



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

PEGGY A. LAUTENSCHLAGER
ATTORNEY GENERAL

Daniel P. Bach
Deputy Attorney General

17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
www.doj.state.wi.us

Christopher J. Blythe
Assistant Attorney General
blythecj@doj.state.wi.us
608/266-0180
FAX 608/267-2223

February 23, 2005

Mr. Francis Ferguson
Chairman
Town of Byron
N3576 Hwy. 175 South
Fond du Lac, WI 54937

Dear Mr. Ferguson:

Attorney General Peggy A. Lautenschlager has asked me to respond to your February 14, 2005, letter regarding a municipality's ability to restrict or regulate wind energy systems. As noted by the Wisconsin Court of Appeals, section 66.0401 of the Wisconsin Statutes "represents a legislative restriction on the ability of local governments to regulate solar and wind energy systems. Local restrictions are permitted only if they serve the public health or safety, do not significantly increase the cost or decrease the efficiency of the system, or allow for an alternative system of comparable cost and efficiency. Beyond those, no other restrictions are allowed. The statute is not trumped, qualified or limited by § [66.0403] or by a municipality's zoning and conditional use powers." *State ex rel. Numrich v. City of Mequon*, 2001 WI App 88, ¶ 17, 242 Wis. 2d 677, 626 N.W.2d 366.

The *Numrich* court goes on to note that the owner of a wind energy system does not need a permit to construct such a system, and that such a system can be constructed without prior municipal approval. *Id.*, ¶ 15.

As you may be aware, Wisconsin has no known sources of oil, natural gas, coal or uranium. We therefore import the vast majority of our fuel sources from outside the state. The Legislature has recognized the enormous drain this has on our state's economy and has enacted measures (including the statute cited above) to attempt to foster a greater reliance on renewable energy sources that can be produced here in Wisconsin.

Therefore, based on the facts as you have represented them, your township may not regulate solar or wind energy systems unless one of the exceptions listed in the statute applies to your situation.

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I hope this information is helpful to you. Please contact me with any questions.

Sincerely,

A handwritten signature in cursive script that reads "Christopher J. Blythe".

Christopher J. Blythe
Assistant Attorney General

CJB:ajw