

**NOTICE OF MEETING  
VILLAGE OF FOX POINT  
MUNICIPAL POOL CITIZENS COMMITTEE**

**SCHWEMER HALL – MUNICIPAL BUILDING  
7200 N. SANTA MONICA BLVD  
FOX POINT, WI 53217**

**WEDNESDAY  
January 31, 2024  
5:00 P.M.**

**AGENDA**

- 1. Roll Call**
- 2. Approval of the minutes of the November 20, 2023 meeting.**
- 3. Discussion of the draft Bylaws & Articles of Incorporation for the ‘Friends of the Fox Point Pool’**

The Committee will discuss the draft Bylaws & Articles of Incorporation for the ‘Friends of the Fox Point Pool.’

- 4. Report on the Opinion in Village Attorney’s Legal Opinion Dated January 19, 2023 and Discussion of Committee Charge Under Resolution 2023-15**

The Chair will give a report on the legal opinion from the Village Attorney dated January 19, 2023 and the Committee may discuss its charge under Village Board Resolution 2023-15.

- 5. Report on Completion of Charge**

The Chair will report on final adjournment of the Municipal Pool Citizens Committee.

- 6. Adjourn**

PLEASE NOTE: Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through sign language interpreters or other auxiliary aids. For additional information or to request these services, contact the Village Clerk at (414) 351-8900. It is possible that members of, and possibly a quorum of members of, other governmental bodies of the municipality may be in attendance at the above-stated meeting to gather information; no action will be taken by any governmental body at the above-stated meeting other than the governmental body specifically referred to above in this notice.

VILLAGE OF FOX POINT  
MUNICIPAL POOL CITIZENS COMMITTEE  
November 20, 2023

1 A meeting of the Fox Point Municipal Pool Citizens Committee was held in Schwemer Hall, 7200  
2 N. Santa Monica Blvd., on Monday, November 20, 2023 at 5:00 PM.

3  
4 Those present included:

- 5
- 6 Marty Tirado, Chair
- 7 Jayme Cayne
- 8 Kate Battle
- 9 Jennie Stoltz
- 10 Liz Aelion
- 11

12 Staff present include Assistant Village Manager, Kevin Ausman.

13  
14 Fox Point Municipal Pool Citizens Committee was called to order at 5:00 PM.

15  
16 **Roll Call**

17  
18 **Persons Desiring to be Heard**

19 None.

20  
21 **Approval of the minutes of the August 16, 2023 and October 16, 2023 meetings.**

22 Motion by Tirado, second by Battle to approve the minutes of the August 16, 2023 and October  
23 16, 2023 meetings

24  
25 **Discussion and possible action on the draft Bylaws & Articles of Incorporation for the 'Friends of  
26 the Fox Point Pool'**

27 Attorney Patrick Bomhack assisted with the drafting of bylaws and answered questions of the  
28 committee regarding the documents. The Committee discussed purpose and membership  
29 language.

30  
31 **Discussion of General Process Regarding Appointment of Initial Directors and Officers for  
32 'Friends of the Fox Point Pool'**

33 Application will be posted to the Village website and remain open until December 22.

34  
35 **Adjourn**

36 Motion by Tirado, second by Stoltz to adjourn the Fox Point Municipal Pool Citizens Committee.  
37 All ayes, motion carried. Meeting adjourned at 6:17 PM.

38  
39  
40 Respectfully Submitted,

41  
42  
43 Kevin Ausman  
44 Assistant Village Manager

# Municipal LAW

& LITIGATION GROUP

DALE W. ARENZ – 1935-2022  
DONALD S. MOLTER, Jr. - Retired  
JOHN P. MACY  
H. STANLEY RIFFLE - Court Commissioner  
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BENJAMIN T. CROCKETT  
GREGORY M. PROCOPIO  
ADAM J. MEYERS  
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STEPHEN J. CENTINARIO, JR.  
MICHAEL J. MORSE  
JAMES P. WALSH

January 19, 2024

Scott Botcher, Village Manager  
Village of Fox Point  
7200 N Santa Monica Blvd.  
Fox Point, WI 53217

**Re: Pool Fundraising  
Legal Recommendations**

Dear Mr. Botcher:

I received your request that I provide the Pool Committee and others involved in pool fundraising legal guidance regarding a 501(c)3 non-profit organization. I have had an opportunity to carefully consider this matter.

Years ago, the Footbridge Friends raised funds for the Ravine Lane footbridge. I suggest the Village use a similar arrangement for raising funds for the municipal pool. I note the following comments, questions, concerns, and recommendations in this regard.

1. Direct Fundraising Not Recommended. There are numerous practical and legal problems that could arise if the Village would undertake fundraising for the pool project directly. The private donations could give rise to bias concerns and appearance of impropriety because you could receive donations from persons and entities which have pending applications, or who may seek approval of certain activities within the Village. Careful attention would also need to be given to the accounting for the donated funds, and if the project would not go forward as the public was led to believe when they donated, you could have an obligation to return the funds to each donor, which might be complicated. Your auditor may have additional concerns or thoughts in this regard. It is also tactically difficult for a municipality to solicit voluntary private donations because it is like asking individuals to pay more taxes than they already pay, to fund a government project. Many taxpayers may be more likely to decline the request, if it comes from the Village directly, than they would if the request came from a third party. The League of Wisconsin Municipalities has commented on this issue this way:

*While generally speaking city departments cannot engage in fundraising, a club or association made up of individuals within the department and*

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*other interested persons may engage in fundraising activities for the benefit of the department. For example, it is common for municipal libraries to be supported by "Friends of the Library" associations. (League Opinion, Financial Procedure #230, August 30, 1998.)*

The League assumes in this comment, without offering any citation, that fundraising is generally prohibited. I have not found such a prohibition in the law however, either in State statutes or Wisconsin case law. McQuillin's Municipal Corporations Section 37.55 says that municipalities can raise funds from "citizens and property owners who agreed to [donate] although under no obligation to do so." So, technically it is probably possible for the Village to engage in fundraising directly, but it is fraught with complications, and I recommend against it.

2. Fundraising. If donations would be collected by a third party, numerous legal and practical problems could be significantly minimized. For example:
  - a. Donor Interest. Donors may be more willing to contribute to a municipal foundation than a local government. It may be more rewarding to know that the donation is used to serve the municipal foundation's mission of community service, than to know that the donation is the same as an extra tax payment.
  - b. Outside Statutory and Political Expenditure Constraints. Because the Foundation is independent of the local government, expenditures can be made that might appear to be excessive or unnecessary if the same expenditure would be made by the government.
  - c. Open Avenues for Funding. Many grant programs are available to private entities that are not available to governments. It may be that the friends group could raise funds for this project that the Village could not obtain directly.
3. Do Not Appoint Non-Profit Members. Wisconsin Statutes Section 19.82(1) defines a "Governmental Body" as follows for purposes of open meetings laws:

means a state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order; a governmental or quasi-governmental corporation except for the Bradley center sports and entertainment corporation; a local exposition district under subch. II of ch. 229; a long-term care district under s. 46.2895; or a formally constituted subunit of any of the foregoing, but excludes any such body or committee or subunit of such body which is formed for or meeting for the purpose of collective bargaining under subch. I, IV, or V of ch. 111.

Therefore, a committee created by a governing body is itself a governing body. The League of Wisconsin Municipalities, in its legal opinion opined regarding whether a committee comprised of 2 board members and 3 citizens constituted a

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“governmental body” within the meaning of Wis. Stats 19.82(1). The League opined the following regarding this committee:

For two separate and distinct reasons, I am of the opinion that the subject committee must be perceived to be a governmental unit for purposes of the open meeting law. First, on its face, s. 19.82 (1) expressly prescribes that a local committee falls within the purview of the statutory term "governmental body." No exceptions are specified under s. 19.82 (1) to excuse certain types of legally established committees from complying with the requirements of the open meeting law. Consequently, if a locally created body constitutes a committee in name or in substance, it should seemingly be construed to be a governmental body under s. 19.82 (1).

Also, I am of the opinion that when the village board formally established the study committee, and confirmed the village president's appointments of the body's members, a subunit of the village board was created.

The Pool Committee is not authorized to appoint the members of the non-profit entity, therefore. The new entity would itself be a sub unit of the Village government if the Pool Committee did so, which is not the intent. The charge to the Pool Committee is to “assist” the non-profit, not to appoint its members.

If you should have any questions or concerns regarding these matters, please do not hesitate to contact me.

Very truly yours,

MUNICIPAL LAW & LITIGATION GROUP, S.C.

*Eric J. Larson*

Eric J. Larson

EJL/BTC/em

cc: Christine Symchych, Village President  
Kevin Ausman, Assistant Village Manager  
Kelly Meyer, Village Clerk