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Q & A FOR COUNTY TRAVEL BANS ON SECOND/SEASONAL HOMEOWNERS AND OUT-OF-STATE VISITORS

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Wisconsin counties, particularly those in the central and northern part of the state, have voiced concerns over potential influx of second or seasonal homeowners and out-of-state visitors coming to their counties during the COVID-19 pandemic. The concerns are generally based on fear of community spread of the COVID-19 virus, especially when visitors may come from areas that have a high number of reported COVID-19 cases.

On March 24, 2020, Executive Order #12, the Safer at Home Order (“EO #12”) was issued and states “all individuals present within the State of Wisconsin are ordered to stay at home or at their place of residence, with exceptions outlined” in EO #12. This includes restrictions on “non-essential” travel. Some counties have interpreted EO #12’s ban on “non-essential travel” to include a ban on out-of-state visitors or second homeowners from visiting the county. Counties also have been faced with the issues of whether a Local Public Health Officer has the authority to impose a travel ban, and whether law enforcement has the authority to enforce a travel ban.

The Wisconsin Counties Association and its general counsel, von Briesen & Roper, s.c., have received many questions regarding a county’s ability to adopt a travel ban on second/seasonal home owners and out-of-state visitors during the COVID-19 pandemic. Our general counsel has prepared the Q & A below to provide information related to county travel bans.

This information should be reviewed carefully with corporation counsel to ensure county compliance with other applicable laws and regulations.

Q: Our county has limited medical resources. May a county adopt a ban on out-of-state travelers or second home/seasonal homeowners from visiting the county during the COVID-19 pandemic to reduce the risk of COVID-19 cases putting a strain on local medical facilities?

A: No, a county may not adopt a ban on out-of-state travelers or second home/seasonal homeowners from visiting the county during the COVID-19 pandemic. EO #12 prohibits “non-essential travel,” but a complete ban on travel would conflict with EO #12’s exemptions for “essential travel,” such as travel for business, to care for family members, or other exempted activities. A county’s local order may not conflict with EO #12, and in the event of any conflict, EO #12 controls.

Q: Our county has limited supplies and food for people during the stay-at-home order. May a county adopt a prohibition on out-of-state visitors or second home/seasonal owner owners from purchasing supplies in the county?

A: No, the county may not ban out-of-state or second/seasonal homeowners from patronizing certain stores or purchasing certain essential items, such as bottled water or toilet paper. Such bans would not only conflict with EO #12 but also raise other legal issues, such as equal protection.

Q: Does a county sheriff have authority to enforce EO #12, including the ban on non-essential travel?

A: Yes, a county sheriff (and other local law enforcement) has the statutory authority to enforce the provisions of EO #12 pursuant to Wis. Stat. § 252.25 and pursuant to Paragraph 17 of EO #12. Note, however, that EO #12 does not prohibit out-of-state travelers from entering the state. Also, local law enforcement should have sufficient information to establish that an out-of-state visitor or seasonal/second homeowner is in violation of the non-essential travel restriction in order to issue a citation for violating EO #12.

Q: Other states, such as Illinois and Minnesota, have imposed stay-at-home orders. If residents from these states are visiting our counties, may our sheriff issue fines for violating those orders?

A: No, a county sheriff does not have the legal authority to enforce out-of-state stay-at-home orders.

Q: If a county may not adopt a travel ban, what can a county do to protect their citizens during the COVID-19 pandemic?

A: Counties have several options to protect citizens during the COVID-19 pandemic while still acting within proper legal boundaries. Suggestions include:

- Issue public statements and post online information with facts and recommendations from State of Wisconsin Department of Health Services, the county's Health Department, and the county's Public Health Officer. Knowledge is power!*
- Share details of the county's specific actions to address the COVID-19 pandemic in the county, and address any particular issues that are unique to the county. For example, if a county has a significant aged population, the county may share any local business hours that have limited shopping hours for seniors, any increased transportation and meal services, or connection numbers of other social services that may aid seniors.*
- Issue a "travel advisory" that sets forth the reasons why people are being encouraged to not visit the county at this time, explaining the limited health care resources, and encouraging a self-quarantine for anyone coming to the county.*
- Issue information focusing on local law enforcement, and what law enforcement may (and may not) enforce.*

Q: Other counties have adopted these travel bans. Why can't our county?

A: Every Wisconsin county has different populations, resources and resident needs. However, the law applies uniformly to all counties. Counties that have legitimate concerns regarding vulnerable populations, limited medical facilities and limited supplies may take other steps to protect its interests, such as the suggestions listed, however, a county does not have the legal authority to impose a travel ban as stated above.

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