

MUNICIPAL LAW NEWSLETTER

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Associations' Lawsuit Against Municipal Broadband Utility Thrown Out

A Washington County court heard arguments on October 26 in the first case brought under Wisconsin's new law targeting municipalities who wish to provide broadband, cable, or telecommunications services to their communities. Wisconsin Act 278, which went into effect in July, sets out certain procedural requirements that a municipality must follow before adopting an ordinance authorizing the construction, ownership or operation of a facility to provide broadband, cable or telecommunications service. Specifically, the municipality must prepare a feasibility study as described in the Act and make that study publicly available thirty days before holding a public hearing on the authorizing ordinance.

The Wisconsin Cable Communications Association and the Wisconsin State Telecommunications Association, which both lobbied intensively for the new law, filed a lawsuit on October 11 claiming that the Village of Jackson violated the new law by failing to properly follow the Act's procedural requirements. Additionally, the associations charged that the Village violated the public bidding laws in awarding a contract for the construction of

a wireless broadband system for the Village.

On October 26, the circuit court heard arguments on the Village's motion to dismiss the associations' lawsuit. The Village argued that the two associations lacked the legal right to bring such a lawsuit because neither of the associations' members identified in the lawsuit, Charter Communications and SBC Wisconsin, could show that they were Village taxpayers who would sustain some economic loss by the Village's actions. The court agreed, concluding that the associations' lawsuit was totally devoid of any factual allegations that would support their right to bring such an action. Accordingly, the court dismissed the lawsuit.

The associations have the right to appeal the circuit court's decision to the Wisconsin Court of Appeals. It is not known whether the associations will pursue the matter further. The Village is represented in this matter by the Boardman Law Firm.

— Anita T. Gallucci & Mark J. Steichen

SPEAKERS' FORUM

November 30, 2004

Mini Telecom Legal Update

MEUW's 2004 Municipal Telecom Workshop and Trade Show
Wisconsin Dells, WI

Anita T. Gallucci

Employment Law Tips —

Job Applications and Interviewing

Employers can make the fundamental mistake of viewing the human resource function as a drain on scarce resources. One point where critical legal issues are often overlooked is in the hiring process. Sound and consistent hiring practices lead to both fewer legal issues and a better overall qualified workforce. Employers benefit greatly from periodically reviewing and updating the following components of their hiring process.

Job applications

Job applications are your opportunity to obtain all of the basic information you want regarding a candidate. However, many employers use outdated applications that include irrelevant or even illegal questions about an applicant's age, marital status, or health conditions. Many job applications also ask for irrelevant information that has no direct bearing on the job and may elicit information about protected legal status, such as minority status. Finally, many employers also miss the opportunity to include key information in their job application such as an at-will employment statement, an equal employment opportunity statement, and information on how long an application will be actively considered for job openings.

1. What information is essential on a job application?

- a. General personal data (name, address, telephone)
- b. Specific position applied for (have job descriptions available)
- c. Applicable knowledge and skills
- d. Educational background
- e. On-the-job training
- f. Technical skills relevant to the position
- g. Physical skills necessary to the position
- h. Memberships or activities *specifically related to the position*
- i. Previous work experience
- j. References
- k. Conviction record (or pending charges)
- l. Bondability (where relevant)
- m. Signed averment of truth
- n. Equal Opportunity Statement
- o. At-will language
- p. Time limit for actively considering accepted applications

2. What kinds of questions are illegal? Questions directly or indirectly related to protected status (e.g. race, gender, age, disability, marital status, sexual orientation, religion, veteran status). Furthermore, "loaded" questions that tend to reveal minority or protected status:

- a. Year of graduation from high school

- b. Languages spoken (unless specifically job-related)
- c. Place of birth
- d. What organizations or clubs you belong to
- e. Mr., Mrs., Miss, Ms.
- f. Spouse's name, occupation
- g. Children? Ages?
- h. What church you attend?
- i. With whom to you live?
- j. Have you ever been arrested?
- k. Do you own a car? (but not: Do you have reliable transportation?)

3. Examples of illegal disability-related questions:

- a. What current or past medical problems may limit your ability to do this job?
- b. Have you ever suffered a work-related injury (or filed a worker's compensation claim)?
- c. How many days were you sick last year? (but not: How many days you were absent?)
- d. What medications are you currently taking?
- e. Have you ever been treated for drug abuse?

Interviewing

As all employer's recognize, the interview stage is the employer's one opportunity to assess whether a candidate will be a good fit with an organization. However, interviewing is also where several employers trip up legally. First, those involved in the interview process should have some basic knowledge of the employer's hiring practices and equal employment laws. It is often the untrained supervisor who makes inadvertent promises in an interview or improperly asks a candidate about child bearing plans. Even if improper questioning does not directly lead to a lawsuit, an employer can lose out on quality candidates by having unprepared interviewers as part of the process. Many employers try to "fish" for information from a candidate about family plans and medical conditions. Employers (and all those who interview) simply have to understand that certain areas of questioning are off limits in the interview process. Additional keys to a good interviewing process are as follows:

1. Questions should be prepared in advance and asked uniformly. Use a prepared form to ensure uniformity and to document it.

2. Job descriptions should be made available for applicants to review.

3. Disabled applicants must be accommodated during interviews.

4. Questions must be job related and should be asked consistently of all candidates. A few examples of legal questions:

- a. What positions are you applying for?
- b. What experience or skills do you have that would be important in this position?

Continued on next page

Commission Approves WPSC Coal Plant

The Public Service Commission of Wisconsin (PSCW) has issued a conditional approval of Wisconsin Public Service Corporation's application to build a 500 MW coal-fired generating unit at its Weston Power Plant near Wausau. The projected in-service date of the facility, known as "Weston 4," is June 1, 2008, at an estimated cost of \$752 million.

The PSCW's order — decided by a 2-1 majority — requires WPSC to begin construction within 12 months of receiving necessary state and local approvals and requires the company to address a number of concerns related to noise, cost-effective energy efficiency, operational planning, and other issues.

The dissenting opinion, authored by Commissioner Bert Garvin, criticizes the Order's cost-effective energy efficiency requirement, under which WPSC must submit a plan to capture 32 MW of additional cost-effective energy efficiency by the end of 2008. In his dissent, Commissioner Garvin suggests that, since the evidence in the case did not demonstrate that energy conservation, renewable resources or other "energy priorities" were cost-effective or technically feasible alternatives that could "totally displace" the Weston 4 project, the Commission's requirement rewrites Wisconsin's Energy Priorities Law (Wis. Stat. §1.12) and renders uncertain how the PSCW will apply the Energy Priorities Law in future Certificate of Public Convenience and Necessity proceedings.

After nearly two decades of predominately gas-fired, combined cycle plant construction in Wisconsin, Weston 4 becomes the second major coal-fired generation project to receive the PSCW's blessing within a year. In late 2003, the PSCW approved construction of WE Energies' Oak Creek Project, which includes two 615 MW, supercritical pulverized coal units.

— Richard A. Heinemann

Employment Law Tips—Job Applications and Interviewing

Continued from page 2

- c. What relevant educational background or special training have you had?
 - d. What technical skills do you have that would be relevant?
 - e. What are your long-term professional plans?
 - f. What professional organizations or other activities do you participate in that would be relevant to the position for which you are applying?
 - g. Why did you leave your last job.
 - h. What was your last supervisor like?
 - i. What rate of pay are you seeking?
5. Control the interview and keep applicants on track.
 6. Make thorough notes and compare them with other interviewers. All interviews should be well-documented.
 7. Pre-offer medical inquiries and tests are prohibited.

— Jennifer S. Mirus

Court Upholds City's Right To Regulate Hours of Operation of Payday Loan Businesses

Payday lending is a relatively new industry in the State of Wisconsin and in the country as a whole. Under Wisconsin law, payday lenders are entities, other than a bank, savings and loan or credit union, that are authorized to charge more than 18% interest on consumer loans. *See Wis. Stats. § 138.09(1m)(a)*. Typically, such loans are short term, often from one payday to the next, thus explaining the name. It is not uncommon for payday lenders to charge \$22 of interest for each \$100 borrowed for a two-week loan. Charging a \$22 fee on \$100 borrowed for a two-week period works out to an annual percentage rate (APR) of 572% in interest.

In January 2004, the City of Madison enacted Madison General Ordinance § 23.08, prohibiting the operation of payday loan businesses during the overnight hours of 9:00 p.m. to 6:00 a.m. The ordinance recited that it was intended for the benefit of the health, safety and welfare of the public.

In a lawsuit filed in the United States District Court for the Western District of Wisconsin in Madison, The Payday Loan Store of Wisconsin, Inc. d/b/a Madison's Cash Express ("Cash Express") challenged the constitutionality of the ordinance, claiming that it violated the constitutional guaranty of equal protection of the law. Cash Express moved for a preliminary injunction to prevent the City from enforcing the ordinance. After a hearing, Judge Barbara Crabb denied the request for an injunction, finding that Cash Express had not carried its burden of proving the absence of a rational basis for the ordinance. Later, the Court utilized the same reasoning to dismiss the case entirely.

Cash Express has appealed to the Seventh Circuit, where the matter is now pending. The Boardman Law Firm represented the City in successfully upholding the constitutionality of the ordinance.

— Catherine M. Rottier

MUNICIPAL LAW NEWSLETTER

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If you have a particular topic you would like to see covered, or if you have a question on any article in this newsletter, feel free to contact any of the Boardman attorneys listed below who are contributing to this newsletter.

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