

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

Date: September 12, 2012

OPINION # 2012-002

TO: Mark Elsdon
Member, Ad Hoc PILOT Task Force

FROM: Michael P. May
City Attorney

RE: POST APPOINTMENT ADVOCACY BEFORE CITY ENTITIES

You have asked whether Sec. 3.35(5)(i)5, Madison General Ordinances, which limits post appointment advocacy before City entities, would limit your ability to advocate regarding the property tax exempt status of Pres House, during the 12 month period following your service on the ad hoc PILOT Task Force. You are the Executive Director of the Pres House. Pres House is exempt from the property tax, pursuant to Sec. 70.11(3m), Wis. Stats.

You have been appointed as a member of the PILOT Task Force. This ad hoc committee is "charged with reviewing the different aspects of basic services provided to property tax exempt property owners". See Legislative File ID 25736. Presumably the Task Force will also discuss the various provisions of agreements for Payment In Lieu Of Taxes (PILOT) and when such PILOT agreements are entered into by the City and the owners of exempt property.

The ethics code provision in Sec. 3.35(5)(i)5, MGO, relates to post incumbency advocacy. It provides:

"No former incumbent, for 12 months following the termination of her or his incumbency, may appear, with or without compensation, on behalf of any person or entity, with regard to any matter which was under the former incumbent's responsibility within 12 months prior to the termination of her or his incumbency or in which the former incumbent participated personally and substantially within 12 months of the termination of her or his incumbency before any City entity or negotiate with any incumbent in connection with any judicial or quasi-judicial proceeding, application, contract, claim, charge or matter which may give rise to a judicial or quasi-judicial proceeding."

As a member of the PILOT Task Force, you are an incumbent under the City's Ethics Code. The question is whether the property tax exemption of Pres House is a matter

which would be under your “responsibility” or is a matter in which you would have “participated personally and substantially” during your service on the PILOT Task Force. A reading of the text of Legislative File 25736, which created the PILOT Task Force, indicates that the purpose of the Task Force does not relate to tax exemption itself, but to the issue of payments in lieu of taxes for properties that are already exempt under state law.

A property must already be tax exempt before a PILOT agreement would be applicable. A PILOT agreement presupposes tax exempt status. The City of Madison does not have the power to declare a class or type of property to be tax exempt, although the City does interpret state laws to determine the applicability of state law to a particular property. Because tax exempt status is based on state law, it is not affected by a PILOT agreement.

Since the work of the PILOT Task Force is not directly related to the property tax exemption itself, the “responsibility” of the Task Force would relate only to issues that assume the exempt status of the property. Therefore a Task Force member would still be able to advocate on property tax exemption matters before the Common Council or city agencies.

However a Task Force member would be barred for 12 months after service on the Task Force from advocating on matters that are under the purview of the Task Force, such as PILOT agreement terms or conditions, calculation of payments, or other matters directly relating to the Task Force responsibilities.

Let me know if you have further questions. You also have the right to seek an advisory opinion from the City’s Ethics Board pursuant to sec. 3.35(11), MGO.



Michael P. May, City Attorney

SYNOPSIS: Service on Ad Hoc PILOT Task Force will not limit Task Force member’s post appointment advocacy on the issue of property tax exemption under sec. 3.35(5)(i)5, MGO. However, such service would, for 12 months after service, limit a member’s ability to advocate on issues related to PILOT payments and agreements.

cc: City Clerk