STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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September 4, 2008 OAG—7—08

Mr. Michael J. McKenna
Corporation Counsel
Portage County
1516 Church Street
Stevens Point, WI 54481

Dear Mr. McKenna:

You indicate that Portage County created the position of county executive in 2005. Since at least 2005, Portage County has had a single county health department as provided in Wis. Stat. § 251.02(1). You advise that, both before and after the election of the county executive, the county health department has been "co-located and combined as the Portage County Department of Health and Human Services, with legislative oversight by the Health and Human Services Board." Prior to the election of the county executive in 2005, the Portage County Health Officer was supervised in all respects by the Portage County Director of Health and Human Services. Following the election of the county executive in 2005, the director of health and human services has been supervised by the county executive, and the health and human services director has continued to supervise the county health officer.

You ask, in effect, whether Wis. Stat. § 251.06(4)(b) requires that Portage County create a stand-alone county health department supervised in all respects by the county health officer and whether that statute precludes the county human services director (referred to in your county as the "health and human services director") from exercising any managerial authority over the county health officer.

It is my opinion that Wis. Stat. § 251.06(4)(b) does not require that a county create a stand-alone county health department and that Wis. Stat. § 251.06(4)(b) does not preclude the county human services director (referred to in your county as the "health and human services director") from exercising any managerial authority over the county health officer with respect to the operation of county health department programs.

Wisconsin Stat. § 46.23(3)(b) provides in part:

> *Transfer of other county powers and duties.* 1. If a county department of human services is established under par. (a), the county board of supervisors in a county with a single-county department of human services . . . shall transfer the powers and duties of the county departments under ss. 46.22 and 51.42 to the

> county department of human services. The county board of supervisors in a county with a single-county department of human services . . . may transfer the powers and duties of the following to the county department of human services established under par. (a):
>
> . . . .
>
> b. A local board of health for a local health department, as defined in s. 250.01(4)(a)1. or 2. or (c).
>
> bm. A local health officer for a local health department, as defined in s. 250.01(4)(a)1. or 2. or (c)[.]
>
> c. A local health department, as defined in s. 250.01(4)(a)1. or 2. or (c).

Wisconsin Stat. § 46.23(6)(a), which applies to counties without a county executive or county administrator, provides in part: "A county human services director appointed under sub. (5)(f) shall have all of the administrative and executive powers and duties of managing, operating, maintaining and improving the programs of the county department of human services . . . ."

Wisconsin Stat. § 46.23(6m), which applies to counties with a county executive or county administrator, provides in part:

> [T]he county executive . . . shall appoint a county human services director . . . . The appointment is subject to confirmation by the county board of supervisors unless the county board of supervisors, by ordinance, elects to waive confirmation or unless the appointment is made under a civil service system competitive examination procedure established under s. 59.52(8) or ch. 63. The county human services director, subject only to the supervision of the county executive . . . shall:
>
> (a) Supervise and administer any program for which supervision and administration is authorized under this section.

Wisconsin Stat. § 59.17(2)(a) provides that the county executive shall "[c]oordinate and direct all administrative and management functions of the county government not otherwise vested by law in other elected officers."

Wisconsin Stat. § 250.01(4) provides in part:

> "Local health department" means any of the following:
>
> (a) In a county with a population of less than 500,000, any of the following:
>
> 1. A county health department established under s. 251.02(1), including a county health department whose powers and duties are transferred to a county department of human services under s. 46.23(3)(b)1.c.

Wisconsin Stat. § 251.001 provides: "The legislature finds that the provision of public health services in this state is a matter of statewide concern."

Wisconsin Stat. § 251.01(3) provides in part: "'County health officer' means the position of a local health officer in a single county health department . . . ."

Wisconsin Stat. § 251.02(1) provides in part: "In counties with a population of less than 500,000 . . . the county board shall establish a single county health department, which shall meet the requirements of this chapter."

Wisconsin Stat. § 251.06(4)(b) provides:

> In any county with a county executive that has a single county health department, the county executive shall appoint and supervise the county health officer. The appointment is subject to confirmation by the county board unless the county board, by ordinance, elects to waive confirmation or unless the appointment is made under a civil service system competitive examination procedure established under s. 59.52(8) or ch. 63. The county health officer appointed under this paragraph is subject only to the supervision of the county executive. In a county with such a county health officer, the local board of health shall be only a policy-making body determining the broad outlines and principles governing the administration of the county health department.

Prior to the election of the county executive, the Portage County Board apparently had transferred the duties of the county health officer and the county health department to the county human services department, as authorized by Wis. Stat. § 46.23(3)(b)1.bm. and Wis. Stat. § 46.23(3)(b)1.c. Nothing in Wis. Stat. § 46.23(3)(b)1.bm. or Wis. Stat. § 46.23(3)(b)1.c. would have prevented the county board from transferring the duties of the county health officer and the county health department to the county human services department even after the county executive was elected in 2005. Because the transfer of such functions is expressly authorized

under Wis. Stat. §§ 46.23(3)(b)1.bm. and 46.23(3)(b)1.c., it is my opinion that a county that has a county executive is not required to create a stand alone county health department.

The county executive "[c]oordinate[s] and direct[s] all administrative and management functions of the county government not otherwise vested by law in other elected officers." Wis. Stat. § 59.17(2)(a). Neither the county human services director nor the county health officer is an elected officer. The authority of the county executive therefore extends not only to overseeing the manner in which the county health officer performs his duties, but also to overseeing the manner in which the county human services director administers and manages the functions of the county health department and interacts with the county health officer. The county executive also possesses exclusive authority to hire and, in the absence of a civil service ordinance, to fire both the county human services director and the county health officer. Wis. Stat. §§ 17.10(6)(a), 46.23(6m), and 251.06(4)(b).

When your county executive was elected, the organization of the county human services department did not change. By operation of Wis. Stat. § 46.23(6m), however, the county human services director became "subject only to the supervision of the county executive[.]" Under Wis. Stat. § 251.06(4)(b), the county health officer similarly became "subject only to the supervision of the county executive." Statutes such as Wis. Stat. §§ 46.23(6m) and 251.06(4)(b) were enacted so as to remove all supervisory authority over county department heads from county boards, from committees of the county board, and from boards such as the human services board that consist of both county board supervisors and citizen members. *See, e.g.*, 68 Op. Att'y Gen. 92 (1979). Wisconsin Stat. § 251.06(4)(b) therefore addresses only the relationship between the county health officer, the county board, and the elected county executive. That statute does not address the relationship between the county health officer and the county human services director.

The meaning of terms such as "supervise" and "supervision" is dependent upon the statutory context and those terms should be interpreted so as to further the statutory scheme in which they are employed. *Wis. Environmental Decade, Inc. v. DNR*, 85 Wis. 2d 518, 528-29, 271 N.W.2d 69 (1978). The county health officer is subject "only to the supervision of the county executive" within the meaning of Wis. Stat. § 251.06(4)(b) because ultimately only the county executive possesses statutory authority to determine whether the county health officer's performance is satisfactory.

The relationship between the county human services director and the county health officer derives from Wis. Stat. § 46.23(6m)(a), which directs the county human services director to "[s]upervise and administer any program for which supervision and administration is authorized under this section." As a result of the transfer of functions that had previously occurred under Wis. Stat. § 46.23(3)(b)1.bm. and Wis. Stat. § 46.23(3)(b)1.c., the supervisory and administrative authority of the county human services director under Wis. Stat. § 46.23(6m)(a) extends to all programs within the county health department. I am "obligated to

read the statutes to avoid absurd results." *Petition to Incorporate Powers Lake Village*, 171 Wis. 2d 659, 663, 492 N.W.2d 342 (Ct. App. 1992). Interpreting Wis. Stat. § 251.06(4)(b) to preclude the county human services director from exercising any managerial authority over the county health officer would severely constrain and even potentially eliminate the county human services director's statutory authority to supervise and administer county health department programs under Wis. Stat. § 46.23(6m)(a). Wisconsin Stat. § 251.06(4)(b) should therefore be construed so as to avoid that result. When the Portage County Board made the transfer of duties authorized by Wis. Stat. §§ 46.23(3)(b)1.bm. and 46.23(3)(b)1.c., the county health officer was placed under the supervision of the county human services director, as provided in Wis. Stat. § 46.23(6)(a). He remained under that same statutory supervision following the election of the county executive. The county executive oversees the manner in which the county human services director supervises the county health officer and the performance of the county human services director's duties, thus harmonizing the system of supervision contemplated by these statutes.

I therefore conclude that Wis. Stat. § 251.06(4)(b) does not require that a county create a stand-alone county health department and that Wis. Stat. § 251.06(4)(b) does not preclude the county human services director from exercising managerial authority over the county health officer with respect to the operation of county health department programs.

Sincerely,

J.B. Van Hollen
Attorney General

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