

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

Date: November 6, 2008  
CITY OF MADISON  
Office of the Mayor

MEMORANDUM

NOV 6 2008

TO: Ray Harmon, Mayoral Assistant  
FROM: Michael P. May, City Attorney  
RE: **Bicycle Registration Fees**

RECEIVED

You asked my opinion as to whether the City could raise the current bicycle registration fees and utilize the increase in fees to implement recommendations in the City's Platinum Bicycling Committee Report (hereafter, the Platinum Bike Report).

Short Answer

Yes, the bicycle fee could be increased and the funds used for some of the purposes set out in the Platinum Bike Report. Under Wisconsin law, the fee must be reasonably related to the services provided, and must be used for something in relation to the services, regulation, or supervision for which the fee is intended. The bicycle registration fee appears to be related to safety, bicycle protection, and bicyclist education. While many of the recommendations in the Platinum Bike Report fall within these categories, a number of them seem to be beyond these purposes, and the fees could not be used for those programs.

Discussion

A. Proper Use of Fees Under Wisconsin Law

The limitation on the use of fees by municipalities in Wisconsin is set forth both in state statute and in the common law.

Section 66.028, Wis. Stats., reads in part:

Any fee that is imposed by a political subdivision shall bear a reasonable relationship to the service for which the fee is imposed.

In distinguishing between fees and taxes, the Wisconsin Supreme Court stated in *State v. Jackman*, 60 Wis. 2d 700, 707, 211 N.W.2d 480 (1973):

This court has made a distinction between taxes and fees. A tax is one whose primary purpose is to obtain revenue, while a license fee is one made primarily

for regulation and whatever fee is provided is to cover the cost and expense of supervision or regulation.

The court went on to consider the purpose of boat registration fees in Wisconsin, and determined that because the fees related to safety, it could cover related safety programs such as the cost of boat registration, the cost of boat safety enforcement including the salaries of DNR wardens to enforce regulations, and the disbursements for safety patrol aids. The safety patrol aids went to municipalities for their own water safety patrols.

Subsequently, in *City of River Falls v. St. Bridget's Catholic Church*, 182 Wis. 2d 436, 513 N.W.2d 673 (Ct. App. 1994) the Court of Appeals dealt with the Public Fire Protection Charge imposed by the City of River Falls relying on *State v. Jackman*, the Court of Appeals concluded that the charge was proper, and restated the rule as follows (at 442):

... If the primary purpose of a charge is to cover the expense of providing services, supervision or regulation, the charge is a fee and not a tax.

See also *Rusk v. City of Milwaukee*, 2007 WI App 7, 298 Wis. 2d 407, 727 N.W.2d 358 (2006), review denied, 2007 WI 61 (2007), considering the building reinspection fees in the City of Milwaukee.

#### B. Application to the City's Bicycle Registration Fees

The City provides for the registration of bicycles in § 12.78(3), MGO. The exact purposes of the bicycle registration and the fees associated with it are not directly stated in the ordinance; there is, for example, no "purposes" section of the ordinance. It might be wise to amend the ordinance to include a specific statement of the purposes for the registration and related fees.

However, at a minimum, it appears the purpose of the fees relate to education of bicycle riders (sec. 12.78(2)(e)), the ability to locate a bicycle for law enforcement purposes in the event of an accident or theft of a bicycle (sec. 12.78(2)-(6)), and bicycle safety (sec. 12.78(7)). Perhaps others more familiar with the history of the ordinance and the related fees could identify other purposes.

The Platinum Bike Report contains numerous recommendations, compiled in the last six pages of the 76-page report. Some of the recommendations therein would clearly fall within the above-cited purposes. See, for example, the recommendation for a formal bicycle program with a program coordinator in the Madison Police Department for safety and enforcement, the development of a bicycle crash report study sheet, and the creation of a safe route to school plan for Madison. Some of the other recommendations in the Report seem to be outside the purposes of the bicycle registration fee. See, for example, recommendations to institute a Sunday Parkways Ride once per month, establishing a grant program to encourage bicycling, creating a marketing campaign to replace automobile trips with bicycling, and integrating bicycling into the Fit City Madison program and The Natural Step program.

I have not attempted here to go through each and every recommendation in the Platinum Bike Report, and it may be that some of my characterizations of the above-

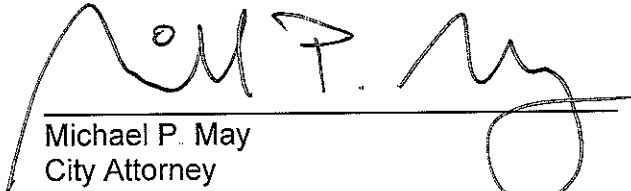
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recommendations are inaccurate and they may or may not fall within the purposes of the registration fee. The point is that each portion of the Platinum Bike Report must be examined to determine whether it is a program that is related to safety, enforcement or education, or whether it relates to some other aspect of bicycling.

Conclusion

While the fees collected for bicycle registration could be used for some aspects of the Platinum Bicycling Committee Report, some recommendations in that report appear to be beyond the purpose of the fees. Each proposed use of the fee must be examined to see if it falls within the rules established in Wisconsin law



Michael P. May  
City Attorney

MPM:skm