



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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April 8, 1993

Ms. Julie Rappert
Deputy Clerk
Town of Menasha
Post Office Box 527
Menasha, Wisconsin 54952

Re: Applicability of open meetings
law to road tours

Dear Ms. Rappert:

You indicate that the town of Menasha Board of Supervisors is considering obtaining a van to inspect problem roads. You request an opinion on whether such a tour would be subject to the open meetings law.

I assume that one-half or more of the members of the town board intend to ride together in the van to inspect the roads and discuss what should be done. Under those facts, the gathering of the town board members would constitute a meeting subject to the open meetings law.

The open meetings law applies to any "meeting" of a governmental body. Sec. 19.83, Stats. In State ex rel. Newspapers v. Showers, 135 Wis. 2d 77, 102, 398 N.W.2d 154 (1987) the court held that a "meeting" occurs whenever: 1) There is a sufficient number of members of a governmental body present to determine the body's course of action and 2) the members gather for the purpose of exercising the responsibilities, authority, power or duties of the body. Anytime one-half or more of the members of a governmental body are gathered, there is a presumption that a meeting is being conducted. The presumption can be overcome if the members of the governmental body can show that they were not exercising the responsibility, authority, power or duties of the body. Sec. 19.82(2), Stats. Finally, the supreme court has made it clear that a meeting occurs even when members of the governmental body convene simply for the purpose of gathering information on a matter related to the governmental body's responsibility, authority, power or duties. State ex rel. Badke, et al. v. Village of Greendale, Case No. 91-0126, filed January 23, 1993. Thus, if one-half or more members of a town board gather in a van for the purpose of inspecting and discussing problem roads, that gathering is a "meeting" subject to the open meetings law.

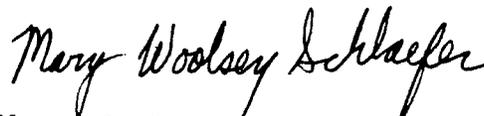
Ms. Julie Rappert
April 15, 1993
Page 2

The town board is, therefore, required to provide advance public notice of the meeting and to hold the meeting in a place that is accessible to members of the public. See secs. 19.83 and 19.82(3), Stats.

In my opinion, there are a number of options a town board has for conducting road inspections in compliance with the open meetings law. One option would be to designate an individual town employe or member of the board to inspect the roads and ask that person to report on the inspection at a properly noticed, regular town board meeting. I understand that some towns have arranged to have an employe or board member video tape road sites and present the video tape at a regular town board meeting. Another option would be for each member of a town board to individually inspect the road sites and then discuss their inspections at a properly noticed regular town board meeting. The town board could also tour the sites together in a van. The town board must, however, provide advance public notice of its meeting to inspect the road sites. In addition, the town board should follow one of two procedures. The first is to list each road site in the order that the town board intends to inspect the sites in the public notice to enable members of the public to follow the town board members to each site. The board members should discuss town board business only while they are at a site and accessible to the public. The board members should not discuss any town board business while traveling from site to site. The second procedure is to arrange to permit citizens interested in attending the meeting to ride in the van along with the town board members.

Thank you for you inquiry about the requirements of the open meetings law. If you have any further questions, please feel free to contact me.

Sincerely,



Mary Woolsey Schlaefer
Assistant Attorney General

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