

DRAFT -- CITY OF MADISON

ETHICS BOARD

ADVISORY OPINION ISSUED TO MAYOR DAVE CIESLEWICZ

REGARDING SOLICITING FUNDS FOR A CONFERENCE

Mayor Dave Cieslewicz has requested that the Ethics Board issue an Advisory Opinion under the following factual background:

In June of 2011 the Congress for New Urbanism (CNU) will be holding its annual convention (referred to by CNU as “congress”) here in Madison at Monona Terrace. The CNU will bring approximately 1,500 architects, landscape architects, planners, public officials and developers from around the world to Madison. The estimated economic impact for Madison is \$1.5 million and it will be a large event for our city-owned convention center providing significant income at a time when convention activity is very competitive. In addition, the congress will introduce Madison to influential designers and investors from all over the world and there will be opportunities for residents of Madison including neighborhood leaders, planning professionals and anyone interested to interact with these international experts. The congress usually takes places in larger cities such as Chicago, Denver, Atlanta and Toronto. Having the CNU in Madison is a substantial accomplishment for our city.

The CNU is a 501(c)3 not for profit organization led by former Milwaukee Mayor John Norquist.

One of the responsibilities of the host city is to raise funds to help defray the cost of the annual congress meeting, which typically runs around \$500,000. The City is being asked to raise \$280,000. Because of the importance of this event to business for our city-owned convention center, the economic impact for our central business district, the international exposure it will give our city and the world-caliber design expertise that will be made available to our staff and our neighborhoods, Mayor Cieslewicz has offered to serve as the local co-chair for the event.

As part of his responsibilities, the Mayor would like to help raise the local share of costs for the meeting. The Mayor would cosign letters to perspective local, regional and

perhaps national sponsors and to follow up these letters with personal calls to philanthropic decision makers in some cases.

The City of Madison has included approximately \$20,000 for costs of the conference in its budget, but the remaining amounts would be raised through the fundraising committee. The funding committee has asked that the Mayor chair that group, sign letters seeking funds, and follow up with phone calls to key potential donors.

While some donors might have little relation to the City, it is likely that many of them would be the types of entities (developers, architects, other local business interests) that either do business with the City on a regular basis, or seek City approval of various actions or otherwise are regulated by the City.

DICSUSSION AND DECISION

As an initial matter, the Ethics Board determines that it does have jurisdiction pursuant to Sec. 3.35(11), MGO.

The issues were framed in a memorandum from City Attorney Michael May to the Board. The first question is as follows:

1. Is the Congress for New Urbanism (CNU) an entity with which the Mayor is “associated” within sec. 3.35(2)(b), MGO, such that fundraising for it would be a violation of sec. 3.35(5)(a)1 and 3, by taking action on a manner which produces a benefit for an associated organization?

The Ethics Board determines that CNU is not an entity with which the Mayor is associated. Associated is defined in sec. 3.35(2)(b), MGO, and generally includes an organization “in which an individual or member of her or his immediate family is a director or officer or owns or controls, directly or indirectly, and severally or in the aggregate, at least 2% of the outstanding equity.”

It was clear from the evidence presented that none of these situations fit with Mayor Cieslewicz. He is not even a member of CNU. Although the Ethics Board does consider that there may be other relationships to an organization which would “associate” a person with it beyond the direct definitions in the Ethics Code (this is because the Ethics Code defines “associated” as “including” those relationships mentioned), the Board is of the opinion that the

relationship must be sufficiently similar to those mentioned in the Code. There is no indication here that the Mayor is a highly paid employee, or otherwise has such a relationship with CNU.

Because the Mayor is not associated with CNU, the fundraising would not violate sec. 3.35(5)(a) 1 and 3 of the Ethics Code.

The next question is the following:

2. Would the solicitation of funds by the Mayor violate sec. 3.35(5)(a)2 in that the solicitation, even with no benefit to the Mayor or his immediate family, would be expected to influence the Mayor's action or be considered a reward for action?

The Ethics Board determines that solicitation of funds from entities which either are regulated by the City or regularly do business with the City would violate sec. 3.35(5)(a) 2, because the Mayor would be "solicit[ing] . . . from any person or entity . . . anything of value . . ." and that solicitation in this case "could reasonably be expected to influence the incumbent's vote, official actions, or judgment . . ."

Although the Board could not directly determine that such solicitation and acceptance might influence the Mayor's vote or official actions, the Board does find that soliciting and accepting those contributions for a third party would influence the Mayor's judgment. It is only natural that the Mayor would be more considerate and open-minded to those who helped bring this important conference to the City. The board concludes this is so, even though in this instance there is no financial benefit of any sort to the Mayor or any member of the Mayor's family.

The Ethics Board further determines that there would be nothing improper with those sending out the solicitation to use a Mayoral quote that was in the public domain, nor is there any issue with the Mayor being listed as co-chair of the host committee for the CNU convention. Letterhead with the Mayor listed as co-chair of the host committee could be sent by others to solicit funds, so long as the Mayor was not listed as a member of the fundraising committee, the Mayor was not doing the actual solicitation, and the Mayor did not make phone calls to make solicitations.

The Board reaches these conclusions while acknowledging the public benefit of such a conference to be held in the city. The Board believes that a carefully crafted and limited exception to the Ethics Code, allowing such solicitations in limited circumstances and with disclosure of the contributors, is an issue that merits further consideration.

In making this advisory opinion, the Board considered some similar opinions issued by the State Ethics Board under similar language in the state statutes. See, e.g., 1991 Wis. Eth. Bd. 6; 1996 Wis. Eth. Bd. 14; 1998 Wis. Eth. Bd. 2; 1998 Wis. Eth. Bd. 5.

Approved by the Ethics Board this _____ day of October, 2010.

FOR THE ETHICS BOARD:

Michael P. May, City Attorney