



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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March 10, 2005

Mr. Darwin L. Zwieg
District Attorney
Clark County
517 Court Street
Neillsville, WI 54456

Dear Mr. ~~Zwieg~~ Darwin —

Thank you for your letter of November 22, 2004, in which you pose two questions about a Clark County ordinance on open meeting violations. According to your letter, the substance of the ordinance in question closely tracks the parallel provisions of Wisconsin's open meeting statutes and, like those statutes, provides for a potential forfeiture of \$25 to \$300 against public officials for each open meeting violation, as such violations are defined in the open meeting statutes.

Your first question is whether the county corporation counsel may bring enforcement actions under this county ordinance. In connection with this question, you note that both enforcement actions under the state open meeting statutes and state forfeiture actions have been legislatively assigned to district attorneys. *See* Wis. Stat. §§ 19.97(1) and 978.05(2). You also note, however, that Wis. Stat. § 59.42(1) provides that a county board may transfer powers and duties with regard to civil matters from the district attorney to the corporation counsel.

As a threshold matter, I note that you have not cited any provision of law that authorizes a county board to promulgate an open meeting ordinance of the type you describe. I assume, for the purposes of this letter, that such authorization exists. Within the limits of that assumption, it is my opinion that it is within the power of a county board, if it so desires, to designate the corporation counsel as the official responsible for enforcing a county open meeting ordinance. The power to enforce such a county ordinance, in my view, does not implicate Wis. Stat. §§ 19.97(1), 978.05(2) or 59.42(1).

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Wisconsin Stat. § 19.97(1) applies only to actions to enforce the state open meeting statute. Even if your county ordinance contains substantive terms identical to those in that statute, an action to enforce that ordinance would still be brought under the ordinance and not under the statute. Assignment of ordinance enforcement duties to the corporation counsel would thus have no effect on the district attorney's concurrent statutory enforcement duties under Wis. Stat. § 19.97(1).

Similarly, Wis. Stat. § 978.05(2) applies only to state forfeiture actions, not to actions brought under a county ordinance. Even if an action to enforce the state open meeting statute is considered a state forfeiture action within the meaning of Wis. Stat. § 978.05(2), a forfeiture action brought under a substantively equivalent county ordinance would still be brought under that ordinance and not under Wis. Stat. § 978.05(2). Making the corporation counsel responsible for bringing forfeiture actions under a county ordinance would thus have no effect on a district attorney's concurrent power to bring state forfeiture actions under Wis. Stat. § 978.05(2).

Finally, Wis. Stat. § 59.42(1) applies only where a county board acts to transfer civil statutory powers of the district attorney to the corporation counsel. Merely giving the corporation counsel the power to enforce a county open meetings ordinance does not transfer to that official the district attorney's concurrent power to enforce the state open meetings statute.

For all of the above reasons, I conclude that a county board may make the county corporation counsel responsible for enforcing a county open meeting ordinance without implicating or affecting the concurrent statutory powers of district attorneys under the state open meeting statute.

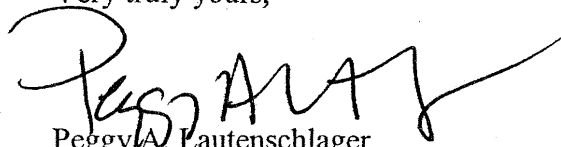
Your second question is whether a county open meeting ordinance may be enforced by issuance of a citation under the procedures set out in Wis. Stat. § 66.0113. That statute, as you note, provides that a county board may authorize the use of a citation for violation of a county ordinance, including an ordinance that has a state statutory counterpart. Because your county's open meeting ordinance is a county ordinance with a state statutory counterpart in the state open meeting law, you infer that the use of the citation procedures is authorized under Wis. Stat. § 66.0113.

I disagree. The Wisconsin Legislature has mandated that an action to enforce the requirements of the state open meeting statute may only be brought after a complainant has sworn out a verified complaint. *See* Wis. Stat. § 19.97(1). That requirement protects public officials against the burden of having to defend themselves in open meeting enforcement actions unless there is a solid factual basis for the alleged open meeting violations. Such protection could be undermined, however, if substantively identical open meeting violations could be prosecuted under the citation procedures of Wis. Stat. § 66.0113, which neither require nor provide for verified complaints. Although, as noted above, enforcement actions under a county ordinance and under a state statute are separate and concurrent, it is my opinion that the

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procedures for enforcing a county ordinance may not subject public officials to a burden from which the Legislature has specifically sought to protect them. I conclude, therefore, that the citation procedure may not be applied to the enforcement of your county's open meeting ordinance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Peggy A. Lautenschlager", with a long, sweeping flourish extending to the right.

Peggy A. Lautenschlager
Attorney General

PAL:TCB:df