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Mr. Mark Baker
Publisher
The Chippewa Herald
Post Office Box 69
Chippewa Falls, WI 54729-0069

Dear Mr. Baker:

Thank you for your letter of January 21, 2004, about The Chippewa Herald's ability to obtain the names and addresses of final candidates for superintendent of the Chippewa Falls School District (the "School District") pursuant to section 19.36(7) of the Wisconsin Statutes. I apologize for the delay in responding to your letter.

Your letter describes the following circumstances: a School District consultant, without school board participation, narrowed the field of superintendent applicants to eight. Four-person teams interviewed those eight applicants on January 7 and 8, 2004. The interview teams included school board members, faculty and citizens. On January 8, the school board announced the names of two finalists for the superintendent position. On January 13, one of your reporters filed a written request for the School District to produce the names and addresses of the final candidates for inspection and copying pursuant to section 19.36(7). On January 20, the School District responded by producing the names and addresses of the two previously announced finalists.

Your letter notes the applicability of section 19.36(7), which provides as follows:

(7) IDENTITIES OF APPLICANTS FOR PUBLIC POSITIONS. (a) In this section, "final candidate" means each applicant for a position who is seriously considered for appointment or whose name is certified for appointment and whose name is submitted for final consideration to an authority for appointment to any state position, except a position in the classified service, or to any local public office. . . . "Final candidate" includes, whenever there are at least 5 candidates for an office of position, each of the 5 candidates who are considered most qualified for the office of position by an authority, and whenever there are less than 5 candidates for an office or position, each such candidate. Whenever an appointment is to be made from a group of more than 5 candidates, "final candidate" also includes each candidate in the group.

(b) Every applicant for a position with any authority may indicate in writing to the authority that the applicant does not wish the authority to reveal his or her identity. Except with respect to an applicant whose name is certified for appointment to a position in the state classified service or a final candidate, if an applicant makes such an indication in writing, the authority shall not provide access to any record related to the application that may reveal the identity of the applicant.

Pursuant to these statutory provisions, I agree with your view that the names and addresses of the eight candidates identified by the School District consultant should have been disclosed in response to your reporter's public records request. Based on the information you have provided, however, I see no deliberate non-compliance by the School District with your reporter's request or section 19.36(7) requirements. "Section 19.36(7) is hardly a model of clarity," as one of my predecessors correctly observed. 81 Op. Att'y Gen. 37, 38 (1993).

Concluding that "applicant" and "candidate" are synonymous for section 19.36(7) purposes, my predecessor identified two important principles that also guide my analysis of your inquiry. First, my predecessor's conclusion resulted in the greatest number of candidates being identified as final candidates. That result is consistent with the legislative mandate in section 19.31 that the public records statutes "be construed in every instance with a presumption of complete public access, consistent with the conduct of government business." Second, section 19.36(7) must be narrowly construed because it is a partial exception to the public records law. 81 Op. Att'y Gen at 38, citing *Hathaway v. Green Bay School Dist.*, 116 Wis. 2d 388, 397, 342 N.W.2d 682 (1984).

I also am mindful of the recent instruction by our Wisconsin Supreme Court that "the purpose of statutory interpretation is to determine what the statute means so that it may be given its full, proper, and intended effect." *State ex rel. Ralph A. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶ 44, ___ Wis. 2d ___, ___ N.W.2d ___. Statutory interpretation begins with the statutory language, given its common, ordinary and accepted meaning. *Kalal*, 2004 WI 58, ¶ 45. Both context and statutory structure are important to meaning. "Therefore, statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results." *Kalal*, 2004 WI 58, ¶ 46.

Section 19.36(7)(b) is clear enough. Records containing the names of final candidates are subject to disclosure under the public records law.

What is not so clear is who constitutes a final candidate, as defined in section 19.36(7)(a): "[E]ach applicant for a position who is seriously considered for appointment or whose name is certified for appointment and whose name is submitted for final consideration to an authority for

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appointment to any state position, except a position in the classified service, or to any local public office[.]”

I believe that any question raised by application of section 19.26(7) to the circumstances you describe ultimately is answered by the presumption of openness mandated in section 19.31, the language of the remaining sentences of section 19.36(7)(a), and the related provisions of chapter 230 of the Wisconsin Statutes.

Section 19.31 mandates access to the greatest possible information, or, under these circumstances, the largest possible number of final candidate names and addresses.

The second sentence of section 19.36(7)(a) sets five as the minimum number of final candidates whenever there are at least five candidates for a position, and designates all candidates as “final candidates” when there are less than five candidates for a position. We know, from my predecessor’s opinion, that “applicant” and “candidate” are synonymous. 81 Op. Att’y Gen. at 38. This second sentence is not otherwise ambiguous, and the Legislature is presumed to choose statutory terms carefully and precisely to convey its intended meaning. *Ball v. District No. 4, Area Bd.*, 117 Wis. 2d 529, 539, 345 N.W.2d 389 (1984). Because the number of applicants exceeded eight, the second sentence of section 19.36(7)(a) established five as the minimum number of final candidates for the Chippewa Falls School District superintendent position.

However, the third sentence of section 19.36(7)(a) provides that whenever an appointment is to be made from a group of more than five candidates, “final candidate” includes each candidate in that group. The group of two “finalists” announced by the school board is too small to serve as the group of at least five final candidates required by the second sentence of section 19.36(7)(b). The next largest group of candidates is the group of eight identified by the School District consultant to be considered in the group interview process. The third sentence of section 19.36(7)(a) means that all eight of those candidates were “final candidates” because the superintendent appointment was to be made from that group.

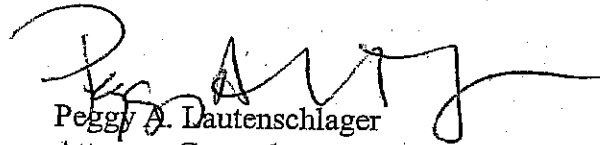
Finally, chapter 230 is the State Employment Relations chapter of the Wisconsin Statutes. In relevant part, it provides that “[u]nless the name of an applicant is certified under s. 230.25, the secretary [of employment relations] and the administrator [of the division of merit recruitment and selection] shall keep records of the identity of an applicant for a position closed to the public[.]” Sec. 230.13(2), Wis. Stats. Section 230.25(1), in turn, requires the administrator to certify for appointment to a vacancy a list of the names at the top of the register of persons eligible for that type of employment. And, “[i]n determining the number of names to certify, the administrator shall use statistical methods and personnel management principles that are designed to *maximize* the number of certified names that are appropriate for filling the specific position vacancy.” Read together, sections 230.13(2) and 230.25(1) operate to maximize the number of applicant names that can be made public pursuant to the

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section 230.13(2) exception to the general rule of applicant confidentiality. Multiple statutes that address the same subject should be read so that each statute that relates to the same subject matter should be read, construed and applied together so the Legislature's intentions can be gathered from both statutes. *State v. Allen*, 200 Wis. 2d 301, 546 N.W.2d 517 (Ct. App. 1996). Sections 19.36(7)(a), 230.13(2) and 230.25(1) should be read in such a manner because all address disclosure of the names of persons certified eligible for appointment. Reading section 19.36(7)(a) with sections 230.13(2) and 230.25(1) supports maximizing the number of applicant names to be made public: eight rather than two in the Chippewa Falls School District superintendent search.

This result—disclosing the eight superintendent candidates who participated in the January 2004 team interviews—complies with the narrow construction mandated for partial exceptions to the public records law. 81 Op. Att'y Gen at 38; *Hathaway*, 116 Wis. 2d at 397. The number of final candidates determined by application of section 19.36(7) in other circumstances will depend on the particular facts of those circumstances.

Very truly yours,


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