



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

PEGGY A. LAUTENSCHLAGER
ATTORNEY GENERAL

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

Daniel P. Bach
Deputy Attorney General

November 30, 2004

Ms. Anna L. Becker
District Attorney
Jackson County
307 Main Street
Black River Falls, WI 54615

Dear Ms. Becker:

I am writing in response to your July 27, 2004, letter to Assistant Attorney General Bruce Olsen about the meeting notice practices of the town board of the Town of Green Valley. I concur in your general assessment that the "[n]otice really says nothing and does not properly give the requisite notice" commanded by Wis. Stat. § 19.84(2) (meeting notice must give the "time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session, in such form as is reasonably likely to apprise members of the public and the news media thereof").

Turning first to the meeting notice, I note that Item 3 is described as "Treasurer's report." The meeting notice identifies only *who* will give the report, and identifies none of the *subjects* to be addressed in that report. Since only those subjects identified in a meeting notice may be lawfully considered by the body, *see* March 5, 2004, letter to Charles A. Rude (enclosed), the meeting notice should have identified the subjects of the treasurer's report; *e.g.*, "payment of bills," or "balance sheet," or whatever other subjects the treasurer intends to address.

Similarly, the subject designation "Old business" identifies no subjects to be taken up by the town board. For years, the Wisconsin Department of Justice (DOJ) has advised local governments to avoid vacuous and general subject matter designations such as "old business," "new business" or "other matters as authorized by law." When the board took up the subject of the patrolman retirement fund, as reflected in the scanty minutes of the meeting, the board considered that subject in violation of the open meetings law.

The town board's violations of the open meetings law are reflected most pointedly in the "New business" section of the minutes of the January 8, 2004, meeting. The meeting notice identifies "Review bills and authorize payment" and "Review Patrolman time sheets" as the two subjects to be addressed in that portion of the meeting. The minutes reflect those two subjects, as well as five other subjects nowhere identified in the meeting notice. None of those five subjects was properly considered by the board, since the subjects were not preceded by a public notice that identified them. Among other things, the board's unlawful notice practices deprived the public of notice that the board approved the expenditure of funds for a road, adopted a

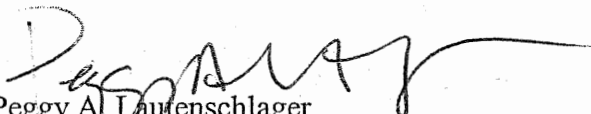
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motion on a zoning issue, authorized the expenditure of funds to purchase tax tables and took action with respect to a shooting range.

You have suggested that if there are violations of the open meetings law, you could send a letter to the board advising it to rescind its previous actions and take them up at a properly noticed meeting. That is a possible option. In my experience, prosecutors who have faced similar circumstances have also entered into non-prosecution agreements with the members of governmental bodies whose open meetings practices are particularly deficient. Those agreements often require, as a condition of declining prosecution, that the members of governmental bodies, and the staff who serve them, obtain training on the open meetings law from their attorney or from a professional association such as the Towns Association, by a certain date. In addition, this office provides regular training throughout the state at pre-arranged dates and sites. Although our 2004 sessions have been completed, I expect that similar training sessions will be conducted by DOJ next year as well. I enclose written materials that can serve as the structure for open meetings training. I include a copy of the DOJ Open Meetings Compliance Guide ("Guide"), and a copy of a topical outline, keyed to the pages of the Guide, as resources, should you find them useful.

Very truly yours,



Peggy A. Lautenschlager
Attorney General

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Enclosures



STATE OF WISCONSIN
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PEGGY A. LAUTENSCHLAGER
ATTORNEY GENERAL

Daniel P. Bach
Deputy Attorney General

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

March 5, 2004

Mr. Charles A. Rude
Mayor
City of Lake Geneva
Post Office Box 340
Lake Geneva, WI 53147

Dear Mayor Rude:

I am responding to your February 9, 2004, letter inquiring about the application of the open meetings law to city council agenda items called "Staff Comments" "Alderman Comments," and "Mayor Comments." You state:

Each staff member, i.e., the City Administrator, Director of Public Works, City Clerk and City Attorney are given an opportunity to comment about such things as forthcoming events or other informational matters. Each Alderman, as well as the Mayor, have the same opportunity. There can be no action discussion, or vote of any kind, on any comments made, whether by Staff Members, Aldermen or the Mayor.

There has been a complaint that allowing such comments is a violation of the Open Meetings Statute, since no specific agenda item other than "comments" is listed. I would appreciate your review of the matter, and letting me know if we are inadvertently violating the statute by following this practice.

Every public notice of a meeting must give the "time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session, in such form as is reasonably likely to apprise members of the public and the news media thereof." Wis. Stat. § 19.84(2). The notice need not contain a detailed agenda, but because the public is entitled to the fullest and most complete information compatible with the conduct of governmental business, the notice should be specific. This requires that when a member of the governmental body knows in advance of the time notice is given that a matter may come before the body, that matter must be described in the meeting notice. 66 Op. Att'y Gen. 143, 144 (1977). The chief presiding officer of the governmental body is responsible for providing notice, and when he or she is aware of matters which may come before the body, those matters must be included in the meeting notice. 66 Op. Att'y Gen. 68, 70 (1977).

In formulating descriptions of the subject matter of a meeting, the chief presiding officer should keep in mind that the public is entitled to the best notice that can be given at the time the

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notice is prepared. A good rule of thumb is to ask whether a person interested in a specific subject would be aware, upon reading the meeting notice, that the subject might be discussed. For example, the court of appeals has held that the subject matter designation "licenses" was specific enough to apprise members of the public that a liquor license would be considered for approval. *State ex rel. H.D. Ent. v. City of Stoughton*, 230 Wis. 2d 480, 486, 602 N.W.2d 72 (Ct. App. 1999). *Cf. State ex rel. Olson v. City of Baraboo*, 2002 WI App 64, 252 Wis. 2d 628, ¶¶ 13-17, 643 N.W.2d 796 (meeting notice that a Joint Review Board would deliberate a resolution was sufficient to notify the public that the board would take action on the resolution). General subject matter designations such as "miscellaneous business," or "agenda revisions," or "such other matters as are authorized by law" should be avoided. The Attorney General advised in an informal opinion that if a meeting notice contains a general subject matter designation and a subject that was not specifically noticed comes up at the meeting, a governmental body should refrain from engaging in any information gathering or discussion or from taking any action that would deprive the public of information about the conduct of governmental business. I-5-93, April 26, 1993.

1997 Wisconsin Act 123, effective May 2, 1998, created Wis. Stat. §§ 19.83(2) and 19.84(2) to allow governmental bodies to receive information from members of the public if the public notice of the meeting designates a period of public comment. The law also allows a governmental body to discuss, but not to act on, any matter raised by the public during a comment period. Although discussion of a general public comment item is permissible, it is advisable to defer extensive discussion and action on such an item until specific notice of the subject matter of the proposed action can be given. By following this practice, a governmental body will accommodate the two somewhat competing public policies raised by public comment periods: first, the laudable public policy that governmental bodies benefit by hearing from the constituents they serve; second, the open meetings policy that members of the public are entitled to the "fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business." Wis. Stat. § 19.81(1).

Applying these principles, it is my opinion that the practice you describe is, at best, at the outer edge of lawful practice, and may well cross the line to become unlawful. Wisconsin Stat. §§ 19.83(2) and 19.84(2) allow citizens to present information to governmental bodies on subjects not included in the meeting notice because citizens do not have access to the body's process for creating meeting notices. The members of governmental bodies and the officials of the governmental unit are not so limited. They have regular opportunities to suggest meeting subjects to the presiding officer responsible for establishing the agenda. If, for example, a member of the body knows in advance of the time the meeting notice is given that there are "forthcoming events" about which the public may be interested, that matter must be described in the meeting notice. 66 Op. Att'y Gen. at 144. In my opinion, the subject matter "forthcoming events" would be minimally adequate to satisfy the requirements of the open meetings law when such matters are raised at the body's meeting.


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The practice of allowing members of the body and governmental officials to present non-specific "informational items" to the members of the body is even more troublesome. Information by definition relates to a particular subject matter. That subject matter is capable of description in a way that is "reasonably likely to apprise members of the public and the news media thereof." Wis. Stat. § 19.84(2). There is no good reason why the subjects of the informational items cannot be identified in a meeting notice more specifically than "Staff Comments" or "Alderman Comments" or "Mayor Comments." The city's current policy prohibits discussion, action and voting on any subject addressed in staff, alderperson and mayor comment periods. The city's policy does not appear to limit the amount of information on a subject that a staff member, alderperson or the mayor can provide to the common council during such a comment period. If only a small amount of information is communicated during one of these comment periods, members of the public who are interested in the subject but not present at the meeting because the subject was not part of the meeting notice would be deprived of only a small amount of the information to which they were entitled. On the other hand, if substantial amounts of information are communicated during the comment periods, the interested public is deprived of a substantial amount of information. At the extreme end, an alderperson or the mayor might provide enough information on a subject during one of the comment periods that the members of the body have all the information they need to take action on the subject, eliminating the need for any discussion of the matter at a subsequent meeting where the noticed subject is brought up for action. In that circumstance, the public is deprived of all of the information to which it is entitled.

Thank you for inquiring about the open meetings implications of the city's current practice. I encourage you to alter that practice to eliminate the staff, alderperson and mayor comment items in the meeting notice. I encourage you to substitute for those comment periods a subject designated as "forthcoming events" for those items currently subsumed in the comment periods. I further encourage you to eliminate the practice of allowing staff, alderpersons and the mayor to communicate information on subjects without designating those subjects in the meeting notice.

Very truly yours,


Peggy A. Lautenschlager
Attorney General

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