



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

DONALD J. HANAWAY  
ATTORNEY GENERAL  
Mark E. Musolf  
Deputy Attorney General

288710803  
JWE  
114 East. State Capitol  
P.O. Box 7857  
Madison, WI 53707-7857  
608/266-1221

December 15, 1988

Ms. Marie Schuh  
Post Office Box 265  
Elcho, Wisconsin 54428

Dear Ms. Schuh:

You have asked for advice on whether the town board of Elcho violated the open meetings law in the manner in which it gave notice for and in the manner in which it conducted the October 19, 1988, meeting.

You have sent copies of the notice that was posted at the town hall and the notice that appeared in the newspaper. The posted notice stated that the meeting would "[a]djourn to closed session concerning alleged discrimination for Sanitary District position by Marie Schuh (authority under Statutes 19.81-19.98 in State of Wisconsin statutes)."

The posted notice is defective because it did not cite the statutory authority for closing the meeting. The notice must state the subject matter to be discussed during the closed session and cite the statutory exemption on which the board relies in closing the meeting. See sec. 19.84(2), Stats., and 66 Op. Att'y Gen. 93, 98 (1977). The board's notice cited the entire open meetings law; and a citation to the entire law is the same as no citation at all. The notice should cite the specific exemption in section 19.85(1) of the Wisconsin statutes that authorizes the board to close the meeting.

The notice that appeared in the newspaper stated: "The board will convene to closed session according to Wisconsin S.S. 19:85(1)(f) for discussion and decision on allegations by Marie Schuh of P.O. Box 265, Elcho, WI. concerning sex discrimination against the Town of Elcho."

This notice appears to satisfy the technical requirements of the law because it cites the subject matter to be discussed and the specific statutory exemption on which the board is relying to close the meeting. I do not know enough facts to be able to evaluate whether section 19.85(1)(f) of the Wisconsin statutes actually authorized the board to close the meeting. That section permits the board to close a meeting if the board will be considering:

[F]inancial, medical, social or personal histories or disciplinary data of specific persons, preliminary

consideration of specific personnel problems or the investigation of charges against specific persons . . . which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations.

Sec. 19.85(1)(f), Stats.

Before the board can legally convene in closed session in reliance upon this section at least one board member would have to have actual knowledge of information that he or she reasonably believed would be divulged and would be likely to have a substantial adverse effect upon the required reputations. 74 Op. Att'y Gen. 70, 71 (1985). I do not have enough information to determine whether the board satisfied these tests.

The newspaper notice also stated that during the closed session the board would make a decision on the allegations. Making a decision or voting in closed session is proper only if the vote is an integral part of the authorized closed deliberations. Again, without knowing what the board was discussing and precisely what the board was deciding, I cannot evaluate whether the voting in closed session was authorized.

You state that at the meeting the town chairman announced that the board was going into closed session to discuss action concerning the discrimination suit filed by you against the town. You note that there was no motion to go into closed session and no roll call vote was taken.

The open meetings law clearly provides that the board cannot go into closed session unless a motion to do so is approved by a majority vote in such a manner that the vote of each member is ascertained and recorded in the minutes. In addition, prior to the adoption of the motion, the town chairman must announce the nature of the business to be considered at the closed session and the specific exemption or exemptions that authorize the closed session. Sec. 19.85(1), Stats.

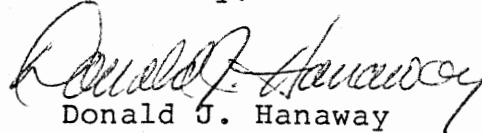
According to your description, the town chairman announced the nature of the business to be discussed but failed to announce the specific exemption that authorized the closed session. Also, the board should have voted on a motion to go into closed session and the vote should have been conducted in such a way that the vote of each board member was ascertained and recorded. Failure to comply with these requirements constitutes violations of the open meetings law.

Ms. Marie Schuh  
Page 3

Finally, you ask whether it was proper for the board to permit Al Brandow, the Elcho Sanitary District Commissioner and a party to a separate lawsuit you have filed, to attend the meeting.

Normally, the board can admit to the closed session anyone whose presence it determines is necessary for the consideration of the matter that is the subject of the meeting. Since the board said it was in closed session to discuss a discrimination action you filed concerning the sanitary district, it may well have been proper for the board to permit the sanitary district commissioner to attend since the board may have determined that his presence was necessary for the board's discussion of the subject.

Sincerely,

  
Donald J. Hanaway  
Attorney General

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