



You're in the Public Sector Now!

Maria Davis, Assistant Legal Counsel, League of Wisconsin Municipalities

One of the first things individuals need to understand when entering the public sector, either as an elected official or municipal staff, is that there are important differences between the public and private sectors. Local governments are subject to certain legal requirements and are also afforded unique governmental authority. Individuals need to be aware of these distinctions to serve their municipalities effectively and to avoid violating the law. Below are some of the most important differences to be aware of.

US and WI constitutions

Local governments are subject to the provisions of the U.S. and Wisconsin Constitutions. On the federal level, the main constitutional amendments to be aware of include the First Amendment (free speech, exercise of religion, establishment clause), the Fourth Amendment (no unreasonable searches or seizures without a warrant), the Fifth Amendment (due process), and the Fourteenth Amendment (equal protection, applies amendments to the states). The Wisconsin Constitution contains similar protections and also a constraint on municipal debt, found in Article XI, sec. 3(2) and 3(3), which provides that no municipality “may become indebted in an amount that exceeds an allowable percentage of the taxable property located therein equalized for state purposes as provided by the legislature. In all cases the allowable percentage shall be 5 percent [except as specified otherwise].”

State ethics code/pecuniary interest prohibitions

The state statutes set forth an ethics code containing minimum standards of ethical conduct for local government officials. Wis. Stat. § 19.59. Note, municipalities may also enact a local ethics code that is more stringent than the state ethics code. Additionally, to protect against any self-dealing by public officials, the statutes generally prohibit public officials from having a private financial interest in a public contract. Wis. Stat. § 946.13. Thus, local officials are generally prohibited from entering into a contract for goods, services, construction, or employment with the municipality.

Open government laws

Municipalities are subject to open government laws; namely, the Open Meetings Law (§§ 19.81 - 19.98) and the Public Records Law (§§ 19.21 - 19.39). The Open Meetings Law requires that all meetings of governmental bodies be preceded by public notice and open to the public at all times unless a statutory exemption authorizes use of closed session. The Public Records Law requires municipalities to maintain public records for prescribed amounts of time and to make them available for inspection when requested. The law establishes a strong presumption in favor of openness and public records requests may not be denied without statutory or judicial authority.

Quasi-judicial hearings

Often, municipal officials act in a legislative or executive role, depending on the office they occupy. However, certain instances require municipal officials to act in a quasi-judicial capacity, namely when a quasi-judicial hearing is required. A quasi-judicial hearing affects the rights of those who are a party to a proceeding before a governmental body (e.g., an alcohol license revocation hearing). Quasi-judicial hearings must be fair and the decision-makers impartial to ensure due process is afforded.

Ch. 32 eminent domain authority

Government entities have the unique authority of eminent domain. The power of eminent domain allows municipalities to acquire property via condemnation for specific purposes in accordance with the provisions of Chapter 32 of the Wisconsin Statutes.

General charter laws and other municipal laws

There are numerous statutory provisions that apply to cities and villages in Wisconsin. Cities and villages each have a general statutory charter setting forth laws regarding their organization and procedures. The village charter is found in Chapter 61 and the city charter is found in Chapter 62 of the statutes. Additionally, Chapter 66 sets forth general municipal laws that apply to both villages and cities.

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Public purpose doctrine

The “public purpose doctrine” is a basic and important constraint on the expenditure of public funds and one that every municipal official should understand. The public purpose doctrine requires that public funds be expended only for public purposes. There is no simple rule of thumb that can be used to determine whether an expenditure of public funds serves a public purpose. However, for an expenditure of public funds to constitute a public purpose, the subject matter of the appropriation must be one of public necessity, convenience, or welfare.

Governmental immunity

Wisconsin law provides broad grants of immunity for local governments. Wisconsin Stat. § 893.80 grants local governments and their officers, officials, agents, and employees immunity from liability for acts done in the exercise of legislative, quasi-legislative, judicial, or quasi-judicial functions. Additionally, Wis. Stat. § 895.52 provides property owners, including municipal governments, with immunity from liability for any injury to a person engaging in recreational activity on the owner’s property. While these grants of immunity are broad, they are not absolute

and there are certain specific exceptions that, if met, can defeat a municipality’s statutory immunity.

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