



OFFICE OF THE CORPORATION COUNSEL

MEMORANDUM

TO: CITY/COUNTY HOMELESS ISSUES COMMITTEE

FROM: KRISTI A. GULLEN
Assistant Corporation Counsel

DATE: AUGUST 25, 2015

RE: APPLICABILITY OF WIS. STATS. § 66.0139 & 170.105

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Question presented: The City/County Homeless Issues Committee has requested a legal opinion regarding the applicability of Wis. Stats. §§ 66.0139 and 170.105 to cleaning the front porch of the City/County Building (commonly referred to as the “CCB”) of abandoned personal property.

Answer: It is the opinion of the Office of the Dane County Corporation Counsel that neither Wis. Stat. §66.0139 nor Wis. Stat. §170.105 apply to cleaning the CCB front porch of abandoned personal property. Rather, §8.44 of the Madison General Ordinances controls. Sec. 8.44 allows personal property that has been abandoned at the CCB to be immediately disposed of if it has an estimated value of fifty dollars (\$50) or less.

Explanation: Article XI, sec. 3 of the Wisconsin Constitution provides that cities and villages “may determine their local affairs and government, subject only to this constitution and to such enactments of the legislature of statewide concern as with uniformity shall affect every city or every village.” This provision is known as “constitutional home rule,” and means that if a policy is entirely a matter of a city or village’s local affairs and government, a city or village is authorized to regulate that matter and the Legislature is prohibited from enacting a law preempting the local regulation of that matter. A city may also use its home rule powers to opt out of an existing state law and adopt its own procedures. On July 16, 2013, the Madison Common Council enacted Charter Ordinance §8.44 by which the City of Madison determined not to be covered by the provisions of Wis. Stat. §66.0139 and Wis. Stat. §170.105 with respect to abandoned property and enacted rules for the treatment of lost or abandoned property that comes into the possession of city employees, officials or agents.

It is the opinion of this Office that because the CCB is located within the City of Madison, cleaning the CCB front porch is a matter controlled by Madison General Ordinances and Wis. Stat. §66.0139 and Stat. §170.105 do not apply.