



The State of Wisconsin  
Department of Justice

Veugront  
MT C82090101

123 West Washington Avenue  
Mailing Address: P.O. Box 7857  
Madison, Wisconsin 53707

September 20, 1982

Bronson C. La Follette  
Attorney General  
F. Joseph Sensenbrenner, Jr.  
Deputy Attorney General

Ms. Ann M. Caturia  
County Supervisor  
1632 Starr Avenue  
Eau Claire, Wisconsin 54701

Dear Ms. Caturia:

Attorney General Bronson C. La Follette has referred your July 1, 1982, request for advice pursuant to sec. 19.98, Stats., to me for review and reply. Your request was forwarded to this office on August 27, 1982, by District Attorney Rodney A. Zemke who is charged with duties with respect to enforcement of the law. As a county officer, you are entitled to be advised by the district attorney or county corporation counsel. Whereas you have a right to request advice with respect to the open meetings law from this office, you should seek advice from your county corporation counsel with respect to specific situations. See State v. Davis, 63 Wis. 2d 75, 216 N.W.2d 31 (1974), as to protection available to county officers acting pursuant to advice of his or her county corporation counsel.

Your questions relate to the question whether a committee of the county board can convene in closed session to consider and vote on recommendations to be made to the county board chairman with respect to applicants for vacancies on the board and on committees of the county board. You have specific reference to a meeting of the Committee on Organization held at Altoona on May 26, 1982. I enclose herewith a copy of an August 31, 1982, letter of advice to Eau Claire County Corporation Counsel William G. Thiel which apparently is concerned with the same incident and question. It concludes that the exemption in sec. 19.85(1)(f), Stats., can, in special circumstances, be utilized to close such a meeting. Since (f) is concerned with protection of "any person," it would be applicable to citizens being considered for appointment as officers or employes.

Utilization of the exemption in sec. 19.85(1)(c), Stats., is somewhat tenuous when one considers the limited power the committee has with respect to appointment. Their power is only one of recommendation. If they do have jurisdiction or exercise responsibility as to the appointment, the exemption might apply. I construe "public employe" as used in (c) to include a public officer. Violation of the open meetings law is punishable by forfeiture and the definition of "public officer" and "public employe" in sec. 939.22(30), Stats., is not directly applicable. In my opinion the Legislature intended that a common council could discuss the compensation to be paid to its police chief in closed session. Further, I construe the exemption as permitting a governmental body, which has jurisdiction to "employ" a person as an officer or employe, to meet in closed session to consider applicants who are not as yet employes.

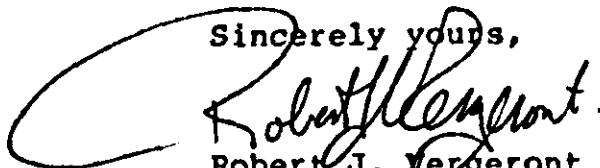
Your last question is: "To what degree are members of a governmental body responsible for giving public notice of a closed meeting should the public official or employe who improperly prepared and posted the agenda cite human error?"

No all-conclusive answer can be given. Under sec. 19.84, Stats., the chief presiding officer or his or her delegatee have the duty to execute the "communication." Such notice is to include reference to subject matter "for consideration at any contemplated closed session." Members of a body can inform the chief presiding officer of their intention to move for closure and of the nature of the subject matter and statutory exemption which they deem appropriate. Any motion to close under sec. 19.85(1), Stats., should also contain reference to claimed statutory authority. The announcement by the chief presiding officer must refer to the specific exemptions relied upon. It is arguably proper for a member to request that the chief presiding officer cite an additional statutory exemption in motion made pursuant to sec. 19.85(1), Stats., where the member deems the exemption referred to in the notice of contemplated closed session was not wholly applicable. If a member of a governmental body firmly believes that the meeting has not been adequately noticed, he or she may wish to make that fact known to the chief presiding officer and move to adjourn. If the body fails to adjourn, the member may wish to depart before further procedures are taken. In some situations a member may become immune from

Ms. Ann M. Caturia  
Page 3

forfeiture by voting to prevent a violation. See sec. 19.97,  
Stats.

Sincerely yours,



Robert J. Vergeront  
Assistant Attorney General

RJV:kdh

Enclosure

cc: Rodney A. Zemke  
District Attorney  
Eau Claire County Courthouse  
731 Oxford Avenue  
Eau Claire, Wisconsin 54701

William G. Thiel  
Corporation Counsel  
Eau Claire County Courthouse  
731 Oxford Avenue  
Eau Claire, Wisconsin 54701