



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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January 26, 2004

Mr. John C. Jacques
Corporation Counsel
Brown County
Post Office Box 23600
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Dear Mr. Jacques:

I recently received a telephone call from a Brown County citizen asking whether the Brown County Blue Ribbon Panel to study the Mental Health Center ("panel") is a governmental body subject to the open meetings law. The citizen represented to me that the panel was appointed by the county executive, that the panel gives no public notice of its meetings and that the panel recently appeared before the county board to request additional time to complete its activities. The citizen also represented to me that you had previously advised that the panel was not subject to the law. I requested, and you provided me with a copy of your May 1, 2003, opinion letter to Supervisor Patrick Collins and the Brown County Executive. The opinion states that "[t]he term 'governmental body' is defined in terms of being created by an enabling statute, ordinance, rule or order of the governing body of the creating governmental unit" (emphasis added). The opinion concludes that the panel is not within the statutory definition of a governmental body "[b]ecause the County Board of Supervisors has not enacted an ordinance creating the panel and conferring power to it."

I must respectfully disagree with your conclusion. A "governmental body" under the open meetings law means "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). "Governmental bodies" are not limited to entities created by other governmental bodies, as your opinion presumes. The Attorney General opined in 1989 that the important question for determining whether an entity is a governmental body is whether there is a directive creating the body and assigning it duties. 78 Op. Att'y Gen. 67, 69 (1989). The directive may be from another governmental body, or from an individual who by law or delegation exercises a portion of a government body's powers. *Id.* Thus, the Attorney General advised that "governmental bodies" subject to the open meetings law may be created by heads of executive agencies, or by lower level employees to whom a portion of the executive power presumably has been delegated or redelegated. *Id.* The opinion is consistent with prior informal

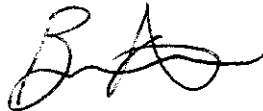
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interpretations of the open meetings law which specifically advised that citizens' advisory committees appointed by a county executive are governmental bodies subject to the open meetings law. These interpretations have been publicized in the Department of Justice publication *Wisconsin Open Meetings Law: A Compliance Guide* since at least 1993.

The conclusion that advisory committees created and appointed by chief executive officers of governmental units, as well as advisory committees created by governmental bodies, are subject to the open meetings law is consistent with the declaration in Wis. Stat. § 19.81(1) that it is "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." The open meetings law is to be construed liberally to achieve this purpose. Wis. Stat. § 19.81(4). As the 1989 Attorney General Opinion stated, "advisory committees are an affair of government because their actions affect the decisions of the department and its employees; and because the committees are an affair of government, the public is entitled to the fullest information about them, pursuant to the policy stated in section 19.81(1)." 78 Op. Att'y Gen. at 70.

I strongly encourage you to advise the County Executive, the County Board and the members of the Blue Ribbon Panel that the panel is a governmental body subject to the open meetings law, and strongly encourage you to advise the Blue Ribbon Panel that its future meetings should conform to all the requirements of the open meetings law.

Sincerely,



Bruce A. Olsen
Assistant Attorney General

BAO:cla

c: Brown County Executive

Supervisor Patrick Collins