

**CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511**

March 9, 2005

OPINION NO. 05-002

TO: Mayor Dave Cieslewicz
Catherine Debo, Transit General Manager

FROM: Michael P. May, City Attorney

RE: Smoking at Madison Metro Transfer Points

You asked for my opinion on exactly where smoking is prohibited at the Madison Metro transfer points. After reviewing sec. 23.05(3)(o), MGO, and researching the history of the ordinance, I have determined that smoking is prohibited only within the enclosed shelters at the transfer points. Smoking is permitted in other areas located within the transfer points.

Sec. 23.05(3), Madison General Ordinances (MGO), states in part:

“Prohibition of Smoking in Public Places. Except as otherwise provided, it shall be unlawful for any person to smoke or use tobacco products in public places, including but not limited to the following:

* * *

(o) Public bus and transfer point shelters.”

The issue arises because there are two types of structures at the transfer points. There are small, nearly enclosed structures, and there are large, open air structures with roofs that provide some protection from precipitation. The standard rule of construction of legislation, that words are to have their ordinary and plain dictionary meaning, *State v. Sorenson*, 2000 WI 43, ¶23, 234 Wis. 2d 648, 611 N.W. 2d 240 (2000), is of little help in this instance. *Webster’s New Collegiate Dictionary*, for example, defines “shelter” as “something that covers or affords protection.” This could apply to either the small, enclosed structures or the larger structures.

If the meaning of legislation is not plain, the legislative history of the law may be examined. *Hall v. State Farm Mut. Automobile Ins. Co.*, 222 Wis. 2d 627, 642, 586 N.W. 2d 863 (1998). MGO 23.05(3)(o) originally was created on March 16, 1993, to include the language “all public bus shelters”. The subdivision was then amended on April 11, 2000, to the current

language of “Public bus and transfer point shelters.” The year that the “transfer point” language was added was the year that the smaller, enclosed shelters were added at the transfer points. Prior to this time, the transfer points consisted of the large, open roofed structures, but did not have the smaller, nearly enclosed structures. Because the language was added when the smaller, nearly enclosed structures were added to the transfer points, I conclude that the word “shelters” is intended to mean the small, nearly enclosed structures at the transfer points and not the entire transfer point area. Put another way, if the entire transfer point was to be covered, language would have been in the ordinance as soon as the transfer points existed, as opposed to when the shelters were added.

Prior to adding the transfer point language, the only structures that were covered by the ordinance were the small, nearly enclosed structures. These are the only types of structures that exist at bus stops. When that same word “shelter” was used with reference to the transfer point, it must be assumed that the same type of structure was meant to be covered.

The specific language that was added to the ordinance was to include the word “and” and move the word “shelter” to the end of the sentence. This also would infer that smoking was intended to be prohibited just within the enclosed shelters. If the intent had been to prohibit smoking at the entire transfer point area, then the language would have been “bus shelters and transfer points.”

Additionally, legislation is to be interpreted to avoid unreasonable results. *State v. West*, 181 Wis. 2d 792, 796, 512 N.W. 2d 207 (Wis. App. 1993), *review denied*, 520 N.W. 2d 89 (1994). The large over-hang structures at the transfer points extend past the curb line into the bus-parking zone. If smoking was prohibited within this area, then smokers would likely step into the parking area to smoke, which has heavy vehicular traffic and could create potential hazards for smokers. Absent some clear language in the ordinance that such a result were intended, it is not reasonable to interpret the language of the ordinance to prohibit smoking within the entire area at the transfer point that is covered by the large over-hang structures, and thereby force smokers into traffic lanes.

Finally, I note that the entire list of areas in which smoking is prohibited in sec. 23.05(3), MGO, consists of places that are enclosed or partially enclosed, as opposed to open air locations. In addition to that list, see sec. 23.05(7)(b), which excludes city park shelters from the smoking ban except when the shelters are “enclosed for the winter.” Presumably, this reflects a determination that the harms from second hand smoke are greater in enclosed areas. When interpreting legislation, it is proper to find the meaning of a clause or phrase by reference to the clauses or phrases surrounding it, under the doctrine of *noscitur a sociis* (that a word is “known by its associates”). *State v. Johnson*, 171 Wis. 2d 175, 181, 491 N.W. 2d 110 (Ct. App. 1992), *review denied*, 494 N.W. 2d 211 (1992). Because the other places in which smoking is prohibited are generally enclosed places, it makes sense to interpret the word “shelter” in the same way.

Based on my opinion that smoking is prohibited within the smaller, nearly enclosed

shelters, Madison Metro has agreed to place visible signs indicating such.

Michael P. May
City Attorney

SYNOPSIS: Under the current language in sec. 23.03(5)(o), MGO, smoking at bus transfer points is prohibited only in the smaller, nearly enclosed structures.