

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

Date: May 2, 2008

**MEMORANDUM**

TO: Mayor Dave Cieslewicz

FROM: Michael P. May, City Attorney  
Anne Zellhoefer, Assistant City Attorney

RE: Dane County and CDA Housing Cooperative Options

The Wisconsin Housing Authority Law is set forth at Sec. 66.1201 through 66.1211, Wis. Stats. Any Wisconsin city, village, or county is authorized to create a housing authority. The Common Council created the CDA in 1979 to replace both the Madison Housing Authority, which had been in existence since 1945, and the Madison Redevelopment Authority, which had been in existence since 1958. The CDA possesses all the powers, duties and functions of both a housing authority and a redevelopment authority.

Area of Operation

A housing authority is authorized to act within its "area of operation." This phrase is defined to include the city for which a housing authority is created and any area within five miles of the city boundaries but not beyond the county. This five mile extraterritorial area of operation does not include any area that lies within territorial boundaries of any city that has a housing authority.

The CDA, therefore, is authorized to finance, operate, own and manage housing projects within the City of Madison, and in any area within five miles of the City's borders, provided that the extraterritorial area is not located in another city that has a housing authority. The CDA traditionally has operated its Section 8 and low rent public housing programs only within the City's boundaries. The CDA's adopted preference policy provides a preference for applicants who are City of Madison residents.

The Dane County Housing Authority (DCHA) also operates Section 8 and low rent public housing programs. Its area of operation is all of Dane County; however, it may not operate within the boundaries of any municipality unless a resolution has been adopted by both the governing board of the municipality and by the municipality's housing authority board (if one exists) declaring that there is a need for the county housing authority to exercise its powers within that municipality. See Sec. 59.53(22)(c), Wis. Stats. In order for DCHA to operate within the City of Madison boundaries, therefore, it would need the approval of

both the CDA and the Common Council. In 2001, the CDA and the Common Council provided such approval to DCHA by adopting resolutions authorizing DCHA to issue housing revenue bonds to refinance 99 low-income housing projects owned by Madison Development Corporation that were located in the City of Madison.

#### Cooperation Among Housing Authorities

Secs. 66.0311 and 66.1201(9)(u), Wis. Stats., allow housing authorities to join or cooperate with each other in the exercise of any of their powers for the purpose of financing, planning, undertaking, owning, constructing, operating or contracting with respect to a housing project located within the area of operation of any of the authorities. The CDA has entered into such arrangements, from time to time, on a limited basis for limited purposes. In 2005, the CDA entered into a cooperation agreement with the Community Development Authority of the City of Ripon in order to issue bonds to finance privately owned low-income housing projects located in both Ripon and Madison. The CDA issued the bonds after receiving the approval of its board, the Ripon CDA board, and the Common Councils of both cities.

The two statutes noted above permit housing authorities to join together or cooperate in the performance of their statutory functions for limited projects; they do not address mergers of housing authorities. Unlike health departments, housing authorities are not sub-units of other governments, but are bodies politic and corporate separate from the cities or counties that created them. They have their own, separate governmental powers. Currently the statutes do not provide for a merger of housing authorities, but they do permit one housing authority to authorize another housing authority to act on its behalf and in its name, as its agent or otherwise, to exercise the powers of a housing authority in the first housing authority's area of operation. Sec. 66.1201(9)(u), Stats.

The cooperative arrangements between housing authorities set forth in sec. 66.0311, Stats., is an alternative to the traditional joint exercise of authority by an intergovernmental agreement under sec. 66.0301, Stats. The latter statute, which is more general, lists the governmental bodies that may act under it, and does not include housing authorities in the list of entities. Thus, the legislature provided for such cooperation (albeit on a more limited basis) under sec. 66.0311.

In addition, sec. 66.1211(4), Stats., allows a housing authority to exercise its powers in an area not otherwise authorized if the governing body of the city, village or county adopts a resolution so authorizing the housing authority. This statute would allow municipalities more than 5 miles from Madison's boundaries to authorize the CDA to operate housing projects in those municipalities. Using this statute would appear to require multiple approvals (Madison, CDA, DCHA, County Board, and local municipality).

As an alternative to joining together cooperatively, a municipal housing authority could agree to dissolve and authorize the remaining authority to exercise its statutory functions within the dissolved authority's area of operation, provided the municipality's common council provided its approval. The City of Middleton, for example, recently dissolved its

housing authority and authorized DCHA to exercise its powers within Middleton. Sec.66.1201(26), Wis. Stats., provides that any housing authority may be dissolved upon the adoption of an ordinance declaring that the need for the authority no longer exists, that all projects under the authority's jurisdiction have been disposed of, and that there are no outstanding obligations or contracts and that no further business remains to be transacted by the authority.

Conclusions.

1. There are no provisions for the merging of housing authorities.
2. Housing authorities may operate cooperatively and jointly under the powers given in secs. 66.1211(9)(g) and 66.0311, Stats., but these powers are more limited than the power to jointly exercise governmental powers through an intergovernmental agreement. The housing authorities so acting each retain their separate authority and must each approve the cooperative projects. Presumably, an agreement to cooperatively exercise their individual powers could be open-ended and begin to resemble a single, merged entity, but the laws do not provide for a true merger and the joint exercise of powers through one board. The laws also allow one housing authority to designate another as its agent for such projects and to exercise its powers for the benefit of the first agency.
3. Finally, the CDA could (if it met all the statutory requirements for outstanding obligations) dissolve as a housing authority and allow the DCHA to operate within Madison. This would require new City and County ordinances.

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