

**CONFIDENTIAL LEGAL MEMORANDUM**

**ATTORNEY-CLIENT PRIVILEGED**

**TO:** David De Angelis, Village Manager for the Village of Elm Grove

**FROM:** von Briesen & Roper, s.c.  
By: Hector de la Mora & Christopher T. Koehnke

**DATE:** November 7, 2018

**RE:** Children at Play Signs

You have asked our firm to research the installation of “Children at Play” signs in the Village of Elm Grove (the “Village”) and what, if any, possible liability the Village may be exposed to due to the installation of such signs. We have analyzed this issue and would recommend that the Village **not** install “Children at Play” signs. Our analysis is below:

**Background**

On May 10, 2018, the Public Safety Committee authorized the installation of four (4) “Child Safety/Slow Down” advisory signs at each of the St. Mary’s parking lot exits, and one sign in the 1200 block of Crescent Drive. The Village Chief of Police expressed some concern that installing such signs could expose the Village to some liability.

**National Trend to Discontinue Use of “Children at Play” Signs**

The use of “Children at Play” and similar signs is decreasing across the county. This is due to the fact that there is little or no evidence which shows the use of such signs is effective.

In September of 2007, the Wisconsin Department of Transportation (“WisDOT”) published a Transportation Synthesis Report (“TSR”) which reviewed research regarding the effectiveness of signs related to children in order to assist WisDOT in policy decisions regarding the use of these signs. In summary, the TSR found:

*There is no evidence that special warning signs of this sort reduce driver speeds or crash rates. This is the unanimous conclusion of the many credible sources we located on this topic. This claim is supplemented by a number of often-cited “common sense” observations that such signs do not give clear and enforceable guidance to drivers, provide a false sense of security to parents and children that may increase risk, expose the government to liability, give the false impression that areas without such signs do not have children, represent an unnecessary cost*

*that then propagates as additional signs are requested and violate the principle that signage should be based on engineering, not political, decision making.*

Additionally, Chapter 2, Section 1 of the *Traffic Engineering, Operations & Safety Manual* prepared by WisDOT states the following regarding the use of “Slow Children” signs.

*The use of this sign is probably the most common non-standard to be found on local streets. It is typically a black on yellow rectangular sign, with a running child figure. A variation may add the phrase “at play.” It is often shown in sign catalogs.*

*The purpose of this sign is largely to placate the residents. While their concern for the safety of their children is understandable, the real issue is not being addressed, which is the hazard caused by children either playing in the street or entering the street without exercising care. Both actions are illegal. The sign therefore tends to endorse illegal actions, and that is why it should not be used.*

### **Potential Liability**

In addition to the fact that there is no evidence which suggest they are effective, many communities have also stopped using children at play or similar signs because they are not included in the Manual on Uniform Traffic Control Devices (“MUTCD”) prepared by the Federal Highway Administration (“FHWA”). There is some concern that using signs that do not conform to the MUTCD may expose a municipality to liability if it does use such signs.<sup>1</sup>

The basis for this belief is found in a FHWA publication which states “[a]gencies should avoid the use of CAUTION – CHILDREN AT PLAY or SLOW CHILDREN nonstandard signs since such signs may imply that the involved jurisdiction approves of streets as playgrounds, which may result in the jurisdiction being vulnerable to tort liability<sup>2</sup>.”

We have been unable to locate any Wisconsin case law where the issue of municipal liability related to the use of child safety signs had been litigated. In the absence of any legal authority or factual basis that the usage of such signage is legally defensible or beneficial, we recommend following the recommendation from WisDOT that such signs should not be used.

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<sup>1</sup> There is a clear obligation on the part of “local authorities” to place and maintain traffic control devices in conformity with Wis. Stat. §349.065 which provides:

**Uniform traffic control devices. Local authorities shall place and maintain traffic control devices upon highways under their jurisdiction to regulate, warn, guide or inform traffic. The design, installation and operation or use of new traffic control devices placed and maintained by local authorities after the adoption of the uniform traffic control devices manual under s.84.02 (4) (e) shall conform to the manual. After January 1, 1977, all traffic control devices placed and maintained by local authorities shall conform to the manual.**

**Wis. Stat. 84.02 (4) (e) provides: The department shall adopt a manual establishing a uniform system of traffic control devices for use upon the highways of this state. The system shall be consistent with and, so far as practicable, conform to current nationally recognized standards for traffic control devices.**

<sup>2</sup> FHWA Course on Bicycle and Pedestrian Transportation: Pedestrian Signing and Pavement Markings  
[https://safety.fhwa.dot.gov/ped\\_bike/univcourse/instrtoc.cfm](https://safety.fhwa.dot.gov/ped_bike/univcourse/instrtoc.cfm)

## **Enforcement Alternatives**

As discussed above, WisDOT recommends against the use of child safety signs. These signs serve as nothing other than a warning and have no legal enforceability. If the Village wanted to pursue alternatives to improve the safety of children when near Village roadways, there are other options available to it.

1. Increased Traffic Enforcement – The Village could post additional speed limit signs in areas of particular concern and coordinate increased police patrol of these areas during times when traffic poses an increased danger to children. The Village could also paint additional crosswalks at areas of particular concern.
2. Close Village Roadways at Specific Times – Wis. Stat. § 66.0429(1) provides as follows:

*The governing body of a city, village or town may set aside streets or roads that are not a part of any federal, state or county trunk highway system for the safety of children in coasting or other play activities, and may obstruct or barricade the streets or roads to safeguard the children from accidents. The governing body of the city, village or town may erect and maintain on the streets or roads barriers or barricades, lights, or warning signs and is not liable for any damage caused by the erection or maintenance.*

This statute clearly authorizes municipalities to set aside and barricade streets "that are not part of any federal, state or county trunk highway system" for children's play purposes. Although it does not expressly authorize municipalities to close streets near schools for the purpose of loading school buses safely, municipalities have nevertheless used this statute to temporarily barricade streets adjacent to schools. The Wisconsin Supreme Court has previously ruled that, pursuant to Wis. Stat. § 66.0429(1)<sup>3</sup> a municipality could adopt a resolution to barricade a street adjacent to a public and parochial school from 8:30 a.m. to 4:30 p.m. on school days. The court concluded that Wis. Stat. § 66.0429(1) permitted the city to erect and maintain a barricade in such a location and manner and granted the city immunity from claims of liability brought by persons injured by the barricade. *See Bendorf v. City of Darlington*, 31 Wis.2d 570, 143 N.W.2d 449 (1966).

## **Conclusion**

Because "Children at Play" signs have been found to be ineffective in actually protecting children and have no legal enforceability, we would recommend against their installation. The Village may wish to consider other policy options to reduce the potential danger to children at specific locations within the Village.<sup>4</sup>

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<sup>3</sup> The Court considered Wis. Stat. 66.046(1) which was the precursor to Wis. Stat. § 66.0429(1) and contained language identical to the current statute.

Please let us know if you have any questions or wish to discuss the subject of this memo further.

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<sup>4</sup> The Village may also wish to discourage the informal placement of similar signage within right of ways by adjacent property owners so that it cannot be claimed that the Village is passively sanctioning the placement of questionable signage within right of ways.