The State of Wisconsin
Department of Justice
Madison
53702

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Mr. Clifford A. Miller
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Dear Mr. Miller:

You ask several questions about the application of sec. 66.77, Stats. (1973), to a local school board meeting held at a motel in Oshkosh in June, 1976. Section 66.77, Stats. (1973), is the "old" open meeting law. The "new" open meeting law, subch. IV of ch. 19, Stats., became law after the meeting you reference, on July 2, 1976.

You ask:

> "May a governmental body legally meet in private accommodations, in this case a motel located more than 40 miles from the boundaries of the governmental unit?"

The Ashwaubenon School Board was a "governmental body" subject to the provisions of sec. 66.77, Stats. (1973). Sec. 66.77(2)(c), Stats. (1973). Was the June, 1976, gathering a "meeting" contemplated by sec. 66.77(2)(b), Stats. (1973)? That subsection defined the term "meeting" as follows:

> "(b) 'Meeting' means the convening of a governmental body in a session such that the body is vested with authority, power, duties or responsibilities not vested in the individual members."

You enclosed a story under the byline of Bill Jordan from the Green Bay Press-Gazette printed Tuesday, January 11, 1977, about the June, 1976, meeting. Jordan wrote that the School Board President, Richard Dittloff, stated the purpose of the meeting as follows:

> "Dittloff said the primary purpose of the meeting was to solve communications problems between the board and the district's administrative staff."

Efficient administration of a school district is public business. If a breakdown in "communications" occurs between the school board and its administration, efficient administration suffers. In the context stated, then, the Oshkosh gathering was between the school board as "boss" and its administration as "employes" to resolve school district problems. In my opinion such gathering was a "session ... vested with authority ... not vested in the individual members." Sec. 66.77(2)(b), Stats. (1973). Thus, the provisions of the "old" open meeting law applied to the meeting at Oshkosh in June, 1976.

Section 66.77(2)(d), Stats. (1973), defined "open session" as follows:

> "(d) 'Open session' means a meeting which is held in a place reasonably accessible to members of the public, which is open to all citizens at all times, and which has received public notice."

A meeting held more than 40 miles from the school district is not, as a practical matter, a meeting "open to all citizens at all times" and certainly is not "reasonably accessible to members of the public." Sec. 66.77(2)(d), Stats. (1973). Under the "old" statute closed sessions were permitted for specifically enumerated subjects as set forth in sec. 66.77(4), Stats. (1973). However, based on the facts you provide, it appears that the June, 1976, meeting was not exempted from the open session requirements by sec. 66.77(4), Stats. (1973). It is therefore my opinion that the June, 1976, meeting at Oshkosh of the Ashwaubenon School District violated the provisions of sec. 66.77(2)(d), Stats. (1973).

You ask:

> "Did the school board's failure to announce this meeting in advance violate provisions of the Open Meeting Law then in effect. (Though this aspect of the case is not mentioned in the story, one of the reporters familiar with the case told me there was no formal announcement; it was, on the other hand, generally known that the board planned a 'seminar' out of town on the weekend in question.)"

Like in the first question, I assume your facts are

accurate and correct. If no notice were given of the Oshkosh meeting under sec. 66.77(2)(e), Stats. (1973), then a further violation occurred. Section 66.77(2)(e), Stats. (1973), provided as follows:

> "(e) 'Public notice' means statutorily required notice, if any. If no notice is required by statute, it means a communication by the chief presiding officer of a governmental body or his designee, to the public and to the official municipal or city newspaper designated under s. 985.05 or 985.06, or if none exists, then to members of the news media who have filed a written request for such notice, which communication is reasonably likely to apprise members of the public and of the news media of the time, place and subject matter of the meeting at a time, not less than one hour prior to the commencement of such meeting, which affords them a reasonable opportunity to attend."

You ask:

> "May a governmental body require citizens or news media representatives to submit a written request for public records, and require a waiting period before those records are furnished? Is there, for that matter, any question that financial records such as travel, meal and lodging expenses of members of a public body are public records?"

This question does not involve the open meeting law, but rather the public records statute, sec. 19.21, Stats. (1973). Section 19.21(1) and (2), Stats., provides as follows:

> "(1) Each and every officer of the state, or of any county, town, city, village, school district, or other municipality or district, is the legal custodian of and shall safely keep and preserve all property and things received from his predecessor or other persons and required by law to be filed, deposited, or kept in his office, or which are in the lawful possession or control of himself or his deputies, or to the possession or control of which he or they may be lawfully entitled, as such officers.
>
> "(2) Except as expressly provided otherwise, any person may with proper care, during office hours and subject to such orders or regulations

as the custodian thereof prescribes, examine or copy any of the property or things mentioned in sub. (1). Any person may, at his own expense and under such reasonable regulations as the custodian prescribes, copy or duplicate any materials, including but not limited to blueprints, slides, photographs and drawings. Duplication of university expansion materials may be performed away from the office of the custodian if necessary."

60 Op. Att'y Gen. 284, 287 (1971), states as follows:

"... The public right of full access is, however, qualified in three respects:

"1. The right to inspect is subject to such reasonable regulations with respect to hours, procedures, etc., that the custodian may prescribe to limit unreasonable interference with the ordinary operations of his office.

"2. The right is limited or denied in some instance by express statutory provision.

"3. The custodian may refuse inspection of certain records in instances where he believes the public interest in nondisclosure outweighs the strong public interest in having full public access to any public records. State ex rel. Youmans v. Owens, supra. In such event, the custodian must give as concrete an explanation as is possible for nondisclosure to the person requesting inspection of the record. Beckon v. Emery (1967), 36 Wis. 2d 510, 153 N.W. 2d 501. If the person seeking inspection is unsatisfied by such explanation, his remedy is in a mandamus action in circuit court. State ex rel. Youmans v. Owens, supra, at p. 682."

No statute exempts expense accounts of public officials from public scrutiny. Further, I can say with confidence that no court would declare that the public interest in nondisclosure of expense records outweighs the public interest in full disclosure thereof. See 63 Op. Att'y Gen. 144, 63 Op. Att'y Gen. 400, 63 Op. Att'y Gen. 573 (1974), and Op. Att'y Gen. 12-77.

Section 19.21(2), Stats., does provide that examination and copying of public records is "subject to such orders or

regulations as the custodian thereof prescribes." Therefore, in balancing the public's right to the expeditious handling of its public business with the right of public access to public records, without specific facts to consider, I am unable to opine that it would be unreasonable for the custodian to conclude that written requests and waiting periods are required. However, such regulations cannot be lawfully imposed for the purpose of delay or of intentionally frustrating access or of discouraging the public from seeking such information.

Under ordinary circumstances, a request for access to seven school board members' expense vouchers would not appear to impose any great burden on the custodian's office, and only a minimal delay in providing such information could normally be justified.

Sincerely yours,

B. C. La Follette

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