



STATE OF WISCONSIN  
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Mr. Dan Thompson  
Executive Director  
League of Wisconsin Municipalities  
202 State Street, Suite 300  
Madison, WI 53703-2215

Dear Mr. Thompson:

I am writing to clarify a March 5, 2004, letter I wrote to Lake Geneva Mayor Charles A. Rude published in the June 2004 edition of *The Municipality*. In that letter, I strongly encouraged governmental bodies to designate the subjects to be addressed when members, staff, and elected officials communicate information on subjects within the scope of the body's authority, under headings such as "mayor's comments" or "alderpersons' comments" or "staff comments." Governmental bodies should not use the March 5 letter as a reason for eliminating public comment periods.

The March 5 letter addressed two types of general subject matter designations in meeting notices. The designation "forthcoming events" was used to provide information to the public about future events involving the governmental body or the jurisdiction it serves. The March 5 letter concluded that while the subject matter designation "forthcoming events" satisfied the requirements of the open meetings law, the best practice is to include in the meeting notice the specific future events whenever possible.

The second type of general subject matter designation addressed in the March 5 letter was items such as "mayor's report," or "alderpersons' comments" or "staff comments" or "committee report." The March 5 letter concludes that, to the extent those designations are used to provide information to the public and to members of the body on subjects within the scope of the body's authority, the subjects of the comments or report should be specifically identified. As discussed in the March 5 letter, members of the governmental body are prohibited from discussing or taking action with respect to information provided as part of the comments and reports, but there is no constraint on the amount of information the members of the body could gather on the subject through those comments and reports. Since information gathering on a subject within the realm of the body's authority meets the test of "governmental business" under *State ex rel. Newspapers v. Showers*, 135 Wis. 2d 77, 102-03, 398 N.W.2d 154 (1987), the substance of the comments and reports are part of the "subject matter of the meeting" which must be included in the meeting notice. Sec. 19.84(2), Wis. Stats.

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The March 5 letter specifically distinguishes between permissible meeting notices with "public comment" subject designations, and impermissible meeting notices with subject matter designations like "mayor's report" or "alderpersons' comments" or "staff comments" or "committee report." The reason for the distinction is that the members of the body and officials of the governmental unit have greater and more regular access than the public has to the process for creating meeting notices, and should therefore be held to a higher standard of specificity regarding the subjects they intend to address.

On a closely related subject, I have been asked whether the members of a governmental body may participate in public comment segments of meetings, either to respond to comments on subjects within the realm of the body's authority raised by members of the public, or to initiate subjects as members of the public. As I indicated in the March 5 letter, the law allows a governmental body to discuss, but not to act on, any matter raised by the public during a comment period.

In summary, and to reiterate my March 5, 2004, opinion: 1) public comment periods are authorized by state law; and 2) where the presiding officer contemplates a meeting notice that contains expected reports or comments by a member, the presiding officer should obtain from the member intending to make the comments or report(s) the subjects that will be addressed in the comments or the report(s). Such adherence to our state's open meetings law should in no way hinder the public participation that is essential to our representative form of government but rather enhance it.

Thank you for providing me the opportunity to offer this clarification of the March 5, 2004, letter.

Very truly yours,

  
Peggy A. Lautenschlager  
Attorney General

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