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## **Wisconsin Supreme Court Finds Liability Risk for Municipalities and Taxpayers in Wisconsin Fair Dealership Law**

**By Daniel Olson, Assistant Legal Counsel, League of Wisconsin Municipalities**

Last Thursday, the Wisconsin Supreme Court reversed the decisions of two lower courts and ruled for the first time that a municipality's contractual relationship with a private contractor is subject to the Wisconsin Fair Dealership Law, which governs contractual obligations between those who sell goods or services and those who benefit from the sales. *Benson v. City of Madison*, 2017 WI 65. The ruling, the first of its kind in any state, creates new and substantial liability risk for municipalities and their residents given the large number of activities performed by private contractors for Wisconsin cities and villages.

In a 5-2 decision, the Court concluded that four golf professionals can maintain their lawsuit against the city of Madison for \$1.8 million in damages over claims their contracts with the city were terminated in 2012 without good cause. The Court's majority concluded that the golf pros' contracts were "dealerships" under the law, and as such could only be terminated for cause.

The Wisconsin Fair Dealership Law, like similar laws across the country, protects the economic interests of "dealers" against unfair treatment or practices by "grantors," those who grant dealerships and who might have superior economic or bargaining powers. The law applies to arrangements in which there is a "community of interest" between the two parties, such as a shared financial interest or coordination of activities. Prior to this decision, it had never been extended to relationships between private contractors and municipalities.

The plaintiffs claimed that their contracts with the city, sale of goods associated with the city and shared financial interests in operating the courses created a dealership under the law. The City argued that it was not a "grantor" under the law and immune from liability under Wisconsin law.

Two lower courts agreed with the City and ruled that a municipality is not subject to the Fair Dealership Law because a municipality does not fall within the law's definition of a grantor as "a person." The Supreme Court's majority disagreed and stated that the law's definition of a "person" included a corporation, and the city is a "municipal corporation."

The majority opinion also disagreed with the court of appeals decision that the pros weren't selling or distributing city goods or services. The majority reasoned that the golfers made reservations to play one of the city golf courses through the golf pros or their attendants and paid their greens fees through them. The city also provided the equipment necessary to process payments, and the golf pros remitted those revenues to the city.

"In this way, the golf pros sold access to city courses," Justice Ziegler wrote in the majority opinion. She also wrote that the agreement between the pros and the city constituted "a community of interest" because there was a shared financial interest in the operation of the dealership. "It is more than fair to say that the city's power to terminate, cancel, or not renew the relationship(s) (was) a substantial threat to the economic health of the (golf pros)," Ziegler wrote.

Justice Shirley Abrahamson dissented and wrote that the decision establishes "a far-reaching precedent" that fundamentally changes the relationship between municipalities and contractors. "Municipalities will be limited with regard to managing their finances and their contracts," Abrahamson wrote.

Justice Abrahamson observed that the state Legislature's instructions for determining whether a statute governs a municipality make clear that the Fair Dealership Law should not be interpreted as applying to a city. She noted that included among the specific powers conferred on a city by the Legislature is the management and control of city property.

The majority opinion "ought to interpret the Dealership Law as not limiting the powers of the city of Madison because nothing in the Fair Dealership Law expressly limits the city of Madison in exercising management over its golf courses or expressly limits the city's power to act for the good order of the city, its commercial benefit, or for the health, safety, and welfare of the public with regard to its golf courses," Abrahamson stated.

Justice Ann Walsh Bradley also disagreed with the majority opinion and dissented.

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