libraries, municipalities establishing, maintaining or expanding public libraries, counties establishing, maintaining or expanding public library services, public library systems and their governing bodies;

(c) State agencies and officers; and

(d) Institutional library programs.

(4) Collect library statistics and conduct studies and surveys of library needs throughout the state and report and publish the findings. The research shall be coordinated with statewide library planning.

(5) Designate a librarian to serve as a coordinator of activities for state document depository libraries under ss. 35.81 to 35.835 and to fulfill its responsibilities under ss. 35.81 to 35.835.

(6) Recommend and distribute standards for school library programs and facilities to school library media programs, standards for public libraries to public library governing bodies and standards for institutional library programs to governing bodies and administrators of institutional library programs and to heads of departments, as defined under s. 15.01 (8), which administer institutional libraries.

(7) Establish standards for public library systems under s. 43.09 (2).

(8) Establish standards for and issue certificates to public librarians under s. 43.09 (1).

(9) Approve the establishment of public library systems under s. 43.13.

(10) Administer aids to public library systems under s. 43.24.

(11) Maintain a resources for libraries and lifelong learning service to supplement the collections of all types of libraries in this state by providing specialized materials not appropriately held and information sources not provided by local libraries or readily available from other area or state-level resource providers. The service shall provide specialized library and information services to state agency libraries and state employees, institution libraries, public library systems, public libraries, school libraries, and other types of libraries according to policies developed by the division. Library and information services may include development of collections of specialized materials, interlibrary loan services, reference services, provision of database search services, and maintenance of a statewide database of library materials. The service may contract with state agencies and libraries to provide library material cataloging and processing services.

(12) Assist the council on library and network development in the preparation of the descriptive and statistical report to be prepared by the council under s. 43.07 (5).

(13) Carry out such other programs and policies as directed by the state superintendent.

(14) (a) In this subsection, “participating municipality” has the meaning given in s. 43.18 (1) (ag).

(b) Conduct a review of a public library system if at least 30 percent of the libraries in participating municipalities that include at least 30 percent of the population of all participating municipalities state in the report under s. 43.58 (6) (c) that the public library system did not adequately meet the needs of the library. If the division determines that the public library system did not adequately meet the needs of libraries participating in the system, it shall prepare an advisory plan suggesting how the public library system can so do in the future, including suggestions designed to foster intrasystem communications and local dispute resolution. The advisory plan shall be distributed to the public library system board, the boards of all libraries participating in the system and the county boards of all counties participating in the system.

History: 1979 c. 347; 1983 a. 189 s. 329 (27); 1985 a. 29, 177, 332; 1991 a. 285; 1995 a. 27; 1997 a. 27, 150; 1999 a. 83, 185; 2011 a. 158.

43.06 Collection and maintenance of data. (1) The division may perform any of the following activities to collect and maintain public library-related data, including all of the following:

(a) Purchase licenses for data collection software.

(b) Train library staff on the effective use of data in decision-making.

(c) Establish digital processes for the efficient collection, analysis, and reporting of data to library patrons and staff.

(d) Create dashboard tools for libraries to use internally in analyzing, and to report to the public about, library use.

(e) Develop, implement, and maintain technology systems that allow for secure, interoperable data exchange and the automation of work processes.

(f) Create an automated system for the initial certification and recertification of public librarians, as described in s. 43.09 (1).

(g) Establish library user authentication systems.

(2) From the appropriation accounts under s. 20.255 (1) (e) and (ek), the division may fund the activities described in sub. (1).

History: 2017 a. 142.

43.07 Council on library and network development.

The state superintendent and the division shall seek the advice of and consult with the council on library and network development in performing their duties in regard to library service. The state superintendent or the administrator of the division shall attend every meeting of the council. The council may initiate consultations with the department and the division. The council shall:

(1) Make recommendations to the division in regard to the development of standards for the certification of public librarians and standards for public library systems under s. 43.09.

(2) Advise the state superintendent in regard to the general policies and activities of the state’s program for library development, interlibrary cooperation and network development.

(3) Advise the state superintendent in regard to the general policies and activities of the state’s program for the development of school library media programs and facilities and the coordination of these programs with other library services.

(4) Hold a biennial meeting for the purpose of discussing the report submitted by the state superintendent under s. 43.03 (3) (d). Notice of the meeting shall be sent to public libraries, public library systems, school libraries and other types of libraries and related agencies. After the meeting, the council shall make recommendations to the state superintendent regarding the report and any other matter the council deems appropriate.

(5) On or before July 1 of every odd-numbered year, transmit to the state superintendent a descriptive and statistical report on the condition and progress of library services in the state and recommendations on how library services in the state may be improved. The state superintendent shall include the report as an addendum to the department’s biennial report under s. 15.04 (1) (d).

(6) Review that portion of the budget of the department relating to library service. Recommendations of the council in regard to the budget shall accompany the department's budget request to the governor.

(7) Receive complaints, suggestions and inquiries regarding the programs and policies of the department relating to library and network development, inquire into such complaints, suggestions and inquiries, and advise the state superintendent and the division on any action to be taken.

History: 1979 c. 347; 1983 a. 524; 1985 a. 177; 1995 a. 27; 1997 a. 27.

43.09 Certificates and standards. (1) **PUBLIC LIBRARIANS.** The division shall issue certificates to public librarians and promulgate, under ch. 227, necessary standards for public librarians. The qualifications for public librarians shall be based on education, professional training and experience. Any relevant instruction, as defined in s. 440.075 (1), that an applicant for a certificate has obtained in connection with any military service, as defined in s. 111.32 (12g), counts toward satisfying any requirement for instruction for a certificate under this subsection if the applicant demonstrates to the satisfaction of the division that the instruction obtained by the applicant is substantially equivalent to the instruction required for the certificate. Certificates already granted prior to December 17, 1971, shall remain in effect.

(2) **PUBLIC LIBRARY SYSTEMS.** The division, by rule, may promulgate necessary standards for public library systems. If promulgated, such rules shall be consistent with s. 43.15 and shall be established in accordance with ch. 227, except that the division shall hold a public hearing prior to adoption of any proposed rule. In addition to the notice required under s. 227.17, the division shall endeavor to notify each public library of such public hearings.

History: 1971 c. 152; 1979 c. 347; 1985 a. 177; 1985 a. 182 s. 57; 1997 a. 150; 2011 a. 120; 2017 a. 331.

Cross-reference: See also ch. PI 6, Wis. adm. code.

43.11 County library planning committees. (1) **CREATION.** Any county board may appoint a county library planning committee under this section. If a county board, in a county where all public library service is administered or coordinated by an existing county library board or where there is a single-county public library system board, determines to appoint a committee under this section, the existing library board may serve as the county library planning committee. The county board shall notify the division immediately upon appointment of the committee.

(3) **DUTIES AND POWERS.** (a) The committee may prepare a new plan for the organization of a county or multicounty system, revise an existing plan or change the boundaries of a public library system. It shall conduct public hearings concerning these plans, revisions and changes to which representatives of all libraries in the county shall be invited.

(b) The committee's final report, including a new plan, revisions to an existing plan or changes to the boundaries of a public library system and copies of any written agreements necessary to implement the proposal, shall be filed with the county board and submitted to the division. Plans for multicounty systems shall include a method for allocating system board membership among the member counties.

(c) The plan of library service for a county, whether for a single county or a multicounty system, shall provide for library services to residents of those municipalities in the county not maintaining a public library under this chapter. The services shall include full access to public libraries participating in the public library system and the plan shall provide for reimbursement for that access. Services may include books-by-mail service, bookmobile service, the establishment of additional libraries or other services deemed appropriate by the committee. Services may be provided by contracting with existing public libraries in the county or in adjacent counties or with the public library system or by creating a county library organization under this chapter. The plan of library service

for a county may provide for improving public library service countywide and in municipalities that have libraries. The plan shall specify the method and level of funding to be provided by the county to implement the services described in the plan, including the reimbursement of public libraries for access by residents of those municipalities in the county not maintaining a public library.

(d) The plan of library services for a county may include minimum standards of operation for public libraries in the county. The county shall hold a public hearing on any standards proposed under this paragraph. The standards shall take effect if they are approved by the county and the public library boards of at least 50 percent of the participating municipalities in the county that contain, according to the most recent estimate prepared under s. 16.96, at least 80 percent of the population of participating municipalities in the county.

(e) The plan of library services for a county may require that a municipality located in whole or in part within the county that operates a public library compensate another municipality located in whole or in part within the county that operates a public library whenever the latter public library provides library services to residents of the municipality that operates the former public library. The plan's compensation for each loan may not exceed the actual cost of the loan, as defined by the department by rule.

History: 1971 c. 152; 1981 c. 20; 1985 a. 29, 177; 1993 a. 184; 1997 a. 150; 2005 a. 420.

43.12 County payment for library services. (1) (a) By March 1 of each year, each of the following payments of not less than the minimum amount calculated under par. (b) shall be made:

1. Except as provided in subd. 2., by a county that does not maintain a consolidated public library for the county under s. 43.57 and that contains residents who are not residents of a municipality that maintains a public library under s. 43.52 or 43.53, to each public library in the county and to each public library in an adjacent county, other than a county with a population of at least 750,000 or a county that maintains a consolidated public library for the county.

2. If the adjacent county maintains a consolidated public library and provides the notice under sub. (1m), by a county that does not maintain a consolidated public library for the county under s. 43.57 and that contains residents who are not residents of a municipality that maintains a public library under s. 43.52 or 43.53, to the consolidated public library for the adjacent county providing the notice under sub. (1m).

3. If a county maintains a consolidated public library and provides a notice under sub. (1m), by that county to each public library in an adjacent county, other than a county with a population of at least 750,000, that provides a statement to the county under sub. (2).

(b) The minimum amount under par. (a) shall be calculated to equal 70 percent of the amount computed by multiplying the number of loans of material made by the library during the prior calendar year, for par. (a) 1. or 3., to residents of the county who are not residents of a municipality that maintains a public library under s. 43.52 or 43.53, or, for par. (a) 2., to residents of the county who are not residents of a municipality that contains a branch of the consolidated library, as reported under sub. (2), by the amount that results from dividing the total operational expenditures of the library during the calendar year for which the number of loans are reported, not including capital expenditures or expenditures of federal funds, by the total number of loans of material made by the public library during the calendar year for which the loans are reported.

(c) The library board of the public library entitled to a payment under this subsection may direct the county to credit all or a portion of the payment to a county library service or library system for shared services.

(1m) If a county maintains a consolidated public library, the library shall provide a notice not later than April 1 to any public library from which it requests payment under sub. (1).

(2) By July 1 of each year, each public library lying in whole or in part in a county shall provide a statement to the county clerk of that county and to the county clerk of each adjacent county, other than a county with a population of at least 750,000, that reports all of the following:

(a) The number of loans of material made by that library during the prior calendar year to residents of the county, or adjacent county, who are not residents of a municipality that maintains a public library under s. 43.52 or 43.53.

(b) If the library is in a county that is adjacent to a county with a consolidated library system, the number of loans of material made by that library during the prior calendar year to residents of the adjacent county who are not residents of a municipality that contains a branch of the consolidated library.

(c) The total number of loans of material made by that library during the previous calendar year.

(3) A county may enter into an agreement with its participating municipalities or with a public library system to pay no less than the amounts determined under sub. (1) to the public library system for distribution to the public libraries that participate in that system.

(4) Upon request of a county clerk, a public library shall provide access to all books and records used to determine the amount computed under sub. (2).

(5m) Nothing in this section prohibits a county from providing funding for capital expenditures.

(6) The county library board or, if no county library board exists, the county itself, shall either distribute the aid provided by the county to the public libraries, as provided in the plan prepared under s. 43.11, or shall transfer the aid for distribution to the public library system in which it participates.

(7) This section does not apply to a county having a population of 750,000 or more.

(8) For the purposes of this section, a county that provides library service solely under s. 43.57 (2m) is a county that maintains a consolidated public library, and a tribal college–county joint library under s. 43.57 (2m) is a branch of the consolidated library.

History: 1997 a. 150; 2005 a. 226, 420; 2007 a. 97; 2013 a. 157; 2015 a. 306; 2017 a. 207 s. 5.

43.13 Division review. (1) (a) No public library system may be established without the approval of the division. In reviewing final reports submitted by county library planning committees, the division shall consider, in addition to the standards set forth in s. 43.15, the proposed system territory, organization and financing, initial and long-range plans for library services, the role of existing multi-jurisdictional service programs in the territory and plans for cooperation with adjoining systems and with other kinds of libraries in the territory.

(b) If the division approves a final report, it shall report such approval to the appropriate county boards and county library planning committees. Upon acceptance by the county boards, the division shall certify to the appropriate county boards the establishment of the public library system proposed by the report, specifying the effective date of the establishment of the system.

(2) A public library system board may submit to the division a plan for the alteration in the territory included within the system or for a change in system organization from a federated to a consolidated system or vice versa. If the change proposed by the plan is approved, the division shall certify such fact to the system board, specifying the effective date of the change.

(3) The effective date of the establishment of a system under sub. (1) or of a change under sub. (2) shall be January 1 of the year specified by the division.

(4) Any decision by the division under this section may be appealed to the state superintendent.

History: 1971 c. 152; 1995 a. 27; 1997 a. 27; 2005 a. 226.

43.15 Standards for public library systems. A public library system shall not be established unless it meets the requirements under this section.

(1) **POPULATION.** The territory within the system shall:

(a) Have a population of 100,000 or more. If, because of the withdrawal or realignment of participating counties, a public library system has fewer than 3 participating counties and a population under 200,000, the remaining parts of the system shall realign with an existing system within 2 years after the date on which the population falls below 200,000.

(b) After July 1, 1998, no new system may be established unless it serves a population of at least 200,000.

(2) **FINANCIAL SUPPORT.** Each county proposed to be included within a system shall demonstrate, to the satisfaction of the division, its ability to provide adequate funding to implement the plan submitted under s. 43.11 (3) and the report submitted under s. 43.13 (1).

(3) **TERRITORY INCLUDED.** (a) A consolidated system shall consist of one county only. A federated system shall consist of one or more counties.

(b) No more than one system may be established within a single county. If the territory of a municipality lies in 2 or more counties which are not in the same public library system, the municipal library board or, if no such board exists, the municipal governing body shall determine the system in which the municipality will participate.

(c) If the territory of a joint library lies in 2 or more counties that are not in the same public library system, the joint library board or, if no such board exists, the governing bodies of the municipalities and counties that created the joint library shall determine the system in which the joint library will participate.

(4) **METHOD OF ORGANIZATION.** (a) A public library system may be organized as a single-county federated public library system, a multicounty federated public library system, or a single-county consolidated public library system. Two public library systems may merge with the approval of each public library system board and the county boards of the participating counties.

(b) A county may participate in a federated public library system if it does all of the following:

1. Adopts and maintains the plan of library service submitted and approved under ss. 43.11 (3) and 43.13 (1).

2. Provides the financial support for library services required under sub. (2).

3. Enters into a written agreement with the public library system board to participate in the system and its activities and to furnish library services to residents of those municipalities in the county not maintaining a public library.

(c) A municipal, county or joint public library may participate in a public library system if it meets all of the following requirements:

1. Is established under this chapter. A tribal college–county joint library under s. 43.57 (2m) is a library established under this chapter.

2. Is located in a county that participates in a public library system.

3. Is authorized by its municipal governing body or county board to participate in the public library system. If the library is a tribal college–county joint library, it is authorized by an agreement under s. 43.57 (2m).

4. Enters into a written agreement with the public library system board to participate in the system and its activities, to participate in interlibrary loan of materials with other system libraries, and to provide, to any resident of the system area, the same library services, on the same terms, that are provided to the residents of

the municipality or county that established the member library. This subdivision does not prohibit a municipal, county, or joint public library from giving preference to its residents in library group programs held for children or adults if the library limits the number of persons who may participate in the group program, or from providing remote access to a library's online resources only to its residents.

6. Employs a head librarian who is certified as a public librarian by the department and whose employment requires that he or she be present in the library for at least 10 hours of each week that the library is open to the public, less leave time.

7. Beginning in 2008, annually is open to the public an average of at least 20 hours each week except that for a library in existence on June 3, 2006, annually is open to the public an average of at least 20 hours or the number of hours each week that the library was open to the public in 2005, whichever is fewer.

8. Beginning in 2008, annually spends at least \$2,500 on library materials.

(d) A county may establish a consolidated public library system in which the included county and its underlying communities form a single system. The county may, for such purposes, take over and acquire any library property by consent of the authority controlling that property.

(5) CAPITAL COSTS EXCLUDED. For the purpose of determining the amount of financial support required under sub. (4) (b) 2., amounts spent for capital projects shall be excluded.

(5m) LIMIT. A public library system may not be established if its establishment would cause the number of public library systems to exceed the number in existence on June 3, 2006.

History: 1971 c. 152; 1981 c. 197; 1985 a. 29, 177; 1987 a. 399; 1989 a. 286; 1991 a. 269; 1995 a. 27 s. 9145 (1); 1995 a. 270; 1997 a. 27, 150; 2005 a. 226, 420; 2007 a. 97; 2011 a. 32; 2015 a. 306; 2017 a. 365 s. 111.

Cross-reference: See also s. PI 6.06, Wis. adm. code.

43.16 Resource libraries. (1) (a) Each public library system shall have at least one system resource library. Annually, prior to the expiration of its agreement with its existing system resource library, the public library system board shall negotiate with the member public library with the largest annual operating budget of all member libraries to serve as a system resource library in the following year. If the board and the proposed resource library are unable to reach an agreement for the following year before the expiration date of any existing agreements with resource libraries, the existing agreements shall be extended for one year or until an agreement is reached with that proposed resource library, whichever occurs earlier. The division shall notify the public library system board, the existing resource libraries and the proposed resource library of the extension and, during the period of extension, shall attempt to mediate an agreement between the public library system board and the proposed resource library. If the division determines that the public library system board and the proposed system resource library are unable to reach an agreement before the end of the one-year period, the division shall propose an alternative agreement, which shall be binding if it is acceptable to the proposed system resource library. If the alternative agreement is unacceptable to the proposed system resource library, the board shall negotiate with the member public library with the next largest annual operating budget of all member public libraries to serve as a system resource library in the following year.

(am) An existing contract may be extended under par. (a) only if it was entered into on or after May 8, 1990.

(b) The procedure under par. (a) shall be repeated with member public libraries in decreasing order of the size of their annual operating budgets until an agreement is reached with a member public library to serve as a system resource library. Except as provided in par. (a), no agreement may extend beyond December 31 of any year.

(2) If the member public library selected to serve as a system resource library under sub. (1) fails to meet all of the following

requirements, the system board shall enter into a supplementary contract with the academic library with the largest operating budget of all academic libraries in the system area, or with a resource library in an adjacent system, that meets all of the following requirements:

(a) The library has a collection of at least 100,000 volumes.

(b) The library is open to the public at least 50 hours each week.

(c) The library employs at least one full-time, permanent reference librarian with a master's degree in library science.

History: 1989 a. 286.

43.17 Public library systems; general provisions.

(1) BOARD TERMS. Every public library system shall be governed by a board appointed under s. 43.19 or 43.21. No person employed by a public library that is a member of a public library system may be appointed to the public library system board. Upon the initial establishment of a board, the members shall be divided as nearly as possible into 3 equal groups to serve for terms expiring on January 1 of the 2nd, 3rd and 4th years, respectively, following their appointment. Thereafter, regular terms shall be for 3 years and shall commence on January 1. Vacancies shall be filled for the unexpired term in the same manner as regular appointments are made.

(2) BOARD ORGANIZATION AND MEETINGS. As soon as practicable after the initial establishment of a system, and thereafter in January of each year, the board shall organize by the election, from among its members, of a president and such other officers as it deems necessary. The board shall meet at least once every 2 months.

(2m) ADVISORY COMMITTEE. Every public library system may appoint a public library advisory committee to, among other things, advise the system board about the status and needs of libraries in the system, serve as a conduit of information between the system board and individual libraries in the system and make recommendations to the system board relating to libraries in the system.

(3) FISCAL YEAR. The fiscal year of each federated public library system whose territory lies within 2 or more counties shall be the calendar year.

(4) SYSTEM ADMINISTRATION. Notwithstanding ss. 59.17 (2) (b) and 59.18 (2) (b), responsibility for administration of a public library system shall vest in a head librarian who shall be appointed by and directly responsible to the public library system board.

(5) ANNUAL REPORT. Annually, at the time required by the division, each public library system shall report to the division on its operations, expenditures and territory served during the preceding year, shall submit a plan describing the program for library service to be carried out in the subsequent year and shall furnish such other information as the division requires.

(6) COOPERATIVE SERVICES. A public library system may contract with another such system, or with other libraries, library organizations or resource centers within this state or in adjacent states, to provide or receive library services.

(7) EXISTING EMPLOYEES. No person employed by a participating public library at the time of the establishment of a public library system shall lose, because of such establishment, any salary, fringe benefit or other employment rights in existence at that time.

(8) RETIREMENT. If any employee of a participating employer under the Wisconsin retirement system becomes, by virtue of the establishment of a public library system, an employee of that library system, the library system shall become a participating employer under the Wisconsin retirement system.

(9) CONTRACTS, BIDDING AND BORROWING. (a) All contracts for public construction made by a federated public library system whose territory lies within 2 or more counties or by a federated public library system whose territory lies within a single county with a population of at least 750,000 shall be let by the public library system board to the lowest responsible bidder in accord-

ance with s. 62.15 (1) to (11) and (14). For purposes of this section, the system board possesses the powers conferred by s. 62.15 on the board of public works and the common council. All contracts made under this section shall be made in the name of the federated public library system and shall be executed by the system board president and such other board officer as the system board designates.

(b) A public library system board of a multicounty library system may borrow money to accomplish any of its purposes, but the outstanding amount of such loans at any time may not exceed an amount equal to the system board's receipts for the prior fiscal year. A federated public library system whose territory lies within 2 or more counties may obtain a state trust fund loan to accomplish any of its purposes, but the outstanding amount of a federated public library system's state trust fund loans, together with all other indebtedness of the system, may not exceed an amount equal to the system's receipts for the prior fiscal year.

(10) **BORROWERS' CARDS.** Except as provided in sub. (11), all public libraries in a public library system shall honor the valid borrowers' cards of a public library in an adjacent public library system, other than the Milwaukee County Federated Library System. The requirement under this subsection does not apply to the Milwaukee County Federated Library System.

(11) **COST OF LENDING SERVICES.** (a) In this subsection, "loan" means a unit of service that involves the checking out of a single item from a library to an individual for use outside the library for a specific period of time.

(b) A public library in a public library system may refuse to honor valid borrowers' cards of a public library in an adjacent public library system if, in the most recent year in which the public library honored such cards, the total amount of the reimbursement received by the public library from that adjacent public library system, and from counties and municipalities that are located in that adjacent public library system, is less than the adjusted cost incurred for that year by the public library in honoring the cards.

(c) For purposes of par. (b), the adjusted cost shall be calculated by determining the actual cost for each loan incurred by the public library honoring the cards for a given year in the manner provided by the rules promulgated by the department under s. 43.24 (2) (n) and multiplying that amount by the remainder calculated by subtracting 500 from the total number of loans made in that year by the public library to borrowers from the adjacent public library system. For purposes of this paragraph, a renewal of a loan constitutes a separate loan.

(d) Any reimbursement made by a county under par. (b) may not result in a reduction in the level of support for public library services provided by that county to residents of that county.

(e) If a public library in a given public library system refuses to honor the valid borrowers' cards from an adjacent public library system, annual meetings shall be held between representatives of the affected public library systems to discuss the resulting lack of services to the affected borrowers and the costs of providing such services. The affected public library systems shall provide the division with written minutes of these meetings.

History: 1971 c. 152; 1981 c. 96; 1985 a. 29, 176, 177; 1985 a. 332 s. 253; 1989 a. 286; 1991 a. 272; 1993 a. 383; 1995 a. 201; 1997 a. 150; 1999 a. 9; 2001 a. 16, 103; 2005 a. 226; 2017 a. 207 s. 5.

43.18 Withdrawal, abolition and expulsion. (1) **WITHDRAWAL.** (ag) In this subsection, "participating municipality" means a municipality that operates a public library and is a member of a public library system.

(am) Not less than 3 years after affiliating with a public library system, a participating municipality or a county may withdraw from the system by adoption of a resolution by a two-thirds vote of its governing body under pars. (ar) and (b), if the resolution is adopted at least 6 months prior to the close of the system's fiscal year. The resolution shall become effective at the close of the system's fiscal year.

(ar) With the approval of the governing bodies of participating municipalities that contain, according to the most recent estimate prepared under s. 16.96, at least 80 percent of the population of participating municipalities in the county, a county may withdraw from a federated public library system whose territory lies within 2 or more counties.

(b) A participating municipality may withdraw from a federated public library system.

(2) **ABOLITION.** A county may abolish a public library system whose territory lies only within that county, except that a county containing a 1st class city may abolish such a public library system only with the consent of the municipalities within the system.

(2m) **EXPULSION.** With the approval of the division, a public library system may expel, or reduce aids or services to, a municipality or county that fails to meet the requirements under s. 43.15 (2) or (4).

(3) **PROCEDURE.** (a) Prior to taking any action to abolish or withdraw under this section, the county board or other municipal governing body shall hold a public hearing on the proposed action and shall publish a class 1 notice, under ch. 985, of the hearing. Notice of the hearing also shall be given by registered mail not less than 30 days prior to the hearing to the governing body of every other municipality and county participating in the public library system, to the public library system board and to the division.

(b) A municipality or county withdrawing or expelled under this section from a public library system is responsible for its allocated share of the outstanding liabilities of the system on the effective date of its withdrawal or expulsion.

(c) Upon taking final action under this section to withdraw from or abolish a public library system, the county board or other municipal governing body shall give notice, by registered mail, of the action taken to the governing body of every other municipality and county participating in the public library system, to the public library system board and to the division.

(d) Prior to expelling a municipality or county from a public library system, the system board shall notify the municipality or county and the division, by registered mail, of the reason for the action under consideration and shall hold a public hearing concerning the action. The system board shall file a plan for alteration of the system territory under s. 43.13 (2) by November 15 of the year preceding the year in which the expulsion will take effect under s. 43.13 (3) and the division shall adjust state aid under s. 43.24 accordingly.

(e) A municipality or county that has withdrawn or that has been expelled from a public library system may participate in a public library system only by fulfilling the requirements for initial participation under s. 43.15 (4) (b) or (c) and by adopting a new plan of library service for the county.

History: 1971 c. 152; 1981 c. 197; 1985 a. 29; 1997 a. 150; 1999 a. 83.

43.19 Federated public library systems. (1) (a) In a federated public library system whose territory lies within a single county, the system board shall consist of 7 members nominated by the county executive, or by the county board chairperson in a county without a county executive, and approved by the county board. At least 3 members of the system board, at the time of their appointment, shall be active voting members of library boards governing public libraries of participating municipalities, and at least one of these shall be a member of the library board governing the resource library. At least one but not more than 2 members of the county board shall be members of the system board at any one time.

(b) 1. Except as provided in subd. 2., in a federated public library system whose territory lies within 2 or more counties, the system board shall consist of at least 11 and not more than 20 members nominated by the county executive in each county in the system, or by the county board chairperson in a county without a county executive, and approved by each county board in the system. Appointments shall be in proportion to population as nearly

as practical, but, except as provided in subd. 2., each county shall be represented by at least one member on the system board. Each county board may appoint one county board member to the system board. The public library board governing the designated resource library shall have at least one member on the system board. The remaining system board members shall include such representatives of the library boards governing public libraries of participating municipalities and counties and public members appointed from the counties at large as the county board determines.

2. A system board appointed under subd. 1. may consist of more than 20 members if the county boards, acting jointly, determine that each county in the system shall be represented by at least 2 members on the system board.

(2) (a) Except as otherwise provided in this paragraph, a federated public library system whose territory lies within a single county shall be deemed an agency of the county and a federated public library system whose territory lies within 2 or more counties shall be deemed a joint agency of those counties. A federated public library system whose territory lies within 2 or more counties constitutes a separate legal entity for the purposes of having the exclusive custody and control of all system funds, holding title to and disposing of property, constructing, enlarging and improving buildings, making contracts and suing and being sued. A federated public library system whose territory lies within a single county with a population of 750,000 or more constitutes a separate legal entity solely for the purposes of having the exclusive custody and control of all system funds, making contracts and providing benefits to its employees under ch. 40.

(b) A federated public library system board shall have the powers of a public library board under s. 43.58 with respect to system-wide functions and services. The local library boards shall retain responsibility for their public libraries in all other areas.

History: 1971 c. 152; 1985 a. 177; 1993 a. 383; 1997 a. 150; 2015 a. 99; 2017 a. 207 s. 5.

43.21 Consolidated public library systems. (1) In a consolidated public library system, the system board shall consist of 7 or 9 members appointed by the county board. In the initial appointment of a system board, at least 3 members of the system board, at the time of their appointment, shall be active voting members of library boards governing public libraries consolidated into the system. At least one but not more than 2 members of the county board shall be members of the system board at any one time.

(2) (a) A consolidated public library system shall be deemed an agency of the county by which created.

(b) A consolidated public library system board shall have the powers of a library board under ss. 43.58 and 43.60 and shall be responsible for the total program of public library service for the system territory.

(3) If it is consistent with the terms thereof, a gift, bequest or endowment to a public library becoming part of a consolidated public library system may be taken over by the system board. The system board shall maintain the gift, bequest or endowment for the benefit of the library to which it was given.

History: 1971 c. 152; 1985 a. 177 ss. 23, 71; 1993 a. 241.

43.24 State aid. (1) Each public library system shall be paid state aid for the operation and maintenance of the system. Except as provided in pars. (b) and (c), the amount paid to each system shall be determined as follows:

(a) 1. Determine the percentage change in the total amount appropriated under s. 20.255 (3) (qm) between the previous fiscal year and the current fiscal year, except that for the 2009–10 fiscal year, determine the percentage change in the total amount appropriated under s. 20.255 (3) (e), 2007 stats., and s. 20.255 (3) (qm) in the previous fiscal year, and s. 20.255 (3) (qm) in the current fiscal year.

2. Multiply the amount of state aid received by the system in the previous fiscal year by the sum of 1.0 and the result under subd. 1. expressed as a decimal.

(b) If the territory of a public library system is altered, the department shall adjust the aid paid to that system under par. (a). The department shall promulgate rules establishing the method the department will use to make the adjustment.

(c) Beginning in the fiscal year in which the total amount of state aid appropriated for public library systems under s. 20.255 (3) (qm), as determined by the department, equals at least 11.25 percent of the total operating expenditures for public library services from local and county sources in the calendar year ending in that fiscal year, the amount paid to each system shall be determined by adding the result of each of the following calculations:

1. Multiply the system's percentage of the state's population by the product of the amount appropriated under s. 20.255 (3) (qm) and 0.85.

2. Multiply the system's percentage of the state's geographical area by the product of the amount appropriated under s. 20.255 (3) (qm) and 0.075.

3. Divide the sum of the payments to the municipalities and counties in the system under subch. 1 of ch. 79 for the current fiscal year, as reflected in the statement of estimated payments under s. 79.015, by the total of all payments under subch. 1 of ch. 79 for the current fiscal year, as reflected in the statement of estimated payments under s. 79.015, and multiply the result by the product of the amount appropriated under s. 20.255 (3) (qm) and 0.075.

(2) For a public library system to qualify for and maintain its eligibility for state aid under this section it shall ensure that all of the following are provided:

(a) Written agreements that comply with s. 43.15 (4) (c) 4. with all member libraries.

(b) Backup reference, information and interlibrary loan services from the system resource library, including the development of and access to specialized collections, as evidenced by a written agreement with that library.

(d) Referral or routing of reference and interlibrary loan requests from libraries within the system to libraries within and outside the system.

(e) In-service training for participating public library personnel and trustees.

(fm) Electronic delivery of information and physical delivery of library materials to participating libraries.

(g) Service agreements with all adjacent library systems.

(h) Professional consultant services to participating public libraries.

(i) Any other service programs designed to meet the needs of participating public libraries and the residents of the system area, as determined by the public library system board after consultation with participating public libraries.

(k) Promotion and facilitation of library service to users with special needs.

(L) Cooperation and continuous planning with other types of libraries in the system area, which results in agreements with those libraries for the appropriate sharing of library resources to benefit the clientele of all libraries in the system area.

(m) Planning with the division and with participating public libraries and other types of libraries in the area in regard to library technology and the sharing of resources. By January 1, 2000, and by every 5th January 1 thereafter, the public library system shall submit to the division a written plan for library technology and the sharing of resources.

(n) That, if the system reimburses a participating public library for the costs of providing interlibrary borrowing services to an individual who holds a valid borrower's card of another participating public library, the reimbursement shall not exceed the actual costs incurred by the public library in providing such ser-

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vices. The department shall promulgate rules for determining actual costs for the purposes of this paragraph.

(3) Annually, the division shall review the reports and proposed service plans submitted by the public library systems under s. 43.17 (5) for conformity with this chapter and such rules and standards as are applicable. Upon approval, the division shall certify to the department of administration an estimated amount to which each system is entitled under this section. Annually on or before December 1 of the year immediately preceding the year for which aids are to be paid, the department of administration shall pay each system 75 percent of the certified estimated amount from the appropriation under s. 20.255 (3) (qm). The division shall, on or before the following April 30, certify to the department of administration the actual amount to which the system is entitled under this section. On or before July 1, the department of administration shall pay each system the difference between the amount paid on December 1 of the prior year and the certified actual amount of aid to which the system is entitled from the appropriation under s. 20.255 (3) (qm). The division may reduce state aid payments when any system or any participant thereof fails to meet the requirements of sub. (2). Beginning September 1, 1991, the division may reduce state aid payments to any system if the system or any participant in the system fails to meet the requirements of s. 43.15 (4).

(3m) If the appropriation under s. 20.255 (3) (qm) in any one year is insufficient to pay the full amount under sub. (1), state aid payments shall be prorated among the library systems entitled to such aid.

(4) The division shall assure through an annual audit and adjustment of aids, as necessary, that no more than 20 percent of the funds received by systems are used for administrative purposes.

(5) Any interest earned from the investment of state aid paid to each public library system under sub. (3) shall be allocated to the library system receiving the aid payments.

History: 1971 c. 152; 1971 c. 211 s. 126; 1971 c. 336; 1973 c. 243 s. 82; 1977 c. 29; 1979 c. 34, 347; 1981 c. 20; 1983 a. 27 s. 2202 (42); 1985 a. 29, 177; 1989 a. 21, 286; 1991 a. 272; 1993 a. 16, 490; 1995 a. 27, 225; 1997 a. 150; 1999 a. 9, 99; 2003 a. 33; 2005 a. 420; 2009 a. 28; 2011 a. 158; 2013 a. 165 s. 115; 2017 a. 59.

Cross-reference: See also ss. PL 6.07 and 6.11, Wis. adm. code.

43.27 Distribution of materials from resources for libraries and lifelong learning collection to public library systems. The division may disperse to public library systems, without charge, materials from the collection of the resources for libraries and lifelong learning service that the division determines are not appropriately held in the collection of the resources for libraries and lifelong learning service.

History: 1979 c. 347; 1993 a. 335; 2011 a. 158.

43.30 Public library records. (1b) In this section:

(ae) “Collection agency” has the meaning given in s. 218.04 (1) (a).

(ag) “Custodial parent” includes any parent other than a parent who has been denied periods of physical placement with a child under s. 767.41 (4).

(b) “Law enforcement officer” has the meaning given in s. 165.85 (2) (c).

(1m) Records of any library which is in whole or in part supported by public funds, including the records of a public library system, indicating the identity of any individual who borrows or uses the library’s documents or other materials, resources, or services may not be disclosed except by court order or to persons acting within the scope of their duties in the administration of the library or library system, to persons authorized by the individual to inspect such records, to custodial parents or guardians of children under the age of 16 under sub. (4), to libraries under subs. (2) and (3), or to law enforcement officers under sub. (5).

(2) A library supported in whole or in part by public funds may disclose an individual’s identity to another library for the purpose of borrowing materials for the individual only if the library to

which the individual’s identity is being disclosed meets at least one of the following requirements:

(a) The library is supported in whole or in part by public funds.

(b) The library has a written policy prohibiting the disclosure of the identity of the individual except as authorized under sub. (3).

(c) The library agrees not to disclose the identity of the individual except as authorized under sub. (3).

(3) A library to which an individual’s identity is disclosed under sub. (2) and that is not supported in whole or in part by public funds may disclose that individual’s identity to another library for the purpose of borrowing materials for that individual only if the library to which the identity is being disclosed meets at least one of the requirements specified under sub. (2) (a) to (c).

(4) Upon the request of a custodial parent or guardian of a child who is under the age of 16, a library supported in whole or in part by public funds shall disclose to the custodial parent or guardian all library records relating to the use of the library’s documents or other materials, resources, or services by that child.

(5) (a) Upon the request of a law enforcement officer who is investigating criminal conduct alleged to have occurred at a library supported in whole or in part by public funds, the library shall disclose to the law enforcement officer all records pertinent to the alleged criminal conduct that were produced by a surveillance device under the control of the library.

(b) If a library requests the assistance of a law enforcement officer, and the director of the library determines that records produced by a surveillance device under the control of the library may assist the law enforcement officer to render the requested assistance, the library may disclose the records to the law enforcement officer.

(6) (a) Subject to par. (b) and notwithstanding sub. (1m), a library that is supported in whole or in part by public funds may report the following information as provided in par. (c):

1. Information about delinquent accounts of any individual who borrows or uses the library’s documents or other materials, resources, or services.

2. The number and type of documents or materials that are overdue for each individual about whom information is submitted under subd. 1.

(b) If a public library discloses information as described in par. (a), the information shall be limited to the individual’s name, contact information, and the amount owed to the library.

(c) A library may report the information as described in par. (a) to any of the following:

1. A collection agency.

2. A law enforcement agency, but only if the dollar value of the individual’s delinquent account is at least \$50.

History: 1981 c. 335; 1991 a. 269; 2003 a. 207; 2007 a. 34, 96; 2009 a. 180; 2015 a. 169.

43.52 Municipal libraries. (1) Any municipality may establish, equip and maintain a public library, and may annually levy a tax or appropriate money to provide a library fund, to be used exclusively to maintain the public library. The municipality may enact and enforce police regulations to govern the use, management and preservation of the public library. Any municipality desiring to establish a new public library shall obtain a written opinion by the division regarding the feasibility and desirability of establishing the public library before final action is taken. The division shall render its opinion within 30 days of the time the request is received.

(1m) (a) Any town desiring to establish a new public library or participate in a joint library under s. 43.53 shall in addition to the requirement under sub. (1) obtain the approval of the county library board, if one exists, and the county board of supervisors before final action is taken. The county library board and the county board of supervisors shall render decisions within 90 days of the request being received. A town may appeal to the state

superintendent a decision of the county library board or the county board of supervisors that disapproves the participation by the town in a joint library with a municipality located in another county. The state superintendent shall hold a public hearing on the appeal within 60 days after receiving notice of the appeal. The state superintendent shall publish a class 1 notice under ch. 985 of the hearing and shall also provide notice of the hearing to the town board, the county board of supervisors and the county library board. The state superintendent shall decide the appeal within 30 days after the adjournment of the public hearing.

(b) Any city or village that is entirely located in a county that operates and maintains a consolidated public library for the county under s. 43.57, and that desires to establish a new public library or participate in a joint library under s. 43.53, shall, in addition to the requirement under sub. (1), obtain the approval of the county library board, if one exists, and the county board of supervisors before final action is taken. The county library board and the county board of supervisors shall render decisions within 90 days of the request being received. The common council or village board may appeal to the state superintendent a decision of the county library board or the county board of supervisors that disapproves the participation by the city or village in a joint library with a municipality located in another county. The state superintendent shall hold a public hearing on the appeal within 60 days after receiving notice of the appeal. The state superintendent shall publish a class 1 notice under ch. 985 of the hearing and shall also provide notice of the hearing to the common council or village board, the county board of supervisors, and the county library board. The state superintendent shall decide the appeal within 30 days after the adjournment of the public hearing.

(2) Every public library shall be free for the use of the inhabitants of the municipality by which it is established and maintained, subject to such reasonable regulations as the library board prescribes in order to render its use most beneficial to the greatest number. The library board may exclude from the use of the public library all persons who willfully violate such regulations.

(3) Any municipality may purchase or acquire one or more sites, erect one or more buildings and equip the same for a public library or any library already established; or may adopt, take over and acquire any library already established, by consent of the authorities controlling the same.

(4) A municipal library may contract with library organizations within this state or in adjacent states to provide or receive library services.

History: 1971 c. 152 s. 16; 1977 c. 418; 1985 a. 177 ss. 26 to 28, 47; 1989 a. 286; 1997 a. 150; 2005 a. 226, 420.

A library can charge user fees for any services that fall outside of a library's inherent information-providing functions; core "library services" must be provided free of charge to the inhabitants of the municipality. 73 Atty. Gen. 86.

Municipal libraries may not charge a fee for lending video cassettes that are part of a reasonable permanent collection, but may charge for lending additional copies. Municipal libraries may not charge a fee for online searching of bibliographic or informational databases. 78 Atty. Gen. 163.

43.53 Joint libraries. (1) Joint libraries may be created by any 2 or more municipalities or by a county and one or more municipalities located in whole or in part in the county, by appropriate agreement of their governing bodies. Section 43.52 applies to joint libraries.

(2) Joint library agreements under sub. (1) shall contain provisions necessary to establish a library board under s. 43.54, including a procedure for adjusting the membership of the board to ensure that it remains representative of the populations of the participating municipalities, as shown by the most recent federal census, under s. 43.54 (1m) (a) 1.; perform the duties under s. 43.58; and own and operate the physical facilities. A joint library agreement shall also do all of the following:

(a) Name one of the participants as the library's fiscal agent, who is responsible for the payroll, benefit administration, insurance, and financial record keeping and auditing for the library. The participant's costs of providing the services under this para-

graph count toward the financial support required of the participant under s. 43.15 (4) (b) 2.

(b) Include a procedure for the distribution of a joint library's assets and liabilities if the joint library is dissolved.

(3) A joint library may not be established unless it includes at least one municipality with a public library established before May 8, 1990.

History: 1971 c. 152 s. 19; Stats. 1971 s. 43.56; 1985 a. 177 ss. 33, 34; Stats. 1985 s. 43.53; 1989 a. 286; 1995 a. 270; 2005 a. 420; 2011 a. 32.

43.54 Municipal library board composition. (1) (a) Each public library established under s. 43.52 shall be administered by a library board composed in each city of the 2nd or 3rd class or school district of 9 members, in each city of the 4th class of 7 members and in each village, town, tribal government or tribal association of 5 members. Two additional members may be appointed to a library board for a village, town, tribal government or tribal association so that the board has 7 members. Members shall be residents of the municipality, except that not more than 2 members may be residents of other municipalities. Members shall be appointed by the mayor, village president, town chairperson, tribal chairperson or school board chairperson, respectively, with the approval of the municipal governing body. Up to 5 additional members may be appointed under s. 43.60 (3).

(am) Each public library established in a 1st class city shall be administered by a library board consisting of the president of the board of school directors or his or her designee, the superintendent of schools or his or her designee, a member of the county board of supervisors who resides in the county, 3 alderpersons and 6 public members. The county board member shall be appointed by the county executive or county administrator and confirmed by the county board for a 4-year term commencing on May 1. The 3 alderpersons shall be appointed by the mayor on the 3rd Tuesday in April from among those alderpersons serving 4-year terms and shall serve on the library board during their aldermanic terms. The 6 public members shall be residents of the city. Five of the public members shall be appointed by the mayor on the 3rd Tuesday in April to staggered 4-year terms. One of the public members appointed by the mayor under this paragraph shall be designated by the mayor as his or her representative on the board. One public member shall be appointed by the president of the common council on the 3rd Tuesday in April for a 4-year term. The public member appointed by the president of the common council under this paragraph shall be designated by the president of the common council as his or her representative on the board.

(b) Upon their first appointment, the members shall be divided as nearly as practicable into 3 equal groups to serve for 2-, 3- and 4-year terms, respectively. Thereafter, each regular appointment shall be for a term of 3 years. Vacancies shall be filled for unexpired terms in the same manner as regular appointments are made.

(c) The appointing authority shall appoint as one of the members a school district administrator, or the administrator's representative, to represent the public school district or districts in which the public library is located. Not more than one member of the municipal governing body shall at any one time be a member of the library board.

(d) No compensation shall be paid to the members of a library board for their services, except as follows:

1. Members may be reimbursed for their actual and necessary expenses incurred in performing duties outside the municipality if so authorized by the library board.

2. Members may receive per diem, mileage and other necessary expenses incurred in performing their duties if so authorized by the library board and the municipal governing body.

(e) A majority of the membership of a library board constitutes a quorum, but any such board may, by regulation, provide that 3 or more members thereof shall constitute a quorum. For library boards organized under par. (am), a majority of those seats on the board that are currently filled constitutes a quorum.

(1m) (a) Boards appointed for joint libraries under s. 43.53 shall:

1. Consist of 7 to 11 members and be representative of the populations of the participating municipalities.

2. Be appointed by the head of the municipal governing body of each participating municipality and county board chairperson of the participating county.

(b) Subsections (1) (b) to (e) and (2) apply to joint library boards.

(2) As soon as practicable after the first appointments, at a date and place fixed by the appointing officer, and annually thereafter within 60 days after the beginning of terms, the members of the library board shall organize by the election, from among their number, of a president and such other officers as they deem necessary.

(3) In any city of the 2nd or 3rd class, the common council may, by a two-thirds vote, provide for the reduction of the number of appointive members of the library board to 7. Thereupon, whenever a term expires or a vacancy occurs, no appointment shall be made until the number of such members has been so reduced, whereupon the remaining members shall be by lot divided by the common council into 3 classes, 3 to serve for 3 years, 2 to serve for 2 years and 2 to serve for one year, respectively, from the date of such completed reduction, and thereafter each regular appointment shall be for a term of 3 years.

History: 1971 c. 152 ss. 19, 20; 1977 c. 418; 1981 c. 197; 1983 a. 27, 192, 214, 538; 1985 a. 177; 1987 a. 286; 1991 a. 269, 316; 1993 a. 184; 1997 a. 150; 2005 a. 226; 2009 a. 207.

43.57 Consolidated county libraries and county library services. **(1)** CONSOLIDATED COUNTY LIBRARIES. (a) A county board may establish and maintain a consolidated public library for the county, and may for such purpose adopt, take over and acquire any libraries already established, by consent of the authorities controlling those libraries.

(b) If it is consistent with the terms thereof, a gift, bequest or endowment to a public library becoming a part of a consolidated county library may be taken over by the county library board. The county library board shall maintain the gift, bequest or endowment for the benefit of the library to which it was given.

(c) A consolidated county library may become part of a federated multicounty system organized under s. 43.19.

(d) A consolidated county library may contract with library organizations within this state or in adjacent states to provide or receive library services.

(2) JOINT LIBRARIES. A county board may authorize the formation of a joint library under s. 43.53 and may participate in a joint library board under s. 43.54.

(2m) TRIBAL COLLEGE–COUNTY JOINT LIBRARIES. (a) A county board may enter into an agreement with a tribal college to maintain a public library for the county.

(b) An agreement under par. (a) shall require all of the following:

1. That the tribal college annually provide to the county board an accounting of the expenditure of any appropriations received from the county.

2. Except as provided in this subdivision, that the tribal college make the library free for the use of the inhabitants of the county. The tribal college may prescribe reasonable regulations for the use of the library so as to render the use of the library most beneficial to the greatest number of persons. The tribal college may exclude from the use of the library all persons who willfully violate the regulations.

(c) Sections 43.52 to 43.54 do not apply to a tribal college–county joint library under this subsection.

(3) COUNTY LIBRARY SERVICES. A county board may establish and maintain a county library service to serve the residents of the county who do not live in municipalities that have established libraries under s. 43.52 or 43.53 or to improve the library services

of municipal libraries established under s. 43.52 or 43.53. The county library service may operate a library or library service program or may contract with library organizations within this state or in adjacent states for services.

(4) BOARD APPOINTMENT. (a) In a county with a consolidated county library under sub. (1), the county board chairperson shall, with the approval of the county board, appoint a 7–member or 9–member county library board.

(b) In a county operating a county library service under sub. (3), the county board chairperson shall, with the approval of the county board, appoint a 7–member library board.

(bm) 1. In a county with a tribal college–county joint library under sub. (2m), there shall be a 3–member county library board. One member shall be appointed by the tribal college, one member shall be appointed by the American Indian tribe or band that controls the college, and one member shall be appointed by the county board.

2. A board under this paragraph shall have any powers provided in the agreement under sub. (2m), shall advise the library on any matter related to library service, and shall, within 60 days of the conclusion of the fiscal year of the county, provide the report under s. 43.58 (6) to the county and the division.

(c) Boards appointed under pars. (a) and (b) shall include at least one school district administrator of a school district located in whole or in part in the county, or that school district administrator's designee, and one or 2 county board supervisors. Boards appointed under par. (b) shall include, in addition, representatives of existing library boards under s. 43.54 and persons residing in municipalities not served by libraries.

(d) Boards appointed under pars. (a) and (b) have the powers and duties of a library board under s. 43.58.

(5) TERMS OF OFFICE, COMPENSATION, OFFICERS, DUTIES. (a) 1. Upon the initial establishment of a board under sub. (4) (a) or (b), the members shall be divided as nearly as practicable in 3 equal groups to serve for 2–, 3– and 4–year terms, respectively, following their appointment. Thereafter, terms shall be for 3 years. Vacancies shall be filled for unexpired terms in the same manner as regular appointments are made.

2. Upon the initial establishment of a board under sub. (4) (bm), the member appointed by the county board shall serve for a 2–year term, the member appointed by the American Indian tribe or band shall serve for a 3–year term, and the member appointed by the tribal college shall serve for a 4–year term. Thereafter, terms shall be for 3 years. Vacancies shall be filled for unexpired terms in the same manner as regular appointments are made.

(b) No compensation shall be paid to the members of a board under sub. (4) (a) to (bm) for their services, except as follows:

1. Members may be reimbursed for their actual and necessary expenses incurred in performing their duties if so authorized by the board.

2. Members may receive per diem, mileage and other necessary expenses incurred in performing their duties if so authorized by the board and the county board.

(c) A majority of the membership of a board under sub. (4) (a) to (bm) constitutes a quorum, but any such board may, by resolution, provide that 3 or more members constitute a quorum.

(d) As soon as practicable after the first appointments, at a date and place fixed by the appointing officer, and annually thereafter within 30 days after the beginning of terms, the members of the board shall organize by the election, from among their number, of a president and such other officers as they deem necessary.

(e) Section 43.52 (2) applies to consolidated county libraries and county library services.

(f) A library organized under this section may participate in a public library system subject to s. 43.15.

(6) GIFTS AND GRANTS. Any county may receive, by bequest or gift, property for the purpose of establishing a public library for the county and may enter into an agreement to maintain a public

library in consideration thereof, and shall be bound to faithfully perform such agreement. In such case the library board appointed under sub. (4) or, in the absence of a library board, the county board may properly administer the same.

History: 1971 c. 152 s. 25; Stats. 1971 s. 43.57; 1981 c. 282 s. 47; 1985 a. 177 ss. 35 to 41, 51; 1989 a. 286; 1993 a. 241; 1995 a. 354; 2015 a. 306; 2021 a. 240 s. 30.

43.58 Powers and duties. (1) The library board shall have exclusive control of the expenditure of all moneys collected, donated or appropriated for the library fund, and of the purchase of a site and the erection of the library building whenever authorized. The library board also shall have exclusive charge, control and custody of all lands, buildings, money or other property devised, bequeathed, given or granted to, or otherwise acquired or leased by, the municipality for library purposes.

(2) (a) The library board shall audit and approve all expenditures of the public library and forward the bills or vouchers covering the expenditures, setting forth the name of each claimant or payee, the amount of each expenditure, and the purpose for which it was expended, to the appropriate municipal or county financial officer or, in the case of a school district, the school district clerk. The library board shall include a statement, signed by the library board secretary or other designee of the library board, that the expenditure has been incurred and that the library board has audited and approved the expenditure. The appropriate municipal, county, or school district official shall then pay the bill as others are paid.

(b) Notwithstanding par. (a), regular wages or salary or other recurring payments, authorized by the library board and verified by the appropriate library official, may be paid by the appropriate municipal, county, or school district official by the date due or, in the case of salaries, by the regular pay day. The library board shall audit and approve any such payment at its next regular meeting.

(3) Any person having a claim or demand against the municipality or county growing out of any act or omission of the library board shall file with the library board a written statement thereof. If the claim or demand or any part thereof is disallowed, the claimant may bring an action against the municipality or county.

(4) Notwithstanding ss. 59.17 (2) (br) and 59.18 (2) (b), the library board shall supervise the administration of the public library and shall appoint a librarian, who shall appoint such other assistants and employees as the library board deems necessary, and prescribe their duties and compensation.

(5) The library board may employ competent persons to deliver lectures upon scientific, literary, historical or educational subjects; and may cooperate with the University of Wisconsin System, technical college district boards, the historical society, the department, cooperative educational service agencies, school boards and other educational institutions to secure such lectures or to foster and encourage by other means the wider use of books and other resource, reference and educational materials upon scientific, historical, economic, literary, educational and other useful subjects.

(6) (a) Within 60 days after the conclusion of the fiscal year of the municipality or county in which the public library is located, the library board, including a library board under s. 43.57 (4) (bm), shall make a report to the division and to its governing body or, for a library board under s. 43.57 (4) (bm), the county board of the county in which the library is located. The report shall state the condition of the library board's trust and the various sums of money received for the use of the public library during the year, specifying separately the amounts received from appropriations, from the income of trust funds, from rentals and other revenues of the public library and from other sources. The report shall state the condition of all funds in the library board's control and shall state in detail the disbursements on account of the public library during that fiscal year.

(b) The report to the division shall include data concerning library materials, facilities, personnel, operations and such other information as the division requests.

(c) The report to the division shall contain a statement by the library board indicating whether the public library system in which the library participated during the year of the report did or did not provide effective leadership and adequately meet the needs of the library and an explanation of why the library board believes so. The division shall design the form of the statement so that it may be removed from the report and forwarded to the division before it is sent to the public library system.

(7) The library board may receive, manage and dispose of gifts and donations as follows:

(a) All persons wishing to make donations of property for the benefit of a public library may vest the title thereto in the library board, to be held and controlled by the board, when accepted, according to the terms of the deed of gift, devise or bequest. As to such property the board shall be deemed special trustees.

(b) 1. In this paragraph, "community foundation" means a charitable organization, described in section 501 (c) (3) of the Internal Revenue Code and exempt from federal income tax under section 501 (a) of the Internal Revenue Code, dedicated to encouraging and assisting charitable activities and enterprises in a designated community in this state and having expertise in finance, fund development, and grantmaking.

2. If a gift, bequest, or endowment is made to any public library, the library board may pay or transfer the gift, bequest, or endowment, or its proceeds, to the treasurer of the municipality or county in which the public library is situated; may entrust the gift, bequest, or endowment to a public depository under ch. 34; may pay or transfer the gift, bequest, or endowment to the library board's financial secretary; or may, subject to subd. 3., pay or transfer the gift, bequest, or endowment to a charitable organization, described in section 501 (c) (3) of the Internal Revenue Code and exempt from federal income tax under section 501 (a) of the Internal Revenue Code, the purpose of which is providing financial or material support to the public library or to a community foundation. A payment or transfer of a gift, bequest, or endowment by a library board to a charitable organization described in this paragraph made prior to March 19, 2008, is not invalid as lacking statutory authority to make the payment or transfer. If the library board pays or transfers the gift, bequest, or endowment to the financial secretary, the financial secretary may invest the gift, bequest, or endowment as permitted under s. 66.0603 (1m) or 112.11 (3); or may delegate investment authority for the gift, bequest, or endowment as permitted under s. 66.0603 (2) or 112.11 (5). The financial secretary shall hold office only during membership on the library board and shall be elected annually at the same time and in the same manner as the other officers of the library board.

3. A library board may pay or transfer a gift, bequest, or endowment to a charitable organization described in subd. 2. or to a community foundation only if the library board and the charitable organization or the community foundation agree, in writing and at the time of the payment or transfer of the gift, bequest, or endowment, to each of the following:

a. The charitable organization or the community foundation agrees to make disbursements from and of the gift, bequest, or endowment to the library board upon the written request of the library board.

b. Subject to subd. 3. bm., the library board retains control over the manner in which any disbursement made under subd. 3. a. is used.

bm. The library board's use of any disbursement made under subd. 3. a. shall be consistent with the intent of the donor of the gift, bequest, or endowment and with the agreement between the

library board and the charitable organization or community foundation.

c. The library board exercises its rights over the use of each disbursement made under subd. 3. a. in accordance with the law applicable to trust investments and the provisions of this chapter.

(c) If any such treasurer or financial secretary holds any property belonging to the public library, the library board shall require a bond from the treasurer or financial secretary to the library board in such sum, not less than the amount of such property so held by him or her, and with such sureties as the library board requires. The bond shall be conditioned in substantially the same form as the ordinary bond required from the treasurer of the municipality or county, with the necessary changes.

(d) The treasurer or financial secretary shall make an annual report to the library board showing in detail the amount, investment, income and disbursements from the trust funds in his or her charge. Such report shall also be appended to the annual report of the library board under sub. (6).

(e) In the case of a gift for a library building, the library board of the municipality shall have the exclusive right to select and contract for the purchase of a site.

(8) Except as provided under sub. (6), this section does not apply to a library board under s. 43.57 (4) (bm).

History: 1971 c. 152 ss. 10, 20; 1977 c. 26, 418; 1985 a. 176; 1985 a. 177 ss. 42, 43, 48 to 50, 52; 1985 a. 225, 332; 1987 a. 252; 1993 a. 399; 1995 a. 201, 264; 1997 a. 150; 2005 a. 226; 2007 a. 61; 2009 a. 33; 2011 a. 163; 2015 a. 306; 2021 a. 240 s. 30.

Municipal libraries are a matter of statewide concern. Accordingly, home rule provisions will not justify local departures from the provisions of ch. 43. 76 Atty. Gen. 203.

43.60 County appointments to municipal and joint public library boards. (3)

(a) A county chairperson, with the approval of the county board, may appoint from among the residents of the county additional members to the library board of a public library of a municipality located in whole or in part in the county, for a term of 3 years from the May 1 following the appointment, and thereafter for a term of 3 years, as follows:

1. If the annual sum appropriated by the county to the public library is equal to at least one–sixth, but less than one–third, of the annual sum appropriated to the public library by any municipality in which the public library is located during the preceding fiscal year, one additional member.

2. If the annual sum appropriated by the county to the public library is equal to at least one–third, but less than one–half, of the annual sum appropriated to the public library by any municipality in which the public library is located, 2 additional members.

3. If the annual sum appropriated by the county to the public library is equal to at least one–half, but less than two–thirds, of the annual sum appropriated to the public library by any municipality in which the public library is located, 3 additional members.

4. If the annual sum appropriated by the county to the public library is equal to at least two–thirds, but less than the annual sum appropriated to the public library by any municipality in which the public library is located, 4 additional members.

5. If the annual sum appropriated by the county to the public library is equal to at least the annual sum appropriated to the public library by any municipality in which the public library is located, 5 additional members.

(b) For a joint public library of 2 or more municipalities, the “annual sum appropriated to the public library by any municipality in which the public library is located” under par. (a) is the total sum appropriated by all of the municipalities participating in the joint library.

(c) A county chairperson may appoint a county supervisor to serve as a member of a library board of a public library of a municipality under par. (a), but no more than one county supervisor so appointed may serve on the library board at the same time.

(4) If an additional member appointed to a library board under sub. (3) (a) loses the status upon which the appointment was

based, he or she ceases to be a member of the library board effective on the following May 1.

History: 1971 c. 152 s. 23; Stats. 1971 s. 43.60; 1981 c. 197; 1985 a. 177; 1989 a. 56; 1991 a. 269; 2005 a. 226.

43.64 County tax. (1) The county board of a county expending money for public library service to its inhabitants may levy a tax to provide funds for such service and shall include any amount of tax under this subsection in the amount of taxes determined to be levied under s. 70.62 (1).

(2) (a) In this subsection, “library fund” means the funds raised by the city, village, town or school district by tax levy or appropriation under s. 43.52 (1).

(b) Except as provided in sub. (2m), any city, town, village or school district in a county levying a tax for public library service under sub. (1) shall, upon written application to the county board of the county, be exempted from the tax levy, if the city, town, village or school district making the application levies a tax for public library service and appropriates and expends for a library fund during the year for which the county tax levy is made a sum at least equal to an amount calculated as follows:

1. Divide the amount of tax levied by the county for public library service under sub. (1) in the prior year, less the amount levied for public library capital expenditures, by the equalized valuation of property in that area of the county that was subject to the county property tax levy for public library services in the prior year.

2. Multiply the amount determined under subd. 1. by the equalized valuation of property in the city, village, town or school district for the current year.

(c) Notwithstanding sub. (2m), any city, village, town, or school district in a county levying a tax for public library service under sub. (1) is exempt from the tax levy if all of the following apply:

1. The city, village, town, or school district is included in a joint library under s. 43.53.

2. The city, village, town, or school district levies a tax for public library service, less the amount levied for public library capital expenditures, and appropriates and spends for a library fund during the year for which the county tax levy is made an amount that is not less than the average of the previous 3 years.

(2m) No city, village, town or school district is exempt from the tax levy under sub. (2) for any year if, by September 1 of the year preceding the year for which the tax is levied, the county board determines that the public library of the city, village, town or school district that is a member of the public library system has not complied with standards approved under s. 43.11 (3) (d) and (e).

(3) Each city, town, village or school district participating in a joint library under s. 43.53 shall be treated individually in determining its eligibility for tax exemption under sub. (2).

History: 1971 c. 152 s. 16; 1977 c. 418; 1981 c. 20; 1983 a. 27; 1985 a. 177; 1997 a. 150; 2005 a. 226, 420; 2013 a. 20.

A municipality having a traveling library service within its municipal limits could raise a library fund for that service and be exempted from the county tax by meeting the requirement of s. 43.25 (4), 1969 stats. [now sub. (2)]. 60 Atty. Gen. 389.

A town, city, or village that does not maintain a public library, but makes contributions to a nearby public library, cannot be exempted from the county library tax levy under sub. (2). 65 Atty. Gen. 182.

A municipality, otherwise qualified, is entitled to an exemption under sub. (2) when the county has not acted to levy a tax specifically designated as a county library tax but does finance money expended for public library services to its inhabitants by a general tax levy. 72 Atty. Gen. 190.

43.70 Common school fund. (1) No later than October 15 of each year, each school district administrator shall certify to the state superintendent, on forms provided by the state superintendent, a report of the number of persons residing in the school district on the preceding June 30, as reported under s. 120.18 (1) (a).

(2) Annually by January 10, the state superintendent shall apportion the amount that is estimated to be appropriated under s. 20.255 (2) (s) in the current school year to the school districts in

proportion to the number of persons resident therein, as shown by the report certified under sub. (1).

(3) Immediately upon making such apportionment, the state superintendent shall certify to the department of administration the estimated amount that each school district is entitled to receive under this section and shall notify each school district administrator of the estimated amount so certified for his or her school district. The department of administration shall distribute each school district's aid entitlement in one payment on or before May 1. The amount paid to each school district shall be based upon the amount in the appropriation account under s. 20.255 (2) (s) on April 15. Moneys distributed under this section may be expended only for the purchase of instructional materials from the state historical society for use in teaching Wisconsin history and for the purchase of library books and other instructional materials for school libraries, but not for public library facilities operated by school districts under s. 43.52, in accordance with rules promulgated by the state superintendent. In addition, a school district may use the moneys received under this section to purchase school library computers and related software if the school board consults with the person who supervises the school district's

libraries and the computers and software are housed in the school library. Appropriate records of all purchases under this section shall be kept and necessary reports thereon shall be made to the state superintendent.

History: 1971 c. 152 s. 12; 1977 c. 418; 1985 a. 332 s. 251 (6); 1989 a. 31, 359; 1995 a. 27; 1997 a. 27, 87; 2001 a. 16; 2003 a. 33; 2007 a. 20; 2011 a. 105.

43.72 Library exchanges. (1) School library books and other instructional material belonging to one school district may be loaned to another school district for use in any school library of that school district.

(2) Any public library board and school board may make such exchanges and loans of books and other instructional material as are agreed upon for the purpose of increasing the efficiency of both libraries and ensuring the best service to the schools and all citizens.

(3) Any school district that borrows materials through a public library system shall reciprocate by sharing with other participating libraries materials that are not in immediate or constant demand by the school library's primary clientele, as determined by the school district.

History: 1971 c. 152 s. 14; Stats. 1971 s. 43.72; 1985 a. 177.

From: [JonathanMcDonell](#)
To: [John Weidl](#)
Subject: RE: Irvin L. Young Memorial Library Capital Campaign
Date: Monday, October 30, 2023 2:28:29 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

John,

We had a similar issue come up earlier this year regarding GroCo. My opinion on this particular matter is that based on the information provided, the criteria for being considered associated with the campaign include being Officers or Board members of the organization or owning a 10% interest in it.

1. **Officer or Board Member Status:** The first criteria for association with the campaign pertain to serving as an Officer or a Board member of the organization. This is a commonly accepted indicator of a direct affiliation with an organization, suggesting a certain level of control or influence. If an elected official holds such a position in the library expansion fundraising campaign, it is reasonable to consider them as associated with it.
2. **10% Ownership Interest:** The second criteria involve owning a 10% interest in the organization. Ownership interest typically implies a financial stake in the organization, and a 10% ownership interest is a significant financial stake that can reasonably be seen as associating an individual with the campaign.

So, using that criteria, the fact that an elected official contributed to the fundraising campaign for the library expansion would not preclude them from voting on the borrowing structure for the city's contribution to the library expansion.

Jonathan K. McDonell

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From: John Weidl <jweidl@whitewater-wi.gov>
Sent: Monday, October 30, 2023 9:16 AM
To: JonathanMcDonell <jm@hmattys.com>
Subject: Fwd: Irvin L. Young Memorial Library Capital Campaign

Jon,

Here's some additional information regarding my question about donors to the library having any conflict of interest. Attached is the leadership committee as well as all of the donors.

Thx, - JSW

The Capital Campaign Leadership Committee:

Doug Anderson
Brienne Brown
Kelly Davis
Richard Haney
Anne Hartwick
Jon Kachel
Ginger Katzman

Jennifer Motszko
Gayle Stettler
Jim Winship

Donor List (10/26/2023)

Amy Curtis
Amy Green Fienga
Anna Vo
Anne Hartwick
Arlene Newhouse
Ashleigh Bruns
Atlee & Julie Svanoe
Aurelio & Diana Callope
Banco Insurance Agency
Barbara Bren
Barbara Jean Bromley
Barbara Penington
Barbara Vodak
Bernice Sheahen
Betty M. Brown
Blaze Gries
Bob McCullough
Bonita Schauder
Bonnie Wood
Brian & Mary Taggart
Brienne Diebolt-Brown
Carey Fero
Carla Cheek
Carol Jones Holford
Carol M. McLernon
Caroline Pate-Hefty
Carolyn Haas
Carrie Oster
Caryl Yasko
Catherine J Engler
Charlotte Kuenning
Cheryl Benedict

Cheryl Binnie
Cheryl Bresnahan
Chuck & Barb Taylor
Claire McCullough
Cozette Moffatt
Dale Kuster
Dan Sable
Danielle Frawley
Dave Stimpson
David & Jane Roberts
David Drexler
David Yochum
Dawn Hunter
Dawn Millard
Deborah Gamble
Debra Roland
Deidre Simon
DeWind Family
Diane Jaroch
Diane Wendorf
Dianne Dunham
Donald & Nancy Hoepfner
Donald W Triebold
Donna Cornwell
Donna Marshall
Dorothy Otting
Edward Erdmann
Eileen Burke
Elizabeth Miller
Ellen Long
Emily Scheunemann
Erica Schepp
Everett Long
Fort Community Credit Union
Francis & Diane Cahill
Gayle Corcoran Stettler
Germaine & Mark Olm
Ginger Katzman
Glenn Hayes
Greater Whitewater Lake Property Owners Association
Hannah M. Greenhill
Hans Hahn
Harry & Barb Essock
Heather Kuhl
Holly Crowley
Hope Winship
Isabel & John Erickson
Jacqueline Amundson
James & Julie Caldwell
James Mulcahy
Jan Bilgen
Janet Muzatko
Janie Anderson

Jay Craggs
Jean Truesdale
Jen Kaina
Jennifer Lauren Zamora
Jennifer Motszko
Jennifer Visser
Jerry & Shirley Grant
Jessie Dugan
Jim & Louise Fuerstenberg
Jim Winship
Jodi Sweeney
John & Tammy Koebler
John and Suzanne Chenoweth
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From: [JonathanMcDonell](#)
To: [John Weidl](#)
Subject: Ethics Conflict of Interest Documentation
Date: Monday, October 30, 2023 4:20:21 PM
Attachments: [7 Wisconsin Ethics Laws Recognizing and Avoiding Conflicts of Interest.pdf](#)
[ETH-1232.pdf](#)

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Jonathan K. McDonell

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Wisconsin Ethics Commission

For State and Local Public Officials

Mitigating Conflicting Interests: Private Interest Vs. Public Responsibility

In a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without all personal and economic interest in the decisions and policies of government. Citizens who serve as state public officials retain their rights as citizens to interests of a personal or economic nature. Standards of ethical conduct for state public officials need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts which are substantial and material. State public officials may need to engage in employment, professional or business activities, other than official duties, in order to support themselves or their families and to maintain a continuity of professional or business activity, or may need to maintain investments. [WIS. STAT. § 19.45\(1\)](#).

ACTING IN AN OFFICIAL CAPACITY

MAKING POLICY. When a public official or a board, commission, or other body of which an official is a member is called upon to propose or to act on legislation, to promulgate a rule, or to issue a general policy, the official may participate in that action even though the action will affect the official, a member of the official's immediate family, or an organization with which the official is associated¹, as long as:

- The official's action affects a whole class of similarly situated interests;
- Neither the official's interest, the interest of a member of the official's immediate family, nor the interest of a business or organization with which the official is associated¹ is significant when compared to all affected interests in the class; AND
- The action's effect on the interests of the official, of a member of the official's immediate family, or of the related business or organization is neither significantly greater nor less than upon other members of the class.

See e.g., [2008 GAB 02](#); [11 Op. Eth Bd 9 \(1989\)](#); [8 Op. Eth Bd 33 \(1985\)](#); [5 Op. Eth Bd 89, 65, 59](#); [4 Op. Eth Bd 104 \(1981\)](#).

APPLYING POLICY. A public official should not, in an official capacity, participate in or perform any discretionary action with respect to the making, grant, or imposition of an award, sanction, permit, license, grant, contract, offer of employment, or agreement in which the official or a member of the official's immediate family or a business or organization with which the official is associated has a substantial financial interest, direct or indirect. WIS. STAT. §§ [19.45\(2\)](#), [19.46\(1\)](#), [19.59\(1\)\(a\)](#) and [\(c\)](#). In addition, a public official should not, in an official capacity, participate in a matter affecting a business or organization from which the official or a member of the official's immediate family receives substantial compensation or income. See WIS. STAT. §§ [19.45\(3\)](#), [19.59\(1\)\(b\)](#); [2013 GAB 01](#), [1994 Wis Eth Bd 5](#).

¹ "Associated" included any organization in which an individual or a member of his or her immediate family is a director, officer, or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the outstanding equity, or of which an individual or a member of his or her immediate family is an authorized representative or agent. [WIS. STAT. § 19.42\(2\)](#).

HOW TO WITHDRAW FROM OFFICIAL ACTION

When a matter in which a public official should not participate comes before the legislature, a board, commission, or other body of which the official is a member, the official should refrain from discussion, deliberations, or votes related to that matter and ask that the body's minutes reflect that the member has withdrawn. The body's remaining members may review the matter and take whatever action they find appropriate. [1992 Wis Eth Bd 22](#).

ACTING IN A PRIVATE CAPACITY

APPLICATIONS, BIDS, AND CONTRACTS. Usually, a public official should not, in a private capacity, apply, negotiate, bid for, or receive any award, sanction, permit, license, grant, contract, offer of employment, or agreement in which the official has a private financial interest, direct or indirect, if the official is *authorized* to perform in regard to it any governmental function requiring the exercise of discretion, even if the official does not participate in the governmental action or exert any influence on his or her own behalf. [WIS. STAT. § 946.13](#)

REPRESENTING CLIENTS. A public official should not, for compensation or on behalf of an employer, represent an individual, business, or organization before a board, commission, or other body of which an official is a member. The statutory code of ethics is not an obstacle to a local official's partner or business associate representing a client before such board, commission, or other body as long as the official is not financially interested in, and does not exercise control over, the representation. WIS. STAT. §§ [19.45\(3\)](#), [19.45\(7\)](#), [19.59\(1\)\(b\)](#).

Wisconsin's Ethics Laws Recognizing and Avoiding Conflicts of Interest

2023 Local Government 101

Presented by
Claire Silverman, Legal Counsel
Maria Davis, Assistant Legal Counsel

League of Wisconsin Municipalities, Ph. 608-267-2380

I. INTRODUCTION

- A. **Coverage.** This outline provides an overview of state laws that guide the actions of municipal officials when those officials (or a member of their family or an organization with which they are associated) have a financial or other special interest in a governmental matter. In particular, this outline provides an overview of the state ethics code applicable to local officials, the statute governing private interests in public contracts, statutory provisions defining official misconduct, and the compatibility doctrine.
- B. **Identifying Potential Conflict Situations.** The state statutes contain minimum standards of ethical conduct by local government officials. The statutes relating to ethics and conflicts of interest are interrelated and can be quite complicated.

Problems in this area can be avoided primarily by using common sense and applying the “smell test.” Stated broadly, when an official, a member of the official's family or a business organization with whom the official is associated is involved in a municipal matter, the official needs to step back and question whether there are problems concerning his or her involvement in the matter. The official may want to discuss the situation with the municipal attorney. Local officials may also contact the League's attorneys to discuss ethics issues.

Sometimes it is not clear whether a conflict, as defined by state law, exists. In these gray areas, the official needs to balance the benefits of involvement (e.g., representing the electors, using the official's expertise) against the drawbacks (e.g., how it would look, the risk of violating a law). Sometimes, even if it may be legal to act on a matter, you may not feel comfortable doing so or it may not look good to do so.

II. STATE CODE OF ETHICS FOR LOCAL GOVERNMENT OFFICIALS (Sec. 19.59, Stats.)

- A. **Background.** The state code of ethics for local officials was created in the 1991 legislative session and took effect in 1992. The law applies to “local governmental units,” including

counties, cities, villages and towns, as well as special purpose districts, such as town sanitary districts. Sec. 19.42(7u), Stats. The law also covers joint bodies and subunits of local governmental units. The law was overseen by the State of Wisconsin Government Accountability Board (GAB). Effective June 30, 2016, 2015 Wis. Act 118 replaces the Government Accountability Board with separate commissions governing Ethics and Elections.

B. **Municipal Officials Affected.** The state ethics code applies to “local public officials” who hold “local public office.” Sec. 19.42(7w) and (7x), Stats.

1. “Local public office” includes elected municipal officers; city and village managers, appointed municipal officers and employees who serve for a specified term; and officers and employees appointed by the governing body or executive or administrative head who serve at the pleasure of the appointing authority.
2. The term does not include independent contractors and persons who perform only ministerial (i.e., non-discretionary) tasks, such as clerical workers. In addition, the term omits officials and employees who are appointed for indefinite terms and are only removable for cause, such as police chiefs and fire chiefs.

C. **Prohibited Conduct.** The state ethics law for local officials, sec. 19.59, Stats., prohibits the following conduct:

1. **Use of Office for Private Gain.** Public officials are prohibited from using their offices to obtain financial gain or anything of substantial value for the private benefit of themselves, their immediate families, or organizations with which they are associated. Sec. 19.59(1)(a), Stats.
2. **Offering or Receiving Anything of Value.** No person may give and no public official may receive “anything of value” if it could reasonably be expected to influence the local public official’s vote, official action or judgment, or could reasonably be considered as a reward for any official action or inaction. Sec. 19.59(1)(b), Stats.

Note: This outline does not cover sec 19.59(1)(br). That section was created as part of a larger law aimed at campaign finance reform but the courts held the law was unconstitutional, and that particular section was held to be unseverable from the larger law. See *Wisconsin Right to Life, Inc. v. Schober*, 366 F.3d 485 (7th Cir. 2004) and *Wisconsin Realtors Ass’n v. Ponto*, 233 F. Supp. 2d 1078 (W.D. Wis. 2002).

3. **Taking Action Affecting a Matter in Which Official Has Financial Interest.** Local officials may not take official action substantially affecting a matter in which the official, an immediate family member, or an organization with which the official is associated has a substantial financial interest. Nor may an official use his or her office in a way that produces or assists in the production of a substantial benefit for the official, immediate family member or organization with which the official is associated. Sec. 19.59(1)(c), Stats.

- a. Exceptions. The prohibitions under no. 3 above do not prohibit local officials from taking lawful actions concerning payments for employee salaries, benefits, or expense reimbursements. The above prohibitions also do not prohibit local officials from taking action “to modify” an ordinance. Sec. 19.59(1)(d), Stats.

The State of Wisconsin Ethics Commission’s guidelines suggest that local officials can take action in situations where they are part of a similarly situated class of interests and their interest is not significantly greater or less than other members of that class or where the law will have general application (e.g., like an ordinance). For purposes of this exception, the Ethics Commission distinguishes between making and applying policy. See attached Ethics Guideline 1240, Mitigating Conflicting Interests.

D. Definitions:

1. “Immediate Family” means an official's spouse or relative by marriage, lineal descent or adoption who receives, directly or indirectly, more than one-half of his or her support from the official or contributes, directly or indirectly, that amount for the official's support. Sec. 19.42(7), Stats.
2. “Organization” is broadly defined to cover “any corporation, partnership, proprietorship, firm, enterprise, franchise, association, trust or other legal entity other than an individual or body politic.”
3. “Associated” with an Organization. An official is “associated” with an organization for purposes of the state ethics law when the individual or a member of the individual's immediate family is an officer, director or trustee, or owns at least 10% of the organization. An individual is not associated with an organization merely because the individual is a member or employee of an organization or business. Sec. 19.42(2), Stats.
4. “Anything of value” means any money or property, favor, service, payment, advance, forbearance, loan, or promise of future employment, but does not include compensation and expenses paid by the state, fees and expenses which are permitted and reported under s. 19.56, political contributions which are reported under ch. 11, or hospitality extended for a purpose unrelated to state business by a person other than an organization. Sec. 19.42(1).

- E. **Conflict Response: Withdrawal.** Ethics Commission guidelines provide that when a matter in which a local official should not participate comes before a board, commission or other body which the official is a member of, the official should not participate in any portion of the body’s meeting involving discussion, deliberations, or votes related to the matter. When, because of a potential conflict of interest, an official withdraws from the body’s discussion, deliberation, and vote, the body’s minutes should reflect the absence. See Ethics 1232.

- F. **Local Ordinances.** Municipalities can adopt ethics ordinances that:

- require disclosure of economic interests

- establish ethics boards
 - prescribe standards of conduct
 - establish forfeitures not exceeding \$1,000
- G. **Ethics Advisory Opinions.** Local officials may request advisory ethics opinions from the municipal ethics board or, if there is none, from the municipal attorney.
- **Effect of Opinion.** The local ethics board or attorney may issue a written advisory opinion. If the official follows the advice in the opinion, it is evidence of intent to comply with the law.
- H. **Penalties & Enforcement.** Any person who violates the state ethics law may be required to forfeit up to \$1,000. The law is enforced by the district attorney.
- I. **Interpretation.** The state code of ethics for local officials has not been interpreted in published court decisions. However, the State Ethics Commission has guidelines which are available online at <https://ethics.wi.gov/Pages/Resources/ResourcesOverview.aspx>.

The guidelines include the following:

1. *Citizen's Guide to Standards of Conduct for Local Officials* (ETH- 1202).
2. *Receipt of Items and Services (for Municipal Judges)* (ETH-1215).
3. *Local Officials' Receipt of Food, Drink, Favors and Services* (ETH-1219). Local officials may accept and retain: (a) food, drink, lodging, items and services that are unrelated to their public service and could not reasonably be expected to influence official's vote, official actions or judgment, nor reasonably be considered a reward for any official action or inaction; b) payment or reimbursement for costs relating to their work as public officials; and c) mere tokens and items or services of only nominal, insignificant or trivial value. Ethics 1219 further provides that a local official should not accept or retain: (a) any item or service, including food, drink, and travel of more than nominal value that is offered because of their public position; (b) any item or service that could reasonably be expected to influence their vote, official actions or judgment; (c) any item or service that could be reasonably be considered a reward for official action or inaction; and (d) discounted transportation, traveling accommodations or communication services for which the supplier would normally charge.
4. *Nepotism* (ETH-1233) (this applies to state officials but may be of interest to local officials).
5. *Disposition and Reporting of Gifts* (ETH-1235).
6. *Mitigating Conflicting Interests: Private Interest vs. Public Responsibility* (ETH-1240). Ethics guideline 1240 states that an official may participate in actions of their municipality even though the action may affect the official, a member of the official's family, or an organization with which the official is associated, as long as: (a) the action affects a class of similarly-situated interests; (b) the interest of the official, an immediate family member, or an organization with which the official is associated is not significant when compared to other members of the class; and (c) the action's effect on the interests of the official, an

immediate family member or an organization with which the official is associated is not significantly greater or less when compared to other members of the class.

7. *Letters of Reference* (ETH-1244).
8. *Seminars & Conferences* (ETH 1222). This guideline is aimed at state public officials but is good advice. Generally, officials attending seminars and conferences may accept the meals and refreshments provided or approved by the event's organizer and approved by the local governmental unit. An official should generally not accept food, drink or entertainment offered outside of the conference or activities at hospitality suites, receptions or similar activities.

III. PRIVATE INTERESTS IN PUBLIC CONTRACTS (Section 946.13, Stats.)

- A. **General Prohibition.** To protect against self dealing by public officials, sec. 946.13, Stats., generally prohibits municipal officials from having a private financial interest in a public contract. Thus, local governing body members are generally prohibited from entering into a contract for goods, services, construction or employment with the municipality.

1. **Prohibition Against Official Action.** A public official may not participate in the making of a contract in his or her official capacity if the official has a direct or indirect financial interest in the contract. Sec. 946.13(1)(b).

Since this is a prohibition on official action, abstaining from voting on the contract will prevent violation.

2. **Prohibition Against Private Action.** A public official may not in his or her private capacity negotiate or bid for or enter into a contract in which the public official has a direct or indirect financial interest if the official is "authorized or required by law to participate in his capacity as such officer or employee in the making of that contract." Sec. 946.13(1)(a).

This latter provision is a prohibition on private action and a public official cannot avoid violating it merely by abstaining from voting because all that is necessary for a violation to occur is that the official be authorized to vote on or exercise discretion with regard to a contract in which the official has a private financial interest and the official has negotiated, bid for, or entered into the contract.

3. **Exceptions:**
 - a. \$15,000. Contracts in which receipts and disbursements do not, in the aggregate, exceed \$15,000 in any one year. This means that a municipal governing body member can enter into a total of \$15,000 in business with the municipality in any calendar year.
 - b. Bankers. Bankers who receive less than \$10,000 per year for serving on the city council or village board are exempted, unless the banker's compensation is directly dependent on procuring public business.

- c. Attorneys. Partners in a law firm that serves as legal counsel to the municipality who receive less than \$10,000 per year for serving on the city council or village board are exempted, unless the individual has an interest in the law firm greater than 2% of its net profit or loss; the individual participates in the making of a contract between the municipality and the law firm; or the individual's compensation from the law firm is directly dependent on procuring public business.
 - d. 2% of stock. There is an exception from sub. (1)(b), the prohibition on official action, for persons who own no more than 2% of the stock of the corporation involved.
4. **Penalty:** Violation of the statute is a Class I felony and subjects the person to a fine of not more than \$10,000, imprisonment for not more than 3 years and 6 months, or both.

IV. INCOMPATIBILITY DOCTRINE.

- A. **Common law Prohibition.** The same person cannot hold two offices or an office and a position where, from a public policy perspective, it is improper for one person to discharge the duties of both posts. The Wisconsin Court of Appeals has held that serving in an office and a position, where one post is superior to the other, is improper from a public policy perspective. For example, in *Otradovec v. City of Green Bay*, 118 Wis. 2d 393 (Ct. App. 1984), the court held that a common council member could not work as an assistant appraiser in the city assessor's office.
- 1. **Result.** If a second office is taken that is incompatible with an existing office, the first office is vacated. In the case of office/position incompatibility, the outcome is unclear – person runs risk of losing first post, but court might allow choice.
 - 2. **General Rule of Thumb:** Municipal governing body members may not hold other municipal offices or positions, unless specifically authorized by statute. This is because the governing body exercises control over such matters as the salaries, duties, and removal or discipline of most other municipal officers and employees.
 - 3. **Statutory Exceptions.**
 - a. Elected city, village and town officers can also serve as volunteer firefighters, EMTs or first responders when annual compensation from one or more of those positions, including fringe benefits, does not exceed \$25,000 if the municipality has a population of 5,000 or less or \$15,000 if the municipality has a population greater than 5,000. Sec. 66.0501(4). Wis. Stat. § 66.0501(4).
 - b. Governing body members can serve on local boards and commissions if they receive no compensation other than a per diem and other board/commission members also receive the per diem. Wis. Stat. § 66.0501(2).
 - c. Village trustees may be paid an hourly wage for serving as an employee if wages do not exceed \$15,000 each year. Amounts may be paid in addition to compensation

for serving as trustee or as volunteer firefighter, emergency medical services practitioner, or emergency medical responder. Wis. Stat. § 61.327.

- d. Municipal governing body members may serve as county board supervisor. Wis. Stat. § 59.10(4).

Related Statutory Provisions.

1. Section 66.0501(2) generally prohibits governing body members from taking municipal jobs. Under the statute:
 - a. Governing body members are prohibited, during the term for which the member is elected, from taking new municipal jobs created during their term of office even if they resign.
 - b. A governing body member may be appointed to an office or position which was not created during the member's term in office as long as the member resigns first.
 - c. Governing body members may run at any time for new or existing elective office, but the compatibility doctrine applies if elected and the official would be required to choose between the two offices. Individuals may run for two elected local offices at the same time. Sec. 8.03(2m).
 - d. Governing body members may be appointed to serve on local boards and commissions (e.g., library board and plan commission) where no additional remuneration is paid to such officers except that such officers may be paid a per diem if other members of the board or commission are paid a per diem.
2. Section 59.10(4), Stats., provides that municipal governing body members may serve as county board supervisors.

V. OTHER STATUTORY PROHIBITIONS

- A. **Misconduct in Office.** Section 946.12 is a criminal statute that prohibits public officers and employees from intentionally performing, or refusing to perform, certain acts. A violation of sec. 946.12 is punishable by up to two years in prison, a fine of up to \$10,000, or both.
 1. Section 946.12(1) prohibits a public official from intentionally failing or refusing to perform a “known mandatory, nondiscretionary, ministerial duty of his office or employment within the time or in the manner required by law.”
 2. Section 946.12(2) prohibits a public official from doing an act which he or she knows is forbidden by law to do in an official capacity.
 3. Section 946.12(3) provides that a public official may not, by an act of commission or omission, exercise a discretionary power in a manner inconsistent with the duties of office

or the rights of others, with an intent to obtain a dishonest advantage for himself or another.

- B. **Bribery.** Section 946.10(2) prohibits public officials from taking bribes. Section 12.11 prohibits public officials from promising an official appointment or anything of value to secure votes.
- C. **Sale to Employees Prohibited.** No municipal department or member of a municipal governing body may sell or procure for sale any municipal article, material or product to city or village employee; except meals, public services and special equipment necessary to protect the employee's safety and health. Sec. 175.10. This statute is designed to prohibit governmental acquisition of products for resale to government employees.

VI. A FINAL WORD

Ordinances and Common Law Rules Relating to Ethics. This outline focuses on state statutes that establish minimum standards of ethical conduct for public officials. These laws provide a good starting point for local officials seeking to assure themselves that they are acting appropriately. However, municipal officials should be mindful of other relevant laws governing ethical issues. These include ordinances, local rules of procedure and the common law (i.e., published court decisions).

For example, the Wisconsin Supreme Court has held that members of a legislative body or municipal board are disqualified to vote on propositions in which they have a direct pecuniary interest adverse to the municipality. *Board of Supervisors of Oconto County v. Hall*, 47 Wis. 208 (1879). Additionally, many municipalities have adopted *Robert's Rules of Order*. (Newly Revised, 10th ed) as their local rules of procedure. Section 45 of *Robert's* provides at p. 394: "No member should vote on a question in which he has a direct personal or pecuniary interest not common to other members of the organization." (Note: There are several editions of *Robert's Rules of Order* and so it is important to know which edition your municipality is using.)

From: [JonathanMcDonell](#)
To: [John Weidl](#)
Cc: [Karri Anderberg](#); [Taylor Zeinert](#)
Subject: Library Fundraising Committee Opinion
Date: Tuesday, October 31, 2023 7:35:18 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

John,

Here is my memo on the library fundraising committee question:

I have been asked to give an opinion as to whether an individual who is member of both the Library Board and the library fundraising committee can vote on how the City will fund its contribution to the library renovation project.

It is my opinion that, under the state code of ethics, the Council Member would not have a conflict due to affiliation with an organization because the Library Board does not qualify as an "organization" as defined by WIS. STAT. § 19.42(11), due to the fact that the library board was created by state statute and therefore falls under the category of a "body politic" rather than an "organization" as per the terms of the ethics code. Since it is considered a "body politic," under the ethics code, there would not be a conflict of interest. Similar reasoning would apply to the committee membership.

In addition, since the City's contribution is already a specific, predetermined amount, and the official action pertains solely to how the City will secure those funds, I don't believe that the library board would directly gain any financial benefit from this official action. Because of this, it is my opinion that the Library Board does not possess a substantial financial interest in how the City structures the borrowing to meet its contribution goal.

Because library board's status aligns more closely with that of a "body politic" rather than an "organization," and the board's financial interest in the official action is limited, due to the fact that the City's contribution has already been determined, I do not believe that a member of the Council who is also a Library Board member and a member of the fundraising committee would have a conflict of interest in voting on the action which decides how the City would fund its already determined contribution amount.

Attorney Jon McDonell

From: [Neil Hicks](#)
To: [John Weidl](#); [Jill Gerber](#)
Cc: [Jonathan McDonell](#)
Subject: Re: Donation Concerns Inquiry and Response
Date: Monday, October 30, 2023 12:15:02 PM

John, I understand there may be no conflict of interest from a donor standpoint. However I would like confirmation that being on the board of directors for the library does or does not constitute a conflict of interest.

Thank you

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From: John Weidl <jweidl@whitewater-wi.gov>
Sent: Monday, October 30, 2023 12:02:57 PM
To: Jill Gerber <jgerber@whitewater-wi.gov>
Cc: City Council <citycouncil@whitewater-wi.gov>; Jonathan McDonell <jm@hmattys.com>
Subject: Donation Concerns Inquiry and Response

Jill, please see the attached memo from the Manager's office in response to your question. I will have Karri add this as a staff report as well as the City attorney opinion, once received, so there is no confusion in the public.

Thank you for your inquiry. Please let me know if I can be of further assistance.

Best, - JSW

John S. Weidl
City Manager, City of Whitewater

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www.whitewater-wi.gov
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From: [Jill Gerber](#)
To: [John Weidl](#)
Cc: [JonathanMcDonell](#)
Subject: Re: Donation Concerns Inquiry and Response
Date: Monday, October 30, 2023 12:19:21 PM

John,

Thank you for getting a clarifying answer, but I thought per our earlier conversation we were going to keep this quiet between us for now unless the decision weighed in by Jonathan deemed, they should abstain.

I am in Jonthan McDonnell on this one more time, because after reading your memo I wanted to make sure Jonathan was aware Brienne is also on the Captial Campaign committee for the library. Does this make your decision different in terms of her voting?

Also, I understand it's not a violation, which is also good information to know moving forward but your memo also notes " If the council member's involvement in the fundraising campaign would skew their judgement, it may raise concerns." In the words of Brienne from a prior council meeting "it just looks bad" should be considered in determining to abstain or recuse oneself.

Jill Gerber
Common Council Representative
Aldermanic District 4
Voting Wards 6,7,8
City of Whitewater
262.949.9370

From: John Weidl <jweidl@whitewater-wi.gov>
Sent: Monday, October 30, 2023 12:02 PM
To: Jill Gerber <jgerber@whitewater-wi.gov>
Cc: City Council <citycouncil@whitewater-wi.gov>; Jonathan McDonell <jm@hmattys.com>
Subject: Donation Concerns Inquiry and Response

Jill, please see the attached memo from the Manager's office in response to your question. I will have Karri add this as a staff report as well as the City attorney opinion, once received, so there is no confusion in the public.

Thank you for your inquiry. Please let me know if I can be of further assistance.

Best, - JSW

John S. Weidl
City Manager, City of Whitewater

312 W. Whitewater St., Whitewater, WI 53190

262-473-0104 | jweidl@whitewater-wi.gov

www.whitewater-wi.gov

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From: [James Allen](#)
To: [John Weidl](#); [City Council](#); [JonathanMcDonell](#)
Cc: [Karri Anderberg](#); [Sara Marquardt](#)
Subject: Re: Donation Concerns Inquiry and Response
Date: Monday, October 30, 2023 3:52:32 PM

John,

Disagreeing with your opinion does not constitute attacking you unprovoked. This whole matter wouldn't have been necessary had you included the note from the city attorney!

I just left your office at 1:30pm today. I think you'll agree that I too conducted myself in a professional manner.

Jim

From: John Weidl <jweidl@whitewater-wi.gov>
Sent: Monday, October 30, 2023 3:45 PM
To: James Allen <JAllen@whitewater-wi.gov>
Cc: Karri Anderberg <kanderberg@whitewater-wi.gov>
Subject: Re: Donation Concerns Inquiry and Response

Jim,

Sent. I will again include this correspondence for the public record because that's the second time you've attacked me unprovoked. I will continue responding in a professional manner and submit all correspondence for public review. Have a great afternoon.

Best, - JSW

John S. Weidl
City Manager, City of Whitewater

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262-473-0104 | jweidl@whitewater-wi.gov
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From: James Allen <JAllen@whitewater-wi.gov>
Sent: Monday, October 30, 2023 3:42:05 PM
To: John Weidl <jweidl@whitewater-wi.gov>; Jill Gerber <jgerber@whitewater-wi.gov>
Cc: City Council <citycouncil@whitewater-wi.gov>; Jonathan McDonell <jm@hmattys.com>
Subject: Re: Donation Concerns Inquiry and Response

John,

Before I accept your lecture, I haven't seen Mr. McDonell's opinion.
So, before you pit me against our staff (again) I'll wait to see Jon's opinion.
I believe in transparency and so does Brienne, as she recently stated, "It's all about the optics"
This discussion is all about optics!
J

From: John Weidl <jweidl@whitewater-wi.gov>
Sent: Monday, October 30, 2023 3:32 PM
To: James Allen <JAllen@whitewater-wi.gov>; Jill Gerber <jgerber@whitewater-wi.gov>
Cc: City Council <citycouncil@whitewater-wi.gov>; Jonathan McDonell <jm@hmattys.com>
Subject: Re: Donation Concerns Inquiry and Response

Dear Jim,

Thank you for your correspondence.

It is imperative to ensure transparency and allow for an open review of our actions, especially given your implication that my professional interpretation might be influenced by the parties involved. It is essential for the public to be informed when the integrity of a professional is questioned.

Furthermore, since there's a discrepancy between your understanding and that of the city manager and the city attorney, it's crucial to maintain a transparent dialogue. This not only clarifies our positions but also safeguards against any potential retaliatory actions in the future against staff who are merely executing their duties as assigned and interpreting the ordinances as outlined by legal review.

Sincerely, - JSW

John S. Weidl
City Manager, City of Whitewater

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262-473-0104 | jweidl@whitewater-wi.gov
www.whitewater-wi.gov

From: James Allen <JAllen@whitewater-wi.gov>
Sent: Monday, October 30, 2023 3:27:00 PM
To: John Weidl <jweidl@whitewater-wi.gov>; Jill Gerber <jgerber@whitewater-wi.gov>
Cc: City Council <citycouncil@whitewater-wi.gov>; Jonathan McDonell <jm@hmattys.com>
Subject: Re: Donation Concerns Inquiry and Response

John,

This was a discussion between you and Jill. Why are you including the entire council? I think sending your opinion to the entire council unfairly pressures Jon McDonell.

I don't agree with your opinion. The terms for conflict of interest are clearly spelled out and not up to interpretation.

If I had donated to the Library fund, would your opinion would be the same?
I don't think so.

Jim

From: John Weidl <jweidl@whitewater-wi.gov>

Sent: Monday, October 30, 2023 12:02 PM

To: Jill Gerber <jgerber@whitewater-wi.gov>

Cc: City Council <citycouncil@whitewater-wi.gov>; Jonathan McDonell <jm@hmattys.com>

Subject: Donation Concerns Inquiry and Response

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Best, - JSW

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