



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

991122016
BAO

JAMES E. DOYLE
ATTORNEY GENERAL

114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857

Burneatta L. Bridge
Deputy Attorney General

February 28, 2000

The Honorable Charles H. Constantine
Circuit Court Judge, Br. 17
Racine County Courthouse
730 Wisconsin Avenue
Racine, WI 53403

Dear Judge Constantine:

You have requested my opinion whether the monthly meetings of the ten elected judges of the Circuit Court for Racine County are subject to the open meetings law. You indicate that the judges generally meet once a month. Notice is provided to some other elected officials and to the news media, though notice is probably not given in a manner that complies with the requirements of the open meetings law, if that law were to apply. On occasion, representatives of county government departments are invited to attend if their departments may be discussed. Minutes of the meetings are recorded, as are the motions and votes of the judges. Decisions are made by majority vote. On some occasions, notice of the judges' meetings is not provided to any representative of the public. The meetings cover a broad range of topics, from county budget and space allocation issues, to court interpreters and case assignments, to courtroom security issues.

The open meetings law applies to the meetings of a "governmental body," a definition that includes a "state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order." Wis. Stat. § 19.82(1). That definition focuses on the manner in which a body was created, rather than on the type of authority the body possesses. By statute, some bodies that otherwise fit the definition are exempted from the purview of the law. *Id.*

In addition to statutorily-exempted bodies, bodies created by the Wisconsin Supreme Court pursuant to its superintending control over the administration of justice, such as the Judicial Commission ("Commission") and the Board of Attorneys Professional Responsibility ("Board"), are not governed by the open meetings law. *State ex rel. Lynch v. Dancey*, 71 Wis. 2d 287, 238 N.W.2d 81 (1976); OAG 67-79 (July 31, 1979) (unpublished opinion). In *Dancey*, the Judicial Commission met without notice in closed session just before a noticed open session meeting. At the closed session, the Commission considered a disciplinary complaint against Judge Harvey, and voted on the matter. The Commission then began the noticed meeting in open session. Judge Harvey argued that the closed session meeting was held in violation of Wis. Stat. § 66.77, the predecessor of the current open meetings law, Wis. Stat. § 19.81, *et seq.* The court rejected Judge Harvey's argument, reasoning that it had the inherent superintending

authority to adopt a code of judicial ethics, to implement the code by creating the Judicial Commission as an agency of the judicial branch of government and to establish the rules of procedure under which the Judicial Commission operated. 71 Wis. 2d at 293. The court further reasoned that the Wisconsin Constitution gives to the supreme court the exclusive responsibility for maintaining standards for the administration of justice, and that the legislatively-promulgated open meetings law therefore could not preempt the contrary provisions of the judicial code or the procedures of the Judicial Commission. 71 Wis. 2d at 294-96. The 1979 informal Attorney General's opinion employs the same reasoning with respect to the Board of Attorneys Professional Responsibility, the supreme court agency that regulates the professional standards that apply to attorneys. The opinion concludes that the open meetings law does not apply to that Board's meetings.

Our court has broadly defined the scope of its superintending power. The court stated in *Dancey*, 71 Wis. 2d at 294 (quoting *In re Hon. Charles E. Kading*, 70 Wis. 2d 508, 519-20, 235 N.W.2d 409, 238 N.W.2d 63, 239 N.W.2d 297 (1975)):

“ . . . This power of superintending control is ‘unlimited in extent . . . undefined in character . . . [and] unsupplied with means and instrumentalities.’ That this is ‘a clear, unequivocal grant of power’ has been recognized from the earliest days of Wisconsin law. Justice ROUJET MARSHALL, after a painstaking survey of this power, speaking for this court, concluded in 1908 that it is ‘not limited other than by the necessities of justice’ and that it necessarily includes ‘all . . . means applicable thereto and all power necessary to make such . . . means fully adaptable for the purpose.’ The superintending power is as broad and as flexible as necessary to insure the due administration of justice in the courts of this state.”

Although your letter does not precisely identify the manner in which the body of Racine County Circuit Court judges was created, it is likely, and I assume, that the body's authority derives from the supreme court's superintending control over the judiciary. Supreme Court Rule 70.17 divides the state into ten judicial administrative districts, each with a chief judge appointed by the supreme court. SCR 70.18. The chief judge has general responsibility to supervise and direct the administration of the district, including the power to appoint court committees, establish policies and plans and call and preside over meetings of the circuit judges in the districts. SCR 70.19(1), (3)(d), (3)(f) and (3)(h). Within each district, the chief judge exercises the full administrative power of the judicial branch, subject to the administrative control of the supreme court. SCR 70.20. The chief judge also has the authority to appoint a presiding judge in any multi-judge circuit, and to authorize that presiding judge to act for the chief judge on any and all administrative duties specifically or generally delegated. SCR 70.265.

If, as this opinion assumes, the judges of the Racine County Circuit Court engage in collective decisionmaking pursuant to the supreme court's “inherent power to adopt those

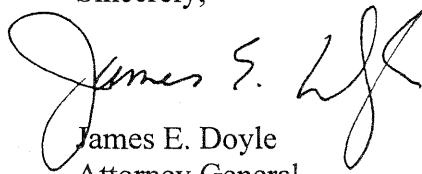
statewide measures which are absolutely essential to the due administration of justice in the state,” *Kading*, 70 Wis. 2d at 518, and a delegated grant of authority from the supreme court and the chief judge of the judicial administrative district, it is my opinion that their meetings are not subject to the open meetings law. This conclusion follows from the reasoning and authority of the *Dancey* and *Kading* cases.

Although the open meetings law does not apply by its terms to the meetings of the Racine County Circuit Court judges, I commend the judges’ practice of providing notice of the judges’ meetings to representatives of the public, as a way of maintaining public trust in the judiciary. As our supreme court has stated in the Preamble to the Code of Judicial Conduct, SCR 60, Preamble:

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all provisions of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

I encourage the judges of the Racine County Circuit Court to continue, and, indeed, to enhance their current practice of providing public notice of judges’ meetings, and their current practice of allowing public access to those portions of judges’ meetings where the public interest in maintaining confidentiality and security are not present. Openness in the operation of public institutions is one of the foundations of our system of government. *See* Wis. Stat. § 19.81(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.”).

Sincerely,



James E. Doyle
Attorney General

JED:BAO:mmp