

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

Date: August 30, 2010

MEMORANDUM

TO: Ethics Board

FROM: Michael P. May, City Attorney

RE: Request of Mayor Dave Cieslewicz for Advisory Opinion regarding Fundraising for the Congress for New Urbanism Conference

I thought it might be helpful to lay out a possible structure for considering the Mayor's request for an advisory opinion (Legistar No. 19536). The Board is welcome to use this or to adopt its own structure.

It seems to me the best approach is to proceed through a series of questions:

1. Does the Ethics Board have jurisdiction?

If yes, proceed to other questions and issue advisory opinion. If no, deny the request for an advisory opinion.

2. 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 matter which produces a benefit for an associated organization?

If yes, the fundraising would not be allowed and an opinion to that effect would be issued. The Board would have to consider whether it wished to proceed to the remaining questions. If no, this section would not forbid fundraising, and the Board must consider the remaining questions.

3. 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?

If yes, direct solicitation would be prohibited. The Board should consider including in its advisory opinion guidelines, per the final question, as to what is or is not allowed short of direct solicitation. If no, then the solicitation could proceed. The Board might place some conditions or guidelines on the solicitation, even if allowed under the Code (e.g., authorization by the Common Council, notice to the City Clerk, etc.).

4. If direct solicitation by the Mayor is not allowed, what actions may the Mayor take within the bounds of the City's Ethics Code?

Some of these options are discussed in my memorandum dated July 13, 2010. Among them are:

- a. Limiting solicitations by the Mayor to those who do not have regular involvement with the City (if possible).
- b. The Mayor acting as "honorary chair" of a non-City based fundraising group with no direct involvement.
- c. Such a group using the Mayor's name with no direct involvement.
- d. An outside fundraising effort with no involvement by or use of the Mayor's name.
- e. Other?

CC: Mayor Dave Cieslewicz