



Fond du Lac County

OFFICE OF THE DISTRICT ATTORNEY

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May 17, 2019

District Attorney David Lasee
Brown County District Attorney's Office
300 E. Walnut Street
Green Bay WI, 54301

Re: Hotel Northland Investigation
Open Meetings Complaint

Dear District Attorney Lasee:

I agreed to accept two special prosecutions from the Brown County District Attorney's Office based upon your conflict of interest with officials that submitted the complaints. My understanding is that the complainants served on governmental board(s) that in some manner have oversight over your office budget. The complaints were filed by City of Green Bay Officials against Mayor James Schmitt related to the Hotel Northland project and an open meetings violation against city councilmembers related to a press conference that Green Bay City Council members participated in or attended. I am declining to issue any charges based on these complaints and this letter outlines my rationale and an explanation for the time lapse in these decisions.

I agreed to take this special prosecution in December of 2017 for a number of reasons. My understanding was that no District Attorneys were readily willing to accept the appointment, a similar hotel renovation was being in discussed in Fond du Lac County, and I have ties to the Brown County area having graduated from St. Norbert College and I lived Green Bay shortly after graduation law school. I wanted to ensure the a community I previously resided in was protected while ensuring a similar project in Fond du Lac County was equally protected.

I understand the public interest and desire to see a swift resolution to this inquiry. I appreciate your patience, the public's patience, and local media's patience as this investigation unfolded. Nearly all parties have been respectful as they inquired about the status of the investigation with my office. I had hoped for an expedited review of this matter but that was unable to occur and I wish to provide a brief explanation of the events causing that to occur.

The Hotel Northland investigation had interviews scheduled to occur had to be rescheduled prior to May of 2018 because of witness conflicts and unrelated court scheduling. Deputy District Attorney Dennis R. Krueger unexpectedly passed away May 5, 2018, days before interviews were slated to occur in this

matter. The unexpected passing of Dennis caused the Fond du Lac District Attorney's Office to be short staffed. Being short staffed placed a focus serious violent crime and other ongoing matters. This review was done without injecting personal opinions or conjecture regarding the actions of City of Green Bay Officials. The sole purpose of the review was to determine whether a crime or crimes were committed based upon the information provided by City of Green Bay City officials, collateral materials reviewed, and subsequent investigation conducted with the assistance of the Wisconsin Department of Justice.

OPEN MEETING

Some of the participants at the press conference are no longer members of the City Council and I am not making a finding of an open meetings violation. I recommend the Green Bay City Attorney ensure proper training and periodic retraining on this issue if members have concerns or questions about open meetings law.

HOTEL NORTHLAND

A letter and attachments alleged that former Mayor James Schmitt committed: "perjury, ongoing intent to deceive, committed fraud, and violated the public trust." Generally speaking the specific allegations listed above are not crimes as codified in the Wisconsin statutes except perjury¹. Misconduct in public office² was analyzed in relation to the non-perjury allegations determine if a crime was committed in relation to Hotel Northland project by then Mayor James Schmitt.

The analysis of the truth of the allegations regarding Mayor Schmitt's actions need not occur because after a review of documents, contracts, and interviews with former Mayor Schmitt and former councilman Guy Zima have shown no evidence to support charges of perjury or misconduct in public office that could be proven beyond a reasonable doubt. Additionally, based upon the allegations and information a misconduct in public office analysis may fall under the Privilege §939.45(3)³ analysis into the actions of then Mayor Schmitt.

The primary allegations made against then Mayor James Schmitt are that the Mayor attempted to secure a \$500,000 loan to the Hotel Northland Project in order to buy out one of the two partners in the Hotel Northland renovation project while representing to the officials that the loan was needed to pay workers and keep the hotel project moving forward. Ultimately the investigation revealed the \$500,000 request was abandoned and therefore not secured to buy out one of the partners in the Hotel Northland renovation. The truth of the why the \$500,000 loan was requested was immaterial to whether perjury or misconduct in public office was committed or attempted⁴ because in either version a crime couldn't be proven beyond a reasonable doubt and if a crime were committed §939.45(3) Privilege would apply.

Two elements of perjury are that statements made are under oath or affirmation and occur in a court proceeding. Statements were made by then Mayor Schmitt to various groups, organizations,

¹ See Exhibit 2 §946.31 and Exhibit 3 Jury Instruction 1750

² See Exhibit 2 §946.12 and Exhibit 3 Jury Instructions 1730, 1731, 1732, and 1734.

³ See Exhibit 2 §939.45

⁴ See Exhibit 2 939.32(3)

governmental bodies and the public. None of these statements were made in a court proceeding or under oath or affirmation therefore the crime of perjury was not committed, even if the statements were false.

An additional accusation was made that approximately \$3,236,720.32 was improperly diverted from one financial account to another with the acquaintance of then Mayor Schmitt and his administration. There is no evidence to suggest this money was improperly spent or was missing. The money was not in the account as required by the lender which eventually was used as a basis by the lender to find the loan in default. Any ramifications of this issue can and likely have been addressed through civil measures related to contract law.

Evidence does not support a prosecution for misconduct in public office. The review of the records and interviews shows no attempt or completion by then Mayor Schmitt in relation to the \$500,000 loan or incorrect accounting of the \$3,236,720.32 for misconduct in public office:

- 1) failure or refusal or to perform duties as outlined in §946.12(1),
- 2) performance of an act in excess of his official capacity as outlined in §946.12(2),
- 3) obtain a dishonest advantage as outlined in §946.12(3),
- 4) falsification or records as outlined in §946.12(4); or
- 5) solicitation or acceptance of any service or duty anything of value which is greater or less than is fixed by law as outlined in §946.12(5).

The results of this investigation have not yielded actionable information to support search warrants or subpoenas for documents. Based on my review of all available information and applicable legal standards I have found no basis to issue any criminal charges that could be proven beyond a reasonable doubt and therefor decline to issue any charges. I have included an appendix of relevant municipal ordinances, statutes and jury instructions consulted for analysis. Please contact me if you have any questions or desire any clarification from the content of this letter.

Sincerely,



Eric J. Toney
District Attorney

Cc: Green Bay City Attorney Vanessa Chavez
Attorney Warren Wanezek

Appendix

EXHIBIT 1: City of Green Bay Municipal Code

Sec. 1.16. - Mayor.

(1) Applicable statute. See § 62.09(8), Wis. Stats.

(2) Chief executive officer. The mayor shall be the chief executive officers, shall take care that the city ordinances and state laws are observed and enforced, and that all city officers and employees discharge their duties.

(3) Recommendations to council. From time to time, the mayor shall give the council such information and recommend such measures as the mayor deems advantageous to the city.

(4) Presiding officer. When present, the mayor shall preside at the meetings of the council.

(5) Veto power. The mayor has that veto power provided by state law as to acts of the council. All council actions shall be submitted to the mayor by the clerk and shall be in force upon approval evidenced by signature or upon failing to approve or disapprove within five days, which fact shall be certified thereon by the clerk. If disapproved, the mayor shall file objections with the clerk, who shall present them to the council at its next meeting. A two-third vote of all the members of the council shall then make the act effective notwithstanding the objections of the mayor.

(6) Signatory for grants-in-aid. The mayor is authorized without approval of the common council to execute applications to state or federal agencies for financial grants-in-aid for all lawful purposes. This shall be done on the conditions that such applications shall not bind the city to an expenditure of funds, and a report that such an application, including the reasons therefor, shall be made to the common council within 30 days after execution by the mayor. The council, within 30 days of receipt of the report, may, upon majority vote of all of the members, cause the application to be withdrawn.

CODE OF ETHICS

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• Sec. 1.90. - Code of ethics.

(1) Declaration of policy. The proper operation of democratic government requires that public officials and employees be independent, impartial, and responsible to the people; that governmental decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. To assist in attaining these goals, there is established a code of ethics for all city officials, including members of boards, committees, and commissions, and employees, whether elected or appointed, paid or unpaid. The purpose of this code is to establish guidelines for ethical standards of conduct for all such officials and employees by setting forth those acts or actions which are incompatible with the best interests of the city and by requiring such officials and employees to disclose personal interests, financial or otherwise, in matters affecting the city. The purpose of this code and the rules and regulations established hereby are declared to be in the public interest.

(2) Responsibility of public office. Public officials and employees hold office for the benefit of the public. They are bound to uphold the Constitution of the United States and the Constitution of this state; to observe the highest standards of law in the exercise of the powers and duties of their office; to impartially carry out the laws of the nation, state, and city; to discharge faithfully the duties of their office regardless of personal considerations; and to recognize that the public interest must be their prime concern.

(3) Dedicated service. Appointive officials and employees shall adhere to the rules of work and performance standards established for their positions. Officials and employees shall not exceed their authority or breach the law or ask others to do so. They shall cooperate with public officials and employees from other governmental bodies, agencies, and jurisdictions unless prohibited from doing so by law.

(4) Fair and equal treatment. No official or employee shall use or permit the use of city-owned vehicles, equipment, materials, or property unless authorized to do so. All officials and employees are obligated to give the same consideration to matters and persons in like or similar circumstances and may not arbitrarily or capriciously treat one person differently from another.

(5) Conflict of interest.

(a) Financial and personal interest prohibited. No official or employee, whether paid or unpaid, shall engage in any business or transaction or shall act in regard to any direct financial interest which is incompatible with the proper discharge of his or her official duties in the public interest contrary to the provisions of this section or which tends to impair his or her independence of judgment or action in the performance of his or her official duties.

(b) Definitions.

1. Financial interest. Any interest which yields directly a monetary or other material benefit to the officer or employee or to any person employing or retaining the services of the officer or employee.

2. Persons. Any person, corporation, partnership, or joint venture.

3. Official duty or act. One done by an officer in his or her official capacity under color and by virtue of his or her office. An authorized act.

4. Violation. Violation includes any unlawful behavior by a public officer in relation to the duties of his or her office, willful in its character, including any willful or corrupt failure, refusal, or neglect of an officer to perform any duty enjoined by law on him or her.

(c) Specific conflicts enumerated.

1. Incompatible employment. No official or employee shall engage in or accept private employment or render service, for private interest, when such employment or service is incompatible with the proper discharge of his or her official duties or would tend to impair such official's or employee's independence of judgment or action in the performance of such duties, unless otherwise permitted by law and unless disclosure is made as herein provided.

2. Disclosure of confidential information. No official or employee shall, without proper legal authorization, disclose confidential information concerning the property, government, or affairs of the City, nor shall such official or employee use such information to advance the financial or other private interest of such official or employee or others.

3. Gifts and favors. Discretion and the judgment of a reasonable, prudent person shall be exercised in the acceptance of giving of gifts which may tend to influence such official or employee in the discharge of his or her duties, or grant in the discharge of his or her duties any improper favor, service, or thing of value, except campaign contributions under subsection (7).

4. No public official, subject to this code, shall solicit private donations or funds for any city-related purpose unless authorized to do so in his or her official capacity under color of law or by virtue of his or her office. Any public official who receives funds for any city-related purpose shall file a report of the receipt and expenditure of such funds with the city clerk within 30 days thereof. For purposes of this subsection, "city-related purposes" shall mean those purposes authorized by the common council of the city, its boards, commissions, or committees. Nothing contained herein shall limit the statutory powers and authority of any public official, nor shall the provisions of this subsection prohibit the private, confidential solicitation of funds, by any person or public official, for any charitable, campaign, or other private purpose.

5. No alderperson, during his/her term of office, or one year thereafter, is eligible for any employment with the city, whether by regular employment or contractual services. Exceptions to this policy will be as follows:

a. Where an alderperson is appointed to fill a vacancy for another elected office or is elected;

b. Where an alderperson serves as a poll worker or at any other position which has a stipend of less than \$1,000.00 a year; or

c. Where an alderperson is appointed to a post with an 80 percent majority consent of the council.

(d) Contracts with the city. No city officer or employee, who in his or her capacity as such officer or employee participates in the making of a contract in which such person has a private pecuniary interest, direct or indirect, or performs in regard to that contract some function requiring the exercise of discretion on the part of such official or employee, shall enter into any contract with the city unless, within the limitations of § 946.13, Wis. Stats., the contract is awarded through a process of public notice and competitive bidding.

(e) Disclosure of interest in legislation. To the extent known, any member of the common council who has a financial interest in any proposed legislation before the common council shall disclose on the records of the common council the nature and extent of such interest.

Any other official or employee who has a financial interest in any proposed legislative action of the common council and who participates in discussion with or gives an official opinion or recommendation to the common council shall disclose on the records of the common council the nature and extent of such interest.

(6) Disclosure of certain financial interest.

(a) A person elected, appointed, or hired for any office or position of employment or appointed to any board, commission, or authority set forth below shall file initial and amended statements of economic interest as required by the provisions of this section.

ELECTED OFFICIALS

Mayor

Municipal judge

Aldermen-supervisors

APPOINTED OFFICIALS

Administrative assistant

Assessor

Chief electrical inspector

City attorney

City clerk

City sealer

Comptroller

Director of planning

Director of public works

Fire chief

Park and recreation director

Personnel director

Plumbing supervisor

Police chief

Purchasing agent

Superintendent of inspection

Treasurer

BOARDS

Board of review

Ethics board

Zoning and planning board of appeals

COMMISSIONS

Annexation commission

Parking utility commission

Plan commission

Police and fire commission

Room tax commission

Traffic, bicycle and pedestrian commission

Water commission

Neighborhood preservation commission

AUTHORITIES

Economic development authority

Housing authority

Redevelopment authority

Transit authority

(b) Within seven days after such person becomes a candidate for any elective city office enumerated in subsection (a) above, or prior to appointment to such office enumerated in subsection (a) above, such person shall file a statement of economic interest with the city clerk.

(c) Form of statement.

1. Interest in land. A person filing any statement of economic interest under this section shall file the statement on a form prescribed by the ethics board and shall supply the following information to the board: a description of all parcels of real estate within the city and adjoining towns or villages in which

the person owns any interest, including an option to purchase, if such property is to be considered for rezoning or purchase by any entity of government, but exempting homestead property.

2. Corporate interests. All candidates for a political office of the city and all appointive positions enumerated in subsection (a) above shall identify all corporate interests in any business organization, either as an owner, part owner, partner, or silent partner, in which such individual owns more than two percent of the outstanding stock or more than two percent of any other business ownership that is doing business with the city in an amount in excess of \$5,000.00 annually.

(d) Amended statements. Any person required to file a statement hereunder shall not be required to file an amended statement unless that person undergoes a change in those economic interests that are required to be disclosed by this section. Such person shall file the amended statement in the manner prescribed by subsection (b) above within seven days of the date of any change in circumstances requiring filing thereof.

(e) Elected and appointed officials and employees shall comply with the provisions of this section within 30 days after the requirements hereof are imposed upon such office or position.

(7) Campaign contributions. Campaign contributions shall be reported by all candidates for city office in conformity with the Wisconsin Statutes.

(8) Ethics board.

(a) There shall be an ethics board which shall consist of five members: one alderman; one city officer or employee; and four citizens, one of whom shall be an alternate who shall vote only in the absence or abstention of a member. Each member shall be appointed by the mayor and subject to confirmation by the common council. The citizen members shall be chosen from the private sector and shall not be affiliated with city government in any capacity, including, but not limited to, employment (including employment for which the salary is in any way funded by or through the city), appointment, or election. Terms of office of citizens shall be three years, one appointment to be made annually. The ethics board shall elect its own chairman and vice chairman and the city attorney shall furnish the board whatever legal assistance it deems is necessary to carry out its functions. If any member of the ethics board petitions the board for a hearing and advice regarding his or her own conduct, such member shall not be eligible to sit in his or her own case, and the alternate shall substitute therefor when the need arises.

(b) The jurisdiction of the ethics board is limited to acting within the scope of subsections (8)(d) and (9) of this section and conducting hearings regarding complaints filed in conformance with the code of conduct for elected officials as adopted by the common council and as amended from time to time.

(c) The ethics board may recommend amendments of this code to the common council.

(d) Upon the sworn complaint of any person alleging facts which, if true, would constitute a violation of this section, the board shall conduct a "due process" public hearing unless a private hearing is requested by the person accused and, in written findings of fact and conclusions based thereon, make a determination concerning the complaint. If the ethics board finds there is probable cause a person has violated a provision of this section, it shall refer the matter to the city attorney, district attorney, or common council for appropriate action. In making such referral, the ethics board shall attach the

findings and conclusions as well as such documents as it decides are germane to the issue; the statement of determination shall not be admissible as evidence in any court.

(e) A four-fifths vote of the entire membership of the board shall be required to make a finding of probable cause.

(9) Applicability of code. When an official or employee has doubt as to the applicability of a provision of this code, such person may apply in writing to the ethics board for an advisory opinion. The official or employee shall have the opportunity to present his or her interpretation of the facts at issue and of the applicability of the code before such advisory decision is made. This code shall apply except when superseded by an applicable statutory provision and statutory action is mandatory, or when the application of a statutory provision is discretionary but determined by the ethics board to be more appropriate or desirable.

(10) Penalty and sanctions. Violation of any provision of this section may constitute cause for suspension, removal from office or employment, or other disciplinary action.

(11) Severability. If any provision of this section is held invalid or unconstitutional, or if the application of this section to any person or circumstance is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this section which can be given without the invalid or unconstitutional provision or application.

STATEMENT OF ECONOMIC INTERESTS PURSUANT TO
CITY OF GREEN BAY CODE OF ETHICS 1.90(6)(c)

NOTE: THIS FORM IS REQUIRED TO BE COMPLETED AND FILED IN THE OFFICE OF THE CITY CLERK. IF THE ANSWER TO ANY QUESTION CONTAINED HEREIN IS "NONE", SO STATE, SIGN THE STATEMENT, AND DELIVER TO THE CLERK.

I, _____, hereby declare and certify that the information contained herein is, to the best of my knowledge, true, correct, and complete.

1. Describe all parcels of real estate within the City and adjoining towns or villages in which you own any interest, including an option to purchase, but exempting homestead property, and state if such property is to be considered for rezoning or purchase by an entity of government.

2. Identify any and all corporate interests in any business organization, either as an owner, part owner, partner, or silent partner, in which you own more than 2 percent of the outstanding stock or more than 2 percent of any other business ownership that is doing business with the City in an amount in excess of \$5,000.00 annually.

Dated this _____ day of _____, _____.

EXHIBIT 2: State of Wisconsin Statutes

19.59 Codes of ethics for local government officials, employees and candidates.

(1) (a) No local public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. A violation of this paragraph includes the acceptance of free or discounted admissions to a professional baseball or football game by a member of the district board of a local professional baseball park district created under subch. III of ch. 229 or a local professional football stadium district created under subch. IV of ch. 229. This paragraph does not prohibit a local public official from using the title or prestige of his or her office to obtain campaign contributions that are permitted and reported as required by ch. 11. This paragraph does not prohibit a local public official from obtaining anything of value from the Wisconsin Economic Development Corporation or the department of tourism, as provided under s. 19.56 (3) (f).

(b) No person may offer or give to a local public official, directly or indirectly, and no local public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the local public official's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the local public official. This paragraph does not prohibit a local public official from engaging in outside employment.

(br) No local public official or candidate for local public office may, directly or by means of an agent, give, or offer or promise to give, or withhold, or offer or promise to withhold, his or her vote or influence, or promise to take or refrain from taking official action with respect to any proposed or pending matter in consideration of, or upon condition that, any other person make or refrain from making a political contribution, or provide or refrain from providing any service or other thing of value, to or for the benefit of a candidate, a political party, any committee registered under ch. 11, or any person making a communication that contains a reference to a clearly identified local public official holding an elective office or to a candidate for local public office.

(c) Except as otherwise provided in par. (d), no local public official may:

1. Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.

2. Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

(d) Paragraph (c) does not prohibit a local public official from taking any action concerning the lawful payment of salaries or employee benefits or reimbursement of actual and necessary expenses, or prohibit a local public official from taking official action with respect to any proposal to modify a county or municipal ordinance.

(f) Paragraphs (a) to (c) do not apply to the members of a local committee appointed under s. 289.33 (7) (a) to negotiate with the owner or operator of, or applicant for a license to operate, a solid waste disposal or hazardous waste facility under s. 289.33, with respect to any matter contained or proposed to be contained in a written agreement between a municipality and the owner, operator or applicant or in an arbitration award or proposed award that is applicable to those parties.

(g) 1. In this paragraph:

- a. "District" means a local professional baseball park district created under subch. III of ch. 229 or a local professional football stadium district created under subch. IV of ch. 229.

- b. "District board member" means a member of the district board of a district.

2. No district board member may accept or retain any transportation, lodging, meals, food or beverage, or reimbursement therefor, except in accordance with this paragraph.

3. A district board member may receive and retain reimbursement or payment of actual and reasonable expenses for a published work or for the presentation of a talk or participation in a meeting related to processes, proposals and issues affecting a district if the payment or reimbursement is paid or arranged by the organizer of the event or the publisher of the work.

4. A district board member may receive and retain anything of value if the activity or occasion for which it is given is unrelated to the member's use of the time, facilities, services or supplies of the district not generally available to all residents of the district and the member can show by clear and convincing evidence that the payment or reimbursement was unrelated to and did

not arise from the recipient's holding or having held a public office and was paid for a purpose unrelated to the purposes specified in subd. 3.

5. A district board member may receive and retain from the district or on behalf of the district transportation, lodging, meals, food or beverage, or reimbursement therefor or payment or reimbursement of actual and reasonable costs that the member can show by clear and convincing evidence were incurred or received on behalf of the district and primarily for the benefit of the district and not primarily for the private benefit of the member or any other person.

6. No district board member may intentionally use or disclose information gained in the course of or by reason of his or her official position or activities in any way that could result in the receipt of anything of value for himself or herself, for his or her immediate family, or for any other person, if the information has not been communicated to the public or is not public information.

7. No district board member may use or attempt to use the position held by the member to influence or gain unlawful benefits, advantages or privileges personally or for others.

8. No district board member, member of a district board member's immediate family, nor any organization with which the district board member or a member of the district board member's immediate family owns or controls at least 10 percent of the outstanding equity, voting rights, or outstanding indebtedness may enter into any contract or lease involving a payment or payments of more than \$3,000 within a 12-month period, in whole or in part derived from district funds unless the district board member has first made written disclosure of the nature and extent of such relationship or interest to the commission and to the district. Any contract or lease entered into in violation of this subdivision may be voided by the district in an action commenced within 3 years of the date on which the commission, or the district, knew or should have known that a violation of this subdivision had occurred. This subdivision does not affect the application of s. 946.13.

9. No former district board member, for 12 months following the date on which he or she ceases to be a district board member, may, for compensation, on behalf of any person other than a governmental entity, make any formal or informal appearance before, or negotiate with, any officer or employee of the district with which he or she was associated as a district board member within 12 months prior to the date on which he or she ceased to be a district board member.

10. No former district board member, for 12 months following the date on which he or she ceases to be a district board member, may, for compensation, on behalf of any person other than a governmental entity, make any formal or informal appearance before, or negotiate with, any officer or employee of a district with which he or she was associated as a district board member in connection with any judicial or quasi-judicial proceeding, application, contract, claim, or charge which might give rise to a judicial or quasi-judicial proceeding which was under the former member's responsibility as a district board member within 12 months prior to the date on which he or she ceased to be a member.

11. No former district board member may, for compensation, act on behalf of any party other than the district with which he or she was associated as a district board member in connection with any judicial or quasi-judicial proceeding, application, contract, claim, or charge which might give rise to a judicial or quasi-judicial proceeding in which the former member participated personally and substantially as a district board member.

(1m) In addition to the requirements of sub. (1), any county, city, village or town may enact an ordinance establishing a code of ethics for public officials and employees of the county or municipality and candidates for county or municipal elective offices.

(2) An ordinance enacted under this section shall specify the positions to which it applies. The ordinance may apply to members of the immediate family of individuals who hold positions or who are candidates for positions to which the ordinance applies.

(3) An ordinance enacted under this section may contain any of the following provisions:

(a) A requirement for local public officials, other employees of the county or municipality and candidates for local public office to identify any of the economic interests specified in s. 19.44.

(b) A provision directing the county or municipal clerk or board of election commissioners to omit the name of any candidate from an election ballot who fails to disclose his or her economic interests in accordance with the requirements of the ordinance.

(c) A provision directing the county or municipal treasurer to withhold the payment of salaries or expenses from any local public official or other employee of the county or municipality who fails to disclose his or her economic interests in accordance with the requirements of the ordinance.

(d) A provision vesting administration and civil enforcement of the ordinance with an ethics board appointed in a manner specified in the ordinance. A board created under this paragraph may issue subpoenas, administer oaths and investigate any violation of the ordinance on its own motion or upon complaint by any person. The ordinance may empower the board to issue opinions upon request. Records of the board's opinions, opinion requests and investigations of violations of the ordinance may be closed in whole or in part to public inspection if the ordinance so provides.

(e) Provisions prescribing ethical standards of conduct and prohibiting conflicts of interest on the part of local public officials and other employees of the county or municipality or on the part of former local public officials or former employees of the county or municipality.

(f) A provision prescribing a forfeiture for violation of the ordinance in an amount not exceeding \$1,000 for each offense. A minimum forfeiture not exceeding \$100 for each offense may also be prescribed.

(4) This section may not be construed to limit the authority of a county, city, village or town to regulate the conduct of its officials and employees to the extent that it has authority to regulate that conduct under the constitution or other laws.

(5) (a) Any individual, either personally or on behalf of an organization or governmental body, may request of a county or municipal ethics board, or, in the absence of a county or municipal ethics board, a county corporation counsel or attorney for a local governmental unit, an advisory opinion regarding the propriety of any matter to which the person is or may become a party. Any appointing officer, with the consent of a prospective appointee, may request of a county or municipal ethics board, or, in the absence of a county or municipal ethics board, a county corporation counsel or attorney for a local governmental unit an advisory opinion regarding the propriety of any matter to which the prospective appointee is or may become a party. The county or municipal ethics board or the county corporation counsel or attorney shall review a request for an advisory opinion and may advise the person making the request.

Advisory opinions and requests therefor shall be in writing. It is prima facie evidence of intent to comply with this section or any ordinance enacted under this section when a person refers a matter to a county or municipal ethics board or a county corporation counsel or attorney for a local governmental unit and abides by the advisory opinion, if the material facts are as stated in the opinion request. A county or municipal ethics board may authorize a county corporation

counsel or attorney to act in its stead in instances where delay is of substantial inconvenience or detriment to the requesting party. Except as provided in par. (b), neither a county corporation counsel or attorney for a local governmental unit nor a member or agent of a county or municipal ethics board may make public the identity of an individual requesting an advisory opinion or of individuals or organizations mentioned in the opinion.

(b) A county or municipal ethics board, county corporation counsel or attorney for a local governmental unit replying to a request for an advisory opinion may make the opinion public with the consent of the individual requesting the advisory opinion or the organization or governmental body on whose behalf it is requested and may make public a summary of an advisory opinion issued under this subsection after making sufficient alterations in the summary to prevent disclosing the identities of individuals involved in the opinion. A person who makes or purports to make public the substance of or any portion of an advisory opinion requested by or on behalf of the person waives the confidentiality of the request for an advisory opinion and of any records obtained or prepared by the county or municipal ethics board, the county corporation counsel or the attorney for the local governmental unit in connection with the request for an advisory opinion.

(6) Any county corporation counsel, attorney for a local governmental unit or statewide association of local governmental units may request the commission to issue an opinion concerning the interpretation of this section. The commission shall review such a request and may advise the person making the request.

(7) (a) Any person who violates sub. (1) may be required to forfeit not more than \$1,000 for each violation, and, if the court determines that the accused has violated sub. (1) (br), the court may, in addition, order the accused to forfeit an amount equal to the amount or value of any political contribution, service, or other thing of value that was wrongfully obtained.

(b) Any person who violates sub. (1) may be required to forfeit not more than \$1,000 for each violation, and, if the court determines that a local public official has violated sub. (1) (br) and no political contribution, service or other thing of value was obtained, the court may, in addition, order the accused to forfeit an amount equal to the maximum contribution authorized under s. 11.1101 (1) for the office held or sought by the official, whichever amount is greater.

(8) (a) Subsection (1) shall be enforced in the name and on behalf of the state by action of the district attorney of any county wherein a violation may occur, upon the verified complaint of any person.

(b) In addition and supplementary to the remedy provided in sub. (7), the district attorney may commence an action, separately or in conjunction with an action brought to obtain the remedy provided in sub. (7), to obtain such other legal or equitable relief, including but not limited to mandamus, injunction or declaratory judgment, as may be appropriate under the circumstances.

(c) If the district attorney fails to commence an action to enforce sub. (1) (a), (b), or (c) to (g) within 20 days after receiving a verified complaint or if the district attorney refuses to commence such an action, the person making the complaint may petition the attorney general to act upon the complaint. The attorney general may then bring an action under par. (a) or (b), or both.

(cm) No complaint alleging a violation of sub. (1) (br) may be filed during the period beginning 120 days before a general or spring election, or during the period commencing on the date of the order of a special election under s. 8.50, and ending on the date of that election, against a candidate who files a declaration of candidacy to have his or her name appear on the ballot at that election.

(cn) If the district attorney for the county in which a violation of sub. (1) (br) is alleged to occur receives a verified complaint alleging a violation of sub. (1) (br), the district attorney shall, within 30 days after receipt of the complaint, either commence an investigation of the allegations contained in the complaint or dismiss the complaint. If the district attorney dismisses the complaint, with or without investigation, the district attorney shall notify the complainant in writing. Upon receiving notification of the dismissal, the complainant may then file the complaint with the attorney general or the district attorney for a county that is adjacent to the county in which the violation is alleged to occur. The attorney general or district attorney may then investigate the allegations contained in the complaint and commence a prosecution.

(d) If the district attorney prevails in such an action, the court shall award any forfeiture recovered together with reasonable costs to the county wherein the violation occurs. If the attorney general prevails in such an action, the court shall award any forfeiture recovered together with reasonable costs to the state.

§62.09(8) MAYOR.

- (a) The mayor shall be the chief executive officer. The mayor shall take care that city ordinances and state laws are observed and enforced and that all city officers and employees discharge their duties.
- (b) The mayor shall from time to time give the council such information and recommend such measures as the mayor may deem advantageous to the city. When present the mayor shall preside at the meetings of the council.
- (c) The mayor shall have the veto power as to all acts of the council, except such as to which it is expressly or by necessary implication otherwise provided. All such acts shall be submitted to the mayor by the clerk and shall be in force upon approval evidenced by the mayor's signature, or upon failing to approve or disapprove within 5 days, which fact shall be certified thereon by the clerk. If the mayor disapproves the mayor's objections shall be filed with the clerk, who shall present them to the council at its next meeting. A two-thirds vote of all the members of the council shall then make the act effective notwithstanding the objections of the mayor.
- (d) Except in cities that have adopted s. 62.13 (6), the mayor shall be the head of the fire and police departments, and where there is no board of police and fire commissioners shall appoint all police officers, and the mayor may, in any city, appoint security personnel to serve without pay, and in case of riot or other emergency, appoint as many special police officers as may be necessary.
- (e) The council at its first meeting subsequent to the regular election and qualification of new members, shall after organization, choose from its members a president, who, in the absence of the mayor, shall preside at meetings of the council, and during the absence or inability of the mayor shall have the power and duties of the mayor, except that the president shall not have power to approve an act of the council which the mayor has disapproved by filing objections with the clerk. The president shall when so officiating be styled "Acting Mayor".

§939.32(3) Attempt REQUIREMENTS. An attempt to commit a crime requires that the actor have an intent to perform acts and attain a result which, if accomplished, would constitute such crime and that the actor does acts toward the commission of the crime which demonstrate unequivocally, under all the circumstances, that the actor formed that intent and would commit the crime except for the intervention of another person or some other extraneous factor.

§939.45 Privilege. The fact that the actor's conduct is privileged, although otherwise criminal, is a defense to prosecution for any crime based on that conduct. The defense of privilege can be claimed under any of the following circumstances:

- (1) When the actor's conduct occurs under circumstances of coercion or necessity so as to be privileged under s. 939.46 or 939.47; or
- (2) When the actor's conduct is in defense of persons or property under any of the circumstances described in s. 939.48 or 939.49; or
- (3) When the actor's conduct is in good faith and is an apparently authorized and reasonable fulfillment of any duties of a public office; or
- (4) When the actor's conduct is a reasonable accomplishment of a lawful arrest; or

§946.31 Perjury.

(1) Whoever under oath or affirmation orally makes a false material statement which the person does not believe to be true, in any matter, cause, action or proceeding, before any of the following, whether legally constituted or exercising powers as if legally constituted, is guilty of a Class H felony:

- (a) A court;
- (b) A magistrate;
- (c) A judge, referee or court commissioner;
- (d) An administrative agency or arbitrator authorized by statute to determine issues of fact;
- (e) A notary public while taking testimony for use in an action or proceeding pending in court;
- (f) An officer authorized to conduct inquests of the dead;
- (g) A grand jury;
- (h) A legislative body or committee.

(2) It is not a defense to a prosecution under this section that the perjured testimony was corrected or retracted.

§946.12 Misconduct in Public Office

Misconduct in public office is defined in §946.12 of the Criminal Code of Wisconsin is committed by [a]ny public officer or public employee who does any of the following is guilty of a Class I felony:

- (1) Intentionally fails or refuses to perform a known mandatory, nondiscretionary, ministerial duty of the officer's or employee's office or employment within the time or in the manner required by law; or
- (2) In the officer's or employee's capacity as such officer or employee, does an act which the officer or employee knows is in excess of the officer's or employee's lawful authority or which the officer or employee knows the officer or employee is forbidden by law to do in the officer's or employee's official capacity; or
- (3) Whether by act of commission or omission, in the officer's or employee's capacity as such officer or employee exercises a discretionary power in a manner inconsistent with the duties of the officer's or employee's office or employment or the rights of others and with intent to obtain a dishonest advantage for the officer or employee or another; or
- (4) In the officer's or employee's capacity as such officer or employee, makes an entry in an account or record book or return, certificate, report or statement which in a material respect the officer or employee intentionally falsifies; or

(5) Under color of the officer's or employee's office or employment, intentionally solicits or accepts for the performance of any service or duty anything of value which the officer or employee knows is greater or less than is fixed by law.

EXHIBIT 3: Wisconsin Jury Instructions

1750 Perjury - § 946.31

Elements of the Crime That the State Must Prove

1. The defendant orally made a statement while under (oath) (affirmation).
2. The statement was false when made.
3. The defendant did not believe the statement to be true when made.

[It is not a defense to a prosecution under this section that testimony which constituted perjury at the time it was given was subsequently corrected or retracted.]

4. The statement was made in a proceeding before a court.

5. The statement was material to the proceeding.

A material statement is one which tends to prove or disprove any fact that is of consequence to the determination of the proceeding in which the statement was made.

1730 MISCONDUCT IN PUBLIC OFFICE (BY FAILURE OR REFUSAL TO PERFORM DUTY) — §946.12(1)

Elements of the Crime That the State Must Prove

1. At the time of the alleged offense, the defendant was a (public officer) (public employee). A (position) is a (public officer) (public employee).

2. The defendant failed to perform a mandatory, nondiscretionary, ministerial duty of (his) (her) office.

[The mandatory, nondiscretionary, ministerial duties of a (position) include: .]

3. The defendant intentionally did not (describe duty).

This requires that the defendant had the mental purpose to fail or refuse to perform the duty.

4. The defendant knew (he) (she) was required to (describe duty) (in the manner) (within the time) required by law.

1731 MISCONDUCT IN PUBLIC OFFICE (BY PERFORMANCE OF UNAUTHORIZED OR FORBIDDEN ACT) — §946.12(2)

Elements of the Crime That the State Must Prove

1. At the time of the alleged offense, the defendant was a (public officer) (public employee). A (position) is a (public officer) (public employee).

2. The defendant, in (his) (her) capacity as a public (officer) (employee) (describe conduct).

3. (Describe conduct) was (in excess of the defendant's lawful authority) (conduct in which the defendant was forbidden by law to engage in (his) (her) official capacity).

4. The defendant knew (that the conduct was in excess of (his) (her) lawful authority) (that (he) (she) was forbidden by law to engage in the conduct in (his) (her) official capacity).

1732 MISCONDUCT IN PUBLIC OFFICE (BY EXERCISE OF DISCRETIONARY POWER FOR A DISHONEST ADVANTAGE) — §946.12(3)

Elements of the Crime That the State Must Prove

1. At the time of the alleged offense, the defendant was a (public officer) (public employee). A (position) is a (public officer) (public employee).
2. The defendant, in (his) (her) capacity as a public (officer) (employee) exercised a discretionary power of (his) (her) office. The defendant may exercise discretionary power either by doing something or by failing to do something.

[The discretionary powers of a (position) include: .]

3. The defendant exercised a discretionary power in a manner inconsistent with (the duties of (his) (her) office) (the duties of (his) (her) employment) (the rights of others).

[The duties of a (position) include _____.]

4. The defendant exercised discretionary power with intent to obtain a dishonest advantage for (himself) (herself) (or) (another).

The phrase "with intent to" means that the defendant had the mental purpose to obtain a dishonest advantage or was aware that (his) (her) conduct was practically certain to cause that result. You cannot look into a person's mind to find intent. While this intent to obtain a dishonest advantage must be found as a fact before you can find the defendant guilty, it must be found, if found at all, from acts and words and statements, if any, bearing upon intent.

1733 MISCONDUCT IN PUBLIC OFFICE (BY FALSE ENTRY, RETURN, CERTIFICATE, REPORT, OR STATEMENT) — §946.12(4)

Elements of the Crime That the State Must Prove

1. At the time of the alleged offense, the defendant was a (public officer) (public employee). A (position) is a (public officer) (public employee).
2. The defendant, in (his) (her) capacity as a public (officer) (employee) made an entry in (an account or record book) (a return) (a certificate) (a report) (a statement).
3. The entry was false in a material respect.
4. The defendant intentionally falsified the entry in a material respect.

"Intentionally" means that the defendant had the mental purpose to falsify the entry in (an account or record book) (a return) (a certificate) (a report) (a statement) in a material respect and knew that the entry was false when (he) (she) made it.

1734 MISCONDUCT IN PUBLIC OFFICE (BY UNLAWFUL SOLICITATION OR ACCEPTANCE OF ANYTHING OF VALUE) — §946.12(5)

Elements of the Crime That the State Must Prove

1. At the time of the alleged offense, the defendant was a (public officer) (public employee). A (position) is a (public officer) (public employee).

2. The defendant intentionally solicited or accepted anything of value for the performance of any service or duty.

"Intentionally" means that the defendant had the mental purpose to solicit or accept anything of value for the performance of any service or duty.

[The (services) (duties) of a (position) include .]

3. The defendant knew that the amount (solicited) (accepted) was greater or less than is fixed by law.

4. The defendant acted under color of (his) (her) (office) (employment).

"Under color of (office) (employment)" means to act under the apparent authority of the (office) (employment).