



State of Wisconsin
Department of Justice
Madison
53702

REC 12, 1979
Gempeler
DEP. ATTORNEY GENERAL
BRONSON C. LA FOLLETTE
Attorney General

February 12, 1979

David J. Hanson
Deputy Attorney General

DJA
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23085

Mr. Henry A. Gempeler
City Attorney
Room 401, City-County Building
Madison, WI 53709

Dear Mr. Gempeler:

Subject: MATC Site Negotiations - Your Letter January 29, 1979

We have your letter of January 29, 1979 as well as the benefit of discussions on February 2, 1979 with you, Norman Mitby, Donald Johnson, and Howard Bellman. We also have had the benefit of written inquiries from the press. The request in your letter of January 29, 1979 was for a "definite opinion" on the question of whether MATC site negotiations currently underway between a subcommittee of the City Council and the MATC Board may be conducted in closed session. In short, we are being asked to make findings of fact that will determine whether one of the exceptions to open meetings applies. We are unable to respond to that question. Our role is to provide guidance as to what the law is. Here we have already suggested that the mediation session meetings could be closed, depending on the circumstances. What follows should provide some guidance to you and to members of the public in dealing with this involved question.

The Wisconsin Open Meetings Law is one of the strongest in the United States and provides specifically for open meetings of all state and local governmental bodies. In my opinion, both the MATC Board and the subcommittee of the Madison City Council are "governmental bodies" within the meaning of the Open Meetings Law. The general policy behind the law is expressed in sec. 19.81, Wis. Stats., as follows:

19.81 DECLARATION OF POLICY. (1) In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.

* * *

(4) This subchapter shall be liberally construed to achieve the purposes set forth in this section, and the rule that penal statutes must be strictly construed and shall not otherwise apply to actions brought under this subchapter or to interpretations thereof.

Notice: This material may be printed for use by the State of Wisconsin only. See Wis. Stats. Sec. 19.81.

From this language and the tenor of the entire act, I take it that the general policy in favor of open meetings must be liberally construed, the exemptions provided in the Act should be narrowly construed, and the procedures contained in the section providing for exemptions should be rigorously applied.

The two governmental bodies involved chose to decide the issues of closed meetings on the exemption provided in sec. 19.35(1)(e), Wis. Stats. That section provides as follows:

19.85 EXEMPTIONS. (1) Any meeting of a governmental body, upon motion duly made and carried, may be convened in closed session under one or more of the exemptions provided in this section. The motion shall be carried by a majority vote in such manner that the vote of each member is ascertained and recorded in the minutes. No motion to convene in closed session may be adopted unless the chief presiding officer announces to those present at the meeting at which such motion is made, the nature of the business to be considered at such closed session, and the specific exemption or exemptions under this subsection by which such closed session is claimed to be authorized. Such announcement shall become part of the record of the meeting. No business may be taken up at any closed session except that which relates to matters contained in the chief presiding officer's announcement of the following purposes:

* * *

(e) Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session.

The key words in sec. 19.85(1)(e) are underlined. The key word in the underlined material is the word "require." I addressed myself to the word "require" in a public statement some days ago. In that statement I focused on the need for the governmental body calling a closed session to make a determination that circumstances did indeed require a closed session. Thus, I stated that mere inconvenience, delay, embarrassment, frustration, or even a speculation as to the probability of success would be insufficient bases to close the meeting. The Legislature, by using the word "require," put a very strong burden on the governmental body considering whether to close a meeting.

In the first instance, the governmental body makes the determination on whether the circumstances "require" a closed meeting for bargaining reasons. This is a factual determination that must be made by the governmental bodies

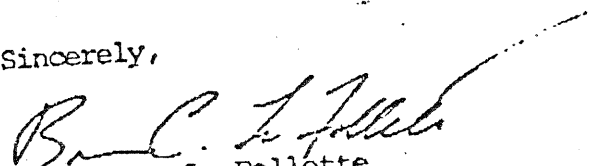
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involved. While the questions of whether there are bargaining reasons and whether the circumstances require closed sessions are of mixed fact and law, the governmental bodies themselves must make a good faith determination of both the applicable facts and the legal conclusion that flows therefrom, given the basic legal guidance already provided by their respective legal counsel and advice provided by this office pursuant to sec. 19.98, Wis. Stats.

It is not my role to speculate as to the motives or intent of the participants in these meetings or the information on which they base their decisions. The law gives them the power to decide the issue. I should not decide it for them. The law also presumes that public officials act in good faith and I, along with others, am bound to accord your decision that presumption.

Those persons who may disagree with the governmental body's decision would, in my view, have access to the courts. The result of such court action would depend on the facts. Should the governmental bodies involved decide to close the meetings, they should be extremely careful to observe the procedural requirements of the state open meeting statute, to provide adequate public notice of the topics which are to be discussed, and to make a careful record in advance of the decision to close the meeting of the reasons which, in their view, require that the meeting be closed to discuss particular items.

Sincerely,


Bronson C. La Follette
Attorney General

BCL/um

cc: Mr. Donald Johnson
Mr. Howard Bellman