

**CITY OF MADISON, WISCONSIN**

REPORT OF: **CITY ATTORNEY**

TITLE: **Charter Ordinance on Bus Shelter Advertising**

AUTHOR: **Michael P. May, City Attorney**

DATED: **May 15, 2006**

PRESENTED July 11, 2006

REFERRED Transit & Parking

**Commission; BOE**

REREFERRED \_\_\_\_\_

REPORTED BACK \_\_\_\_\_

ADOPTED \_\_\_\_\_ POF \_\_\_\_\_

RULES SUSPENDED \_\_\_\_\_

ID NUMBER \_\_\_\_\_

TO THE MAYOR AND COMMON COUNCIL:

Wis. Stats. Sec. 86.19 generally prohibits the placement of signs in the highway right-of-way, with certain limited exceptions. This includes sidewalks adjoining City streets. These signs are also prohibited pursuant to provisions in the City's street graphics ordinance, Sec. 31.04, MGO. The application of this statute and ordinance has in the past engendered much discussion.

In 2000, the City Attorney issued an opinion explaining Sec. 86.19, Opinion 2000-06. The opinion determined that state law governed over any contrary City ordinances. Thus, a simple amendment to sec. 31.04, MGO, would not be effective to overcome the prohibition under State law to allow the City to authorize the placement of signs in the right-of-way. However, that opinion did not address the question of the City's use of its constitutional home rule authority under Article XI, Sec. 3 of the Wisconsin Constitution. Under the constitutional home rule authority, a city may, in certain instances, adopt a Charter Ordinance to opt out of the application of certain state statutes.

The Office of the City Attorney has examined the potential of using a Charter Ordinance for the limited purpose of allowing advertising or other signs on Madison Transit Utility bus shelters in the highway right-of-way. Although the issue is not free from doubt, it is the City Attorney's opinion that a Charter Ordinance, limited in scope and containing appropriate findings, could be used in these specific circumstances, so long as the ordinance is limited to Madison Transit Utility bus shelters, and is not applied on state trunk highways which are within the City limits. Such a Charter Ordinance could provide limited relief from Sec. 86.19, Stats.

By limiting the ordinance to Madison Transit Utility bus shelters and roads that are not state trunk highways, I believe it is more likely that the ordinance will fall within the "local affairs and government" of the City, and thus be within the power granted in Article XI, Section 3, of the Constitution.

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 Michael P. May  
 City Attorney

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