



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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September 24, 1998

Mr. James G. Godlewski
Office of the City Attorney
1004 East First Street
Merrill, WI 54452

Dear Mr. Godlewski:

I am writing in response to your July 9, 1998, letter requesting information on the open meetings law. I apologize that the press of other business has prevented me from responding until now.

You inquire whether a particular group of citizens and governmental officials is a "governmental body" subject to the requirements of the open meetings law. You state that, after International Papers announced the proposed removal of the Ward Paper Mill Dam, the mayor of the city of Merrill invited a group of "local representatives" (consisting of the mayor, the city attorney, the Merrill city engineer, the chairperson of the Lincoln County Board, the chairperson of the Merrill Town Board and several residents of the area potentially affected by the dam removal) to meet with representatives of the DNR Rhinelander office and a representative from International Papers, on various issues related to the dam closure. The local representatives have continued to meet occasionally as issues have arisen, and have traveled to West Bend to speak with officials there about that city's experience with dam abandonment and repair. Notice under the open meetings law has not been posted for any of the meetings. At the same time, members of the local media have been informed about the dates of the meetings, have attended them and have written stories regarding the meetings.

A governmental body under the open meetings law is broadly defined to include "a state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order." Sec. 19.82(1), Stats. The Department of Justice 1996 publication, Wisconsin Open Meetings Law: A Compliance Guide, states, on page 2 that "[t]he term 'rule or order' has been liberally construed [by this office] to include any directive, formal or informal, creating a body and assigning it duties." The paragraph continues that this interpretation "includes directives from governmental bodies, presiding officers of governmental bodies or certain governmental officials, such as county executives, mayors or heads of a state or local agency, department or division."

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In State ex rel. Lynch v. Conta, 71 Wis. 2d 662, 681, 239 N.W.2d 313 (1976), the Supreme Court stated that "the question of whether a particular group of members of the government actually compose a governmental body is answered affirmatively only if there is a 'constitution, statute, ordinance, rule or order' conferring collective power and defining when it exists" (emphasis added). In State ex rel. Newspapers v. Showers, 135 Wis. 2d 77, 102, 398 N.W.2d 154 (1987), the court held that a "meeting" of a governmental body takes place only if there are a sufficient number of members present to determine the governmental body's course of action. One cannot determine if there are a sufficient number of members present to determine a governmental body's course of action unless there are a definable number of members of the body, the members exercise collective power and there is an understanding defining when their collective power exists.

Based on the information you have provided, I am of the opinion that a court would likely conclude that there is no rule or order conferring collective power on the group of local representatives and defining when that power exists. Discussion appears to be the purpose of the meetings between the local representatives, the paper company and the DNR. Based on the facts provided in your letter, the meetings do not appear to be mandated by statute or administrative rule as part of the dam abandonment process. Your letter describes no restrictions on the freedom of every person who attends the meeting to express their personal opinions and concerns individually. Your letter does not describe any directive that opinions be formulated collectively. Your letter does not describe any requirement that voting or other collective decisionmaking take place. Indeed, your letter does not indicate that the group consists of any fixed number of participants in the meetings, and does not identify any way to determine whether there are a sufficient number of individuals present to determine the group's course of action at the meetings.

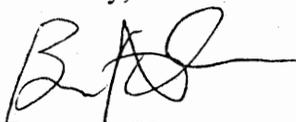
Only a court of law can definitively answer whether a particular gathering constitutes a "meeting" of a "governmental body." However, for the reasons discussed above, I think it is more likely than not that a court would conclude that the Legislature did not intend for the open meetings law to cover the meetings described in, and inferred from, your letter.

The conclusion that the group is probably not a governmental body makes it unnecessary to address your second question. That question raised issues regarding the notice required for the group's out of town meetings, and the accessibility of those meetings for other Merrill-area residents and news media. Only governmental bodies are subject to the notice and accessibility requirements of the open meetings law. I recommend, however, that the mayor's office continue the commendable practice of providing notice of the group's meetings to local news media, and inviting their participation in such meetings.

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We very much appreciate your conscientious efforts to fully comply with the open meetings law. Please feel free to contact this office again if we can be of assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'BAO', with a long horizontal flourish extending to the right.

Bruce A. Olsen
Assistant Attorney General

BAO:mmp

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