

Lincoln Township

25 May 2001

Attorney General James Doyle
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Dear Attorney General Doyle:

Re: Applicability of Wis. Stats. sec. 66.0401 to Commercial Wind Energy Facilities

As the chairman of the Town of Lincoln (Kewaunee County) Moratorium Study Committee, I am writing to ask for your opinion regarding the applicability of Wis. Stats. sec. 66.0401 to local government review and regulation of commercial wind energy facilities. This committee, created by the Lincoln Town Board, is charged with the task of recommending revisions to the Town's zoning ordinance and conditional use permitting process covering the siting and operation of wind generators of all sizes. In order to proceed with our assignment, we need to know the operative statutory environment that define the parameters of review and regulation of commercial wind energy facilities at the local level.

The specific question before the Moratorium Committee is this: does the March 2001 Court of Appeals decision on Numrich v. Mequon, 2001 WL 220710 (Ct. App. 2001), apply to all wind generators sited in the state? My question stems from the fact that Numrich v. Mequon is a case that concerned a residential-size wind generator. It is not clear from our reading of the controlling statute, Wis. Stats. sec. 66.0401 (formerly Wis. Stats. sec. 66.031), whether it also applies to commercial wind energy projects. The statute referenced in Numrich v. Mequon is silent on that question, as are other statutes in which wind energy is specifically mentioned, such as Wis. Stats. secs. 60.61(2)(i), 60.65(5), 59.694(7)(d), and 236.292(2).

Two of these statutes, Wis. Stats. secs. 66.0401 and 236.292(2) make specific reference to the definition of a wind energy system in Wis. Stats. sec. 66.0403(1)(m) as "equipment that converts and then stores or transfers energy from the wind into usable forms of energy." That definition is silent on the size of the wind energy system covered by all of these statutes.

This is a vitally important question for any municipality or local governmental unit seeking to

establish a legally enforceable process and standard of review for siting wind turbines. Are town or county governments limited in their ability to review and regulate commercial wind turbines, subject to Wis. Stats. sec. 66.0401, or can they, through their normal police powers, impose restrictions on wind power facilities that go beyond the limits prescribed in Wis. Stats. sec. 66.0401? An opinion from your office on this question will help us--and other local governments interested in this issue--determine what issues are appropriate for local review and regulation, and what issues are not.

Thank you in advance for your consideration of our request. I look forward to your response.

Sincerely,

Mick Sagrillo
Chairman,
Town of Lincoln Moratorium Study Committee

E3971 Bluebird Rd.
Forestville, WI 54213
(920) 837-7523