

MINUTES OF THE FIRST MEETING
REGIONAL TRANSIT AUTHORITY OF
KENOSHA, MILWAUKEE, AND RACINE COUNTIES

DATE: February 20, 2006
TIME: 3:00 p.m.
PLACE: Port of Milwaukee Offices
2323 South Lincoln Memorial Drive
Milwaukee, Wisconsin

Board Members Present

Len Brandrup City of Kenosha Representative
David Eberle Racine County Representative
Jody Karls City of Racine Representative
Karl Ostby Kenosha County Representative
Julia Taylor Governor's Representative from City of Milwaukee
George A. Torres Milwaukee County Representative

Board Members Excused

Sharon Robinson City of Milwaukee Representative

Staff Members Present

Philip C. Evenson Executive Director, SEWRPC
Kenneth R. Yunker Deputy Director, SEWRPC
Albert A. Beck Principal Planner, SEWRPC

Guests Present

Gregory F. Bird 2230 S. Woodward Street, Milwaukee
Arden Degner Secretary, Oak Creek Citizens Action Committee
Robert R. Dennik Director, Division of Economic and Community Development,
Milwaukee County Department of Administrative Services
Dewayne J. Johnson Director, Southeast Region,
Wisconsin Department of Transportation
H. Carl Mueller President, Mueller Communications, Inc.
Frederick J. Patrie Director of Public Works, Kenosha County
Rosemary Potter Director of Community Outreach,
Southeastern Wisconsin Coalition for Transit Now
Michael Pyritz Communications Director,
Office of Wisconsin State Representative Jeffrey Stone
Cari Reisinger Assistant Account Executive, Mueller Communications, Inc.
John Shaw Data Management Supervisor,
Wisconsin Department of Transportation, Southeast Region

Albert Stanek Chief, Intercity Planning,
 Division of Transportation Investment Management,
 Wisconsin Department of Transportation
 Kenneth J. Warren Managing Director, Milwaukee County Transit System
 Mark Wolfram Administrator,
 Division of Transportation Investment Management,
 Wisconsin Department of Transportation

ROLL CALL AND INTRODUCTIONS

As acting meeting chair, Mr. Evenson called the meeting to order at 3:00 p.m. and welcomed those present to the first board meeting of the Regional Transit Authority (RTA) of Kenosha, Milwaukee, and Racine Counties. He stated that Board member Sharon Robinson from the City of Milwaukee had been unable to attend today’s meeting. Mr. Evenson said that he would help facilitate the Board meeting until the Board selects its own officers. He asked each of the RTA board members present to introduce themselves and provide some background information. Noting that there were also several local and State officials in attendance, he also asked for those in the audience to introduce themselves.

APPROVAL OF AGENDA

Mr. Evenson stated that a packet of information which included the meeting agenda and materials related to agenda items had been provided to each Board member. He asked the board members if the meeting agenda met with their approval or if they desired to make changes to the agenda. There were no changes identified to the meeting agenda.

CONSIDERATION/POSSIBLE ACTIONS RELATIVE TO THE ORGANIZATION AND OPERATION OF THE REGIONAL TRANSIT AUTHORITY

Review of Statutory Responsibilities

Mr. Yunker drew the Board’s attention to the handouts identified as Exhibits A and B (see Attachments 1 and 2 to these minutes) which presented the State legislation for the RTA and a summary of the statutory responsibilities of the RTA specified in that legislation. He stated that the RTA had been charged with making the following recommendations to the State Legislature and Governor: establishment of a permanent regional funding source to provide local funds for the operating and capital costs of both commuter rail and public transit; whether the responsibilities of the RTA should be limited to transit funding or should also include transit operations; preparation of a plan for the distribution of regional funding among the three Counties’ transit operators; the preparation of a plan to improve the coordination of public transit, commuter rail, and passenger rail in the region; the use of bonding for commuter rail and public transit in the region and the role of the authority in such bonding; and whether the authority should continue in existence after September 30, 2009. The RTA recommendations on these issues are to be documented in a report provided to the State Legislature and Governor by November 15, 2008. Mr. Yunker also noted that the State statute requires that six of the seven Board members must vote in favor of any proposed RTA action.

Mr. Yunker noted that the RTA is also to receive reports from local governments within the three counties conducting commuter rail planning and engineering with State funds. He stated that the Regional Planning Commission staff, on behalf of an intergovernmental partnership of the Cities and Counties of

Kenosha, Milwaukee, and Racine, the Wisconsin Department of Transportation and the Commission, is conducting a corridor study/environmental impact statement of commuter rail in the Kenosha-Racine-Milwaukee corridor. That study is funded in part with State funds, and the SEWRPC staff will provide such reports to the RTA. Ms. Taylor stated that a preliminary schedule identifying the timing for the steps needed to implement commuter rail service in the Kenosha-Racine-Milwaukee corridor had been prepared by the KRM Leadership Committee, a group of business representatives and elected officials created by the Greater Milwaukee Committee to advance the proposed commuter rail link to implementation. Mr. Yunker noted that the schedule for the commuter rail planning calls for the technical study to be completed in February 2007, and submitted shortly thereafter to the Federal Transit Administration (FTA) for a determination on Federal funding. He stated that the technical study requires a financial plan identifying the necessary matching local and state funding. He noted that the FTA closes the applications for funding in the summer of each year. He also noted that the RTA's work would need to be completed in about 12 to 15 months, or the commuter rail project would be delayed for a year. He noted that the public transit systems in the three counties, and particularly the Milwaukee County Transit System, faced pressing funding problems, and suggested that the RTA may wish to try to complete its work in 12 to 15 months. Mr. Brandrup asked the Commission staff to prepare a proposed schedule for the RTA's work for meeting the requirements of the State enabling legislation. Mr. Yunker stated that staff would prepare a potential schedule and provide it for review by the Board at the next meeting.

Requirements of Wisconsin Open Meetings and Open Records Laws

Mr. Evenson drew the Board's attention to a handout which summarized the requirements of the Wisconsin public records and open meeting statutes (see Attachment 3 to these minutes). He stated that RTA Board members are considered to be public officials and are subject to the requirements of the identified statutes and that any formal notes, correspondence, or reports prepared by Board members or their staff that address the business of the RTA would be considered part of the public record. He stated that this would include letters and e-mails between Board members but that it was not clear if letters and e-mails between Board members and private citizens would also be considered part of the public record. He stated that staff was researching this question and would report back to the Board in the meeting minutes.

[Secretary's Note: The opinion of the legal counsel to the Commission is provided in Attachment 4 to these minutes.]

Mr. Evenson noted that, as six of the seven Board members must vote in favor of each action considered by the Board in order for the action to proceed, Board members should be aware of the definition of a "negative quorum" under the Wisconsin open meetings laws and Wisconsin Supreme Court holdings attendant to such laws. He explained that any meeting of two or more Board members where RTA business was formally or informally discussed would be considered a public meeting, since votes by only two members would be sufficient to block action on an issue. This could prove, he said, to be operationally problematic to this Board.

Mr. Eberle asked if the counties and cities in the RTA were involved in establishing the rules in the statute governing the passage of actions by the RTA Board. Ms. Taylor indicated each County and City in the RTA communicated to State Representative Stone what they were looking for in terms of rules for the RTA, but they were not aware of this negative quorum situation which results from the open meeting statutes.

Mr. Evenson asked Mr. Pyritz if Representative Stone would consider attempting to change the legislation to address this situation. Mr. Pyritz stated that the RTA legislation was not intended to make it impossible for two Board members to privately discuss RTA business outside of Board meetings. Mr. Karls stated that it was important to inform Representative Stone of this problem with the RTA legislation. Mr. Pyritz stated that he would relay the Board's concerns to Representative Stone.

Budget and Fiscal Considerations

Mr. Evenson stated that the RTA legislation provided for the collection of a \$2 fee assessed on most vehicle rentals in each member county (see Attachments 5 and 6 to these minutes), with the funds collected to be used to finance the work of the RTA to prepare the report called for in the Statute. He indicated that the collection of the fee first must be approved by the RTA Board, and that the Wisconsin Department of Revenue will begin collecting the rental car fee on the first day of the month that begins at least 90 days after the month the RTA approves the fee and notifies the Department. Mr. Wolfgram stated that he would work with the Commission staff to appropriately contact the Department of Revenue to initiate the collection of a \$2 fee for the RTA.

A motion to impose the \$2 vehicle rental fee was made by Mr. Ostby, seconded by Mr. Karls, and unanimously approved by the Board.

Mr. Evenson stated that the RTA will need to identify appropriate fiscal management procedures addressing the collection, record keeping, and expending of the funds it collects. Mr. Brandrup suggested that the Commission staff prepare suggestions for such fiscal management procedures for review by the Board.

Website Establishment

Mr. Yunker stated that the a website for the RTA could be established through the existing website operated by the Commission. He indicated that such a website could be used for several important functions, including posting announcements of each RTA Board meeting and providing for the electronic posting of agendas, minutes, and all other materials. The website could also be used to promote public participation by providing a venue for obtaining comments on issues studied by the RTA and announcements of, and materials for, public informational meetings and hearings conducted by the RTA. He stated that the Commission staff would prepare examples of website pages for the next Board meeting if the Board desired. It was the consensus of the Board that the Commission staff should proceed with the development of an RTA website.

Mr. Brandrup asked if a formal name for the RTA had been identified in the enacting statute. Mr. Evenson stated that a name had not been identified and that Commission staff would present ideas for a name at the next Board meeting.

Future Meeting Schedule

Mr. Evenson suggested that the Board establish a regular schedule of monthly meetings so the dates and times could be reserved on the calendars of Board members. Mr. Evenson stated that it would not be possible for RTA members to vote by proxy, but members could participate in meetings through teleconferencing.

Mr. Evenson asked if there was a particular day and time preferred by Board members for regular meetings. Ms. Taylor suggested that regular Board meetings be scheduled for 8:00 a.m. on the third Monday of each month. During discussion on this suggestion, it was the consensus that meeting locations be rotated among the RTA counties. Mr. Evenson indicated that staff would work with the RTA members

from each county to select meeting locations in each county. Mr. Evenson suggested that the next meeting be held in Racine County, and Mr. Eberle and Mr. Karls suggested that the meeting be held at Racine County's Ives Grove office building located on STH 20 just west of IH 94. Mr. Torres suggested that the Board consider scheduling one late afternoon or evening meeting each quarter to accommodate the general public who may not be able to attend a morning meeting. Alternatively, Mr. Yunker suggested that the Board could have the Commission staff conduct public informational meetings to solicit public comment on the RTA's work.

A motion to schedule RTA Board meetings for 8:00 a.m. on the third Monday of each month and to rotate the meeting locations among the member Counties was made by Mr. Ostby, seconded by Mr. Karls, and unanimously approved by the Board.

Approach to Public Comments at Meetings

Mr. Evenson asked the Board to decide whether a portion of each meeting or selected meetings should include a time period for public comments. He added that an alternative would be to schedule public informational meetings and hearings. Mr. Karls noted that the Board could allow the public to request to speak at each meeting by completing a form before the meeting that identified the question to be asked or issue to be addressed, with the Board deciding at the meeting whether or not to allow the request. Mr. Torres stated that written comments should always be accepted at regular Board meetings. Mr. Yunker stated that Commission staff would compile all written comments received prior to a meeting and provide them to the RTA Board members.

After some discussion, it was the consensus of Board members that there would not be a regular public comment period at every Board meeting, but that the Board would accept and review written comments prior to each meeting, and would periodically direct staff to schedule public information meetings and hearings to facilitate public input.

Staffing Arrangements

Mr. Evenson stated that the State legislation identified the Regional Planning Commission and the Department of Transportation to provide staff and administrative support services to the RTA. Mr. Evenson stated that the Commission staff was willing to provide these staff services. Mr. Wolfgram stated that the Wisconsin Department of Transportation would be available to provide information to the RTA upon request. Mr. Karls and Mr. Ostby asked about the costs entailed in having the Commission provide these services for Board. Mr. Evenson indicated that the Commission was willing to provide professional staff services at no charge for all regular, routine work. He noted that the Commission would obtain Board approval for any special work requested by the Board that required additional costs for staff or services not available through the Commission.

A motion to have the Commission provide staff and administrative support services to the RTA was made by Ms. Taylor and seconded by Mr. Brandrup. During the discussion on the motion, Mr. Eberle noted that any technical or consulting work not performed by Commission staff was to be approved by the RTA Board. The motion was unanimously approved by the Board.

Election of Officers

Mr. Evenson stated that the Commission would like to have the Board at this, or a future meeting, elect officers which the Commission staff can work with to arrange meetings and identify the RTA business to be discussed. He indicated that it would be desirable for the Board to elect a chairperson and a vice-chairperson, and that the Commission staff could serve as the recording secretary for the Board.

Mr. Brandrup commented that a Secretary should be elected from the Board's members even if certain secretarial services were provided by another agency. He also suggested that the Board elect a treasurer to be responsible for the fiscal matters of the RTA. Lastly, he suggested that the Board consider and approve a set of by-laws to formally establish the governance of the RTA including its officers. Mr. Karls stated that the by-laws should specify that the Board members would be allowed to participate in meetings, including voting via the telephone, if they could not attend a Board meeting. Mr. Evenson stated that the Commission staff would draft a set a by-laws for the Board's review and approval.

DISCUSSION/POSSIBLE ACTION ON APPROACH TO ADDRESSING STATUTORY RESPONSIBILITIES

Mr. Yunker drew the Board's attention to the handout identified as Exhibit C (see Attachment 6 to these minutes) which presented a potential sequence for the RTA's consideration of its statutory responsibilities.

Referring to the first bullet, Ms. Taylor noted that the current planning for commuter rail service in the Kenosha-Racine-Milwaukee corridor is considering options which may be expected to result in a reduction in the capital and operating costs of commuter rail compared to those identified in previous studies, and that final estimated costs may be needed before discussing potential permanent funding sources. Mr. Yunker agreed, noting that final revised commuter rail costs may not be available for several months. He added that staff could present previous cost estimates and preliminary estimates based on the studies underway. He added that the Board would be also briefed on the funding needs of the existing public transit operators in the three counties. Mr. Brandrup requested that the Board be briefed on current and long term transit needs and attendant funding requirements as outlined in the regional transportation plan for the year 2035 which is nearing completion. At the conclusion of the discussion, there was a consensus that the sequential approach to the Board's charge reflected in the handout was appropriate.

Mr. Karls asked if staff could provide commuter rail and other studies--such as the work of the previous Southeastern Wisconsin RTA--that RTA members could review. Mr. Evenson stated that staff would compile other relevant studies and make them available on the RTA website.

Ms. Taylor stated that SC Johnson and Transit Now would be sponsoring a presentation by Eugene Skoropowski of the Northern California Capitol Corridor Joint Powers Authority at the Golden Rondelle Theater in the City of Racine on February 28, 2006, entitled "The Real Deal: How Commuter Rail Impacted My Community." She asked if the Commission staff could keep the Board informed about events like this one that could provide useful information to Board members. Mr. Karls suggested that the staff develop a calendar of such events, and Mr. Yunker responded that the staff would attempt to do that. Mr. Brandrup suggested that Board members who become aware of events of interest should contact the Commission staff so the information can be provided to RTA members on the RTA website. Mr. Ostby requested that staff assemble a list of names, telephone numbers, and e-mail addresses of Board members for use in contacting each other and staff.

ADJOURNMENT

Mr. Evenson stated the next RTA Board meeting would be on the third Monday in March--March 20, 2006--in Racine County. He stated that the location would likely be the Racine County Ives Grove Office Complex located on STH 20 immediately west of IH 94. At that meeting, the Commission staff would provide a briefing on transit funding in the three counties. There being no further business to come before

the Board, the meeting was adjourned at 4:25 p.m. on a motion by Mr. Eberle, seconded by Mr. Karls, and unanimously approved.

Respectfully submitted,

Kenneth R. Yunker
Recording Secretary

AAB/mlh
2/24/06
Doc# 115975: Board Minutes for 02/20/06

Attachment 1

Exhibit A

2005 Regional Transit Authority Legislation--Section 59.58 (6) Wisconsin Statutes

(6) REGIONAL TRANSIT AUTHORITY. (a) In this subsection:

1. "Authority" means the regional transit authority.

2. "Region" means the geographic area composed of the counties of Kenosha, Milwaukee, and Racine.

(b) The counties of Kenosha, Milwaukee, and Racine shall create a regional transit authority. The governing body of the authority shall consist of the following members:

1. Three members, one from each county in the region, appointed by the county executive of each county and approved by the county board.

2. Three members, one from the most populous city in each county in the region, appointed by the mayor of each such city and approved by the common council.

3. One member from the most populous city in the region, by the governor appointed.

(bm) No action may be taken by the authority unless at least 6 members of the authority's governing body vote to approve the action.

(c) Notwithstanding s. 59.84 (2), the authority shall be responsible for the coordination of transit and commuter rail programs in the region.

(cg) 1. The authority may impose the fees under subch. XIII of ch. 77.

2. The authority shall retain all revenues received under subd. 1., except those expended as authorized under par. (cr), until the authority has submitted the report specified in par. (e) and action on the report is taken by the legislature.

(cr) The authority may hire staff, conduct studies, and expend funds essential to the preparation of the report specified in par. (e).

(d) The department of transportation or its designee, the southeastern Wisconsin Regional Planning Commission, or any designee of the governing body of the authority may provide administrative support services to assist the authority in fulfilling its duties.

(dm) Any recipient of state funding for the planning or engineering of a commuter rail project in the region shall periodically report to the authority's governing body or staff.

(e) By November 15, 2008, the authority shall submit to the governor and to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), a report on the activities of the authority. The report shall include all of the following:

3. A plan to improve the coordination of expanded mass transit, commuter rail, and passenger rail in the region.

3r. A recommendation on the use of bonding for commuter rail and public transit in the region, and the role of the authority in such bonding.

4g. A plan for the distribution among the mass transit operators in the region of any permanent regional funding specified in subd. 5.

4r. A recommendation as to whether the responsibilities of the authority should be limited to collection and distribution of regional transit funding or should also include operation of transit service.

5. A proposal that specifically identifies a permanent regional funding source to provide local funds for the local portion of operating and capital costs of commuter rail and public transit that are not covered by passenger fares and that considers all potential funding sources.

6. A recommendation on whether the authority should continue in existence after September 30, 2009.

Attachment 2

Exhibit B

Summary of the Regional Transit Authority
Statutory Responsibilities

- Provide the following recommendations to the State Legislature and Governor:
 - A proposal that specifically identifies a permanent regional funding source to provide local funds for the portion of operating and capital costs of commuter rail and public transit that are not covered by passenger fares and that considers all potential funding sources.
 - A recommendation as to whether the responsibilities of the authority should be limited to collection and distribution of regional transit funding or should also include operation of transit service.
 - A plan for the distribution among the mass transit operators in the region of any permanent regional funding specified.
 - A plan to improve the coordination of expanded mass transit, commuter rail, and passenger rail in the region.
 - A recommendation on the use of bonding for commuter rail and public transit in the region, and the role of the authority in such bonding.
 - A recommendation on whether the authority should continue in existence after September 30, 2009.

These recommendations are to be documented in a report provided by November 15, 2008, to the State Legislature and Governor, which would also summarize all activities of the RTA.

- The RTA shall also receive periodic reports from local governments conducting commuter rail project planning or engineering with State funds in Kenosha, Milwaukee, and/or Racine Counties. On behalf of an Intergovernmental Partnership of the Cities and Counties of Kenosha, Milwaukee, and Racine, the Wisconsin Department of Transportation, and the Regional Planning Commission; the Regional Planning Commission is presently conducting -- with State funds -- further study of commuter rail extending between Kenosha, Racine, and Milwaukee and connecting to Chicago-based Metra commuter rail, including preparation of an environmental impact statement.

* * *

PUBLIC RECORDS WISCONSIN STATUTES §§ 19.31- 19.39	OPEN MEETINGS WISCONSIN STATUTES §§ 19.81 – 19.98	
<p>County Supervisors are public officials required to maintain and keep public records associated with their duties. Those records include material that created by yourself or is being kept by yourself and includes material you receive in the course of your duties. Records consist of handwritten, typed and printed pages, maps, charts, photographs, films, recordings, tapes, including computer tapes, computer printouts, optical disks and e-mails.</p> <p>It is <u>not</u> a record if it is a draft, note, preliminary computation or materials prepared for the supervisor's personal use or materials which are purely the personal property of the supervisor and have no relation to the supervisor's office. Additionally, information that is otherwise confidential or proprietary is not considered a public record and access to such a record may be denied.</p> <p>A request for these records may be made by the public. The supervisor has an obligation to respond to those requests. A record may be a public record but that does not mean that it is an open record for inspection purposes. There are confidentiality that apply to some records and if the harm to the public or certain members of the public is outweighed by the benefit to the public by the release of the record, access to that record may be denied.</p> <p>In general a supervisor must retain most records for seven years. Correspondence should be retained for three years.</p>	<p>State law requires that whenever governmental business is discussed such discussion and action is to be at an open meeting. That requirement applies to the Ozaukee County Board and its committees.</p> <p>A convening of members of the board or a committee to exercise the responsibilities, authority or duties vested in that body is a meeting. If one-half or more of the members of that body are present, the meeting is presumed to be for exercising the responsibilities of that committee and is considered a meeting for which it is necessary to notify the public to allow the public to attend that meeting.</p> <p>A meeting does <u>not</u> occur when a majority of members of a committee or board are present for a "social, chance gathering, or conference" which was not held to avoid the open meeting requirements.</p> <p>A meeting can occur when <u>less</u> than half the members of a governmental body are present to discuss government business if the number of members present are sufficient to block action on a matter before their body. That meeting is a "negative quorum" and constitutes a meeting if the vote on an issue requires a super majority such as a 2/3 or 3/4 vote. In those situations 1/4 or 1/3 of the members could decide the result. If that percentage of supervisors meet to discuss governmental business that is a meeting that must be noticed and open to the public.</p>	<p>A meeting occurs when members of a board or committee are physically present so as to exchange communications with each other in a particular location. A meeting also occurs when members are having a conference call by <u>phone</u>, that type of meeting must be appropriately noticed and accessible to the public. A meeting is <u>also</u> held when enough members communicate by e-mail if that e-mail is instantaneous, such as a chat room or immediate interactive communication. Normal use of e-mail is not a meeting. If <u>multiple</u> board members so as to constitute a quorum or negative quorum are using what are called "chat rooms" or "instant messaging" where the communication is virtually simultaneous that is the same as a face-to-face meeting or a telephone conference call and would be a meeting requiring public notice and open session. A rule of thumb is an interval of at least four hours between the sending and returning of the e-mail message so as to avoid the open meeting definition. E-mail used as a functional equivalent of a letter by mail, courier or facsimile does not constitute a meeting because communication is not simultaneous in nature, it is instead a form of written communication.</p> <p style="text-align: center;">* * * * *</p> <p>Questions regarding open meetings and record retention can be directed to the Corporation Counsel's office. However, enforcement and interpretation of the law lies with the District Attorney and Attorney General's office.</p>
<p>FOR DETAILED INFORMATION ON THESE SUBJECTS - go to</p> <p>www.doj.state.wi.us</p> <p>home page and click on "more information on open meetings and public records laws"</p>	<p>All meetings must be noticed to the public. That means at least 24 hours prior notice. Not all meetings are open, by law you are allowed to hold closed meetings for some purposes including discipline, financial considerations, bargaining, conferring with legal counsel, etcetera. Those exceptions to the open meeting law must also be noticed to the public as a closed meeting.</p>	<p>Corporation Counsel Ozaukee County Justice Center 1201 South Spring Street, Suite 232 Port Washington, WI 53074-0994</p> <p>Telephone: Local 262-284-8300 Metro 262-238-8300</p>

HUNTER & SOMMERS, LLC

ATTORNEYS AT LAW
A LIMITED-LIABILITY COMPANY

JAMES R. SOMMERS

259 SOUTH STREET
POST OFFICE BOX 1136
WAUKESHA, WISCONSIN 53187-1136
TELEPHONE (262) 547-7788
FAX (262) 548-1055
E-MAIL JIMSOMMERS@AMERITECH.NET

March 8, 2006

Mr. Phil Evenson,
Executive Director
Southeastern Wisconsin Regional Planning Commission
W239 N1812 Rockwood Drive, PO Box 1607
Waukesha, WI 53187-1607

RE: REGIONAL TRANSIT AUTHORITY - PUBLIC RECORDS

Dear Phil:

You recently asked me to comment upon whether or not communications that are received by a person who is serving as a member of the Regional Transit Authority are "public records" within the Wisconsin Public Records Law.

The Wisconsin Public Records Law defines "record" to mean "any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority." Section 19.32(2), Wis. Stats. (emphasis supplied)

Subsection (1) of Section 19.32, Wis. Stats. defines "authority" to mean "any of the following having custody of a record: a state or local office, elected official, agency, board, commission, committee, counsel, department or public body corporate and politic created by constitution, law, ordinance, rule or order. . ."

It could be argued that a member of the Regional Transit Authority is not an "authority" within the meaning of the statute and therefore communications to that member from a constituent which the member does not thereafter place in the records of the authority would not constitute a public record of the Regional Transit Authority. However there are strong presumptions in the law regarding what constitutes a "public record". For instance in one case the interim grade reports of teachers in a school system were considered to be public records even though those interim grade reports were used solely by the teacher and were not required to be submitted to school administrators. The simple fact that the teacher was an employee of the school district and could have been required to have submitted the interim grade reports to administrators was enough to make those interim grade reports "public records."

Evenson
March 8, 2006
Page 2

It is my advice that members of the Regional Transit Authority should err on the side of caution and assume all communications they might have with constituents should be considered public records.

With regard to retention of records it is my opinion that the Regional Transit Authority is not a state agency but a local government agency. Therefore I believe the Regional Transit Authority can adopt its own policy regarding record retention. I would remind you that if records of the Regional Transit Authority are the subject of a pending request for inspection that the authority may not destroy those records until after the request is granted or at least 60 days after the request is denied or if the requester is a committed or incarcerated person until at least 90 days after the request is denied; and if legal action has been commenced with respect to the request then the record may not be destroyed until after the deadline for appeal has passed or if appealed, the appeal process has been concluded.

If you have any additional questions regarding this matter please feel free to contact me.

Very truly yours,

HUNTER & SOMMERS, LLC

James R. Sommers

JRS/lmd

Attachment 5

2005 Regional Transit Authority Legislation - Sections 77.971-77.973 Wisconsin Statutes

SUBCHAPTER XIII

REGIONAL TRANSIT AUTHORITY FEE

77.9971 Imposition. A regional transit authority under s.59.58 (6) may impose a fee at a rate not to exceed \$2 for each transaction in the region, as defined in s. 59.58 (6) (a) 2., on the rental, but not for rental and not for rental as a service or repair replacement vehicle, of Type 1 automobiles, as defined in s. 340.01 (4) (a), by establishments primarily engaged in short-term rental of passenger cars without drivers, for a period of 30 days or less, unless the sale is exempt from the sales tax under s. 77.54 (1), (4), (7) (a), (7m), (9), or (9a). The fee imposed under this subchapter shall be effective on the first day of the first month that begins at least 90 days after the governing body of the regional transit authority approves the imposition of the fee and notifies the department of revenue. The governing body shall notify the department of a repeal of the fee imposed under this subchapter at least 60 days before the effective date of the repeal.

History: 2005 a. 25.

77.9972 Administration. (1) The department of revenue shall administer the fee under this subchapter and may take any action, conduct any proceeding, and impose interest and penalties.

(2) Sections 77.51 (4) (a), (b) 1., 2., and 4., (c) 1. to 3. and (d) and (14) (a) to (f), (j), and (k), 77.52 (4), (6), (13), (14), and (18), 77.58 (1) to (5) and (7), 77.59, 77.60, 77.61 (2), (5), (8), (9), and (12) to (14), and 77.62, as they apply to the taxes under subch. III, apply to the fee under this subchapter. Sections 77.72 (1) and (2) (a) and 77.73, as they apply to the taxes under subch. V, apply to the fee under this subchapter. The renter shall collect the fee under this subchapter from the person to whom the passenger car is rented.

(3) From the appropriation under s. 20.835 (4) (gh), the department of revenue shall

distribute 97.45% of the fees collected under this subchapter for each regional transit authority to that authority and shall indicate to the authority the fees reported by each fee payer in the authority's jurisdiction, no later than the end of the month following the end of the calendar quarter in which the amounts were collected. The fees distributed shall be increased or decreased to reflect subsequent refunds, audit adjustments, and all other adjustments. Interest paid on refunds of the fee under this subchapter shall be paid from the appropriation under s. 20.835 (4) (gh) at the rate under s. 77.60 (1) (a). Any regional transit authority that receives a report along with a payment under this subsection is subject to the duties of confidentiality to which the department of revenue is subject under s. 77.61 (5).

(4) Persons who are subject to the fee under this subchapter shall register with the department of revenue. Any person who is required to register; including any person authorized to act on behalf of a corporation, partnership, or other person who is required to register; who fails to do so is guilty of a misdemeanor.

(5) A retailer who collects a fee under this subchapter shall identify the fee as a separate item on a receipt the retailer provides to a rental customer.

History: 2005 a. 25.

77.9973 Discontinuation. Retailers and the department of revenue may not collect fees under this subchapter for any regional transit authority after the calendar quarter during which the regional transit authority ceases to exist, except that the department may collect from retailers fees that accrued before that calendar quarter and interest and penalties that relate to those fees. If fees are collected, the authority may use the revenue for any lawful purpose.

History: 2005 a. 25.

Attachment 6

**NOTES CONCERNING FUNDING OF REGIONAL TRANSIT AUTHORITY
FOR KENOSHA, MILWAUKEE, AND RACINE COUNTIES**

Statutory Funding Source

- The RTA enabling legislation establishes a \$2 fee on normal vehicle rentals in Kenosha, Milwaukee, and Racine Counties.
- Initial estimates of this fee indicate that it would raise perhaps as much as \$800,000 annually.
- The Department of Revenue is to administer the RTA fee. By law, the DOR is required to hold 2.55 percent of the revenues collected to cover administrative costs and transmit 97.45 percent of the revenue to the RTA on a quarterly basis by the end of the month following the end of each calendar quarter.

Enactment of the Motor Vehicle Revenue Fee

- The RTA Board must approve imposition of the motor vehicle rental fee and inform the Wisconsin Department of Revenue of such an action.
- Like all RTA Board actions, at least six of the seven Board members must vote in favor of imposing the fee.
- The fee would go into effect on the first day of the first month that begins at least 90 days after the fee is approved by the RTA Board and the DOR has been notified. Consequently, if the RTA was to approve imposition of the fee at its first meeting of February 20, 2006, and reports such action shortly thereafter to the DOR, the fee would take effect on June 1, 2006, and the RTA would receive the first quarterly revenue transfer by the end of July 2006.

Use of RTA Revenue

- Expenditures by the RTA must be limited to those deemed by the RTA Board to be essential to the conduct of its activities in connection with preparation of the report due to the Governor and the Legislature by November 15, 2008.

* * *

Attachment 7

Exhibit C

Potential Sequence for RTA Consideration
of State Statutory Responsibilities

- A proposal that specifically identifies a permanent regional funding source to provide local funds for the portion of operating and capital costs of commuter rail and public transit that are not covered by passenger fares and that considers all potential funding sources.
- A recommendation as to whether the responsibilities of the authority should be limited to collection and distribution of regional transit funding or should also include operation of transit service.
- A plan for the distribution among the mass transit operators in the region of any permanent regional funding specified.
- A plan to improve the coordination of expanded mass transit, commuter rail, and passenger rail in the region.
- A recommendation on the use of bonding for commuter rail and public transit in the region, and the role of the authority in such bonding.
- A recommendation on whether the authority should continue in existence after September 30, 2009.

* * *