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May 12, 2005

Ms. Lauri Perlick
Sawyer County Record
15617B Highway 63 North
Hayward, WI 54843

Dear Ms. Perlick:

I am writing in response to your January 19, 2005, email inquiry regarding the use of a consent agenda to approve all business conducted at meetings of the common council of the City of Hayward. I apologize for the delay in getting this response to you and thank you for your patience.

According to your email and the supporting documents you have submitted, the usual practice of the common council is to discuss individual items of business under separate agenda headings without taking any formal action on them until the end of the meeting. At that time, the members of the council take a single vote on a motion to approve a consent agenda consisting of all the aforementioned items of business. You ask whether there is anything improper or illegal in that procedure.

As a general matter, Wisconsin's statutes do not prescribe particular rules of parliamentary procedure for local governing bodies and provide little guidance on such procedures, but instead grant municipalities broad authority to adopt their own procedural rules. *See* sec. 62.11(3)(e), Wis. Stats. I am unaware of any general statutory requirement that a municipal governing body must vote separately on individual items of business. In this respect, it appears that such bodies are free to provide by local rule for procedures under which separate items may be approved by a single vote. The kind of procedure that you describe is, nonetheless, atypical and probably inadvisable.

For circumstances not covered either by statute or local rule, most governing bodies have adopted a standard parliamentary authority such as Robert's Rules of Order or Sturgis's Standard Code of Parliamentary Procedure. According to these standard authorities, one of the fundamental principles of all parliamentary procedure is that all items of business are to be taken up one thing at a time. *See* Webster's New World, Robert's Rules of Order Simplified and Applied 9-10 (1999); Alice Sturgis, Standard Code of Parliamentary Procedure 33 (2001). This fundamental principle especially applies to main motions—that is, the basic substantive proposals for the transaction of business by a body. In other words, under standard

parliamentary procedure, only one main motion at a time can be before a body. To use a consent agenda for the *en bloc* approval of all items of business taken up by a body would thus be contrary to this fundamental principle because it would simultaneously bring before the body numerous distinct subjects that properly should be the subject of separate main motions.

Accordingly, these standard parliamentary authorities generally permit the use of a consent agenda only for the approval of routine and non-controversial items that can appropriately be disposed of by a single vote and without detailed, individualized consideration. See Robert's Rules of Order Simplified and Applied 22-23; Standard Code of Parliamentary Procedure 116. This strongly suggests that, even if it is technically legal, it is nonetheless poor parliamentary practice to use a consent agenda not only for such routine and non-controversial matters, but also for the *en bloc* approval of a body's entire order of business.

Similarly, the League of Wisconsin Municipalities has published a model ordinance on council rules of procedure which also provides for the use of a consent agenda only for disposing of routine and non-controversial matters that do not require a special vote or specific action by the council. See League of Wisconsin Municipalities, *The Conduct of Common Council Meetings: Suggested Rules of Procedure with Model Ordinance and Annotations* (2002). This model ordinance reinforces the conclusion that the consent agenda procedure you have described is poor government practice.

In addition, both the standard parliamentary authorities and the model ordinance provide that, where a consent agenda is used, any member of the body may demand that any discrete item included in the consent agenda be removed from it and considered separately by the body. More generally, whenever a body is faced with a motion that is composed of two or more independent parts, any member has the right to request that it be divided into separate motions. See Standard Code of Parliamentary Procedure 96-98. The purpose of allowing compound questions to be divided in this way is to secure the independent judgment of each member on every question presented to the body and to prevent members from being required to vote for some items that they may not approve in order to secure a favorable vote on other items.

It is unclear from the materials you have submitted whether your common council permits such separation of individual items from the consent agenda. If it does not, then such a restriction could be contrary both to standard parliamentary procedures and to the approach suggested by the model ordinance. Even if division of separate questions is not formally prohibited, however, such broad use of the consent agenda procedure still appears inadvisable insofar as it could discourage members from exercising their independent judgment on each individual substantive proposal that comes before the council.

It is also possible that the use of a consent agenda for the *en bloc* approval of numerous separate items of business may come into conflict with the open meetings law. Under section 19.88(3) of the Wisconsin Statutes, every governmental body is required to create and maintain a record of all motions and roll call votes. While that statute does not say how detailed the record of a motion must be, the general legislative policy of the open meetings law is 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.” Sec. 19.81(1), Wis. Stats. In light of that policy, it seems clear that a governmental body’s records should provide the public with a full and complete description of every motion that comes before the body.

Guidance on this point may also be found in section 985.01(6), which provides, for purposes of publication of legal notices, that the term “substance” means “an intelligible abstract or synopsis of the essential elements of the official action taken by a local governing body, including the subject matter of a motion, the persons making and seconding the motion and the roll call vote on the motion.” It seems reasonable to conclude that a record of a motion under section 19.88(3) should likewise include the subject matter and an intelligible synopsis of the essential elements of the official action embodied in the motion.

Where a consent agenda is used for the *en bloc* approval of numerous separate items of business, however, there appears to be a danger that the proceedings may fail to generate a clear and unambiguous record of each action taken by the body. Under the procedure you have described, the only motion that formally comes before the council is a single motion to approve the entire consent agenda. A written record of such a general, composite motion does not, in itself, convey an intelligible synopsis of the essential substantive elements of the actual actions taken by the council on individual items of business. Standing alone, therefore, the record of a motion to approve a consent agenda subsuming numerous separate substantive actions appears insufficient to satisfy the record requirements of section 19.88(3).

In contrast, under the standard rules of parliamentary procedure, when a motion is made by a member of a body and seconded, it is then repeated to the assembly by the presiding officer and the way in which the motion is worded by the presiding officer becomes the official wording that is recorded by the secretary. Combined with the one-main-motion-at-a-time principle, such an approach is likely to result in a clear and unambiguous written record of every action taken by the body.

It is possible, of course, that the minutes of a meeting might be sufficiently specific to provide an adequate record of numerous separate substantive actions approved through a single consent agenda motion. It is also possible, however, that ambiguity and confusion could develop if the minutes regarding individual action items failed to record specific proposals, amendments or subsidiary actions that might arise in the course of a meeting. A record that contained such ambiguity or confusion probably would not satisfy the record keeping requirements of the open meetings law.

Therefore, although the consent agenda procedure you describe does not appear to be *per se* unlawful, it does create a risk of open meetings law violations and any governmental body using such a procedure should take great care to ensure that it creates a clear and unambiguous record of the substance of each individual action taken by the body. In particular, if an action on which the council votes includes the amendment or elaboration of an individual agenda item or

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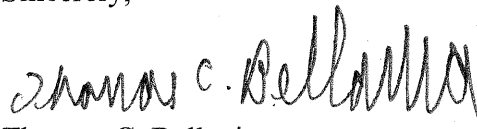
subsidiary action on such an item, the minutes should fully and accurately record all such matters.

With these principles in mind, I reviewed the sample minutes you submitted and I found that, generally, they appear to clearly convey the substance of individual actions taken by the council when it approved a consent agenda. I note, however, that item 7 in the minutes of November 8, 2004, is not stated in the form of a definite proposition, but simply lists quotes from construction companies related to a garage wall project, without specifying any action that may have been intended in relation to those quotes. In the record of the roll call vote on the consent agenda, one member of the council voted yes to all items except one of the quotes. Because of the lack of precision in the minutes, the meaning both of that negative vote and of the corresponding positive votes of other council members is unclear. This kind of confusion would be less likely to occur if separate action items were required to be proposed as separately worded motions.

Finally, you have also asked whether it is permissible for the common council to post a complete agenda at the city hall at least 24 hours in advance of each of its meetings without also providing that agenda to the city's newspaper of record. Such a practice does not comply with the public notice requirements of section 19.84(1). Under that statute, posting of the agenda alone is not sufficient. Notice must also be given to the city's officially designated newspaper and to members of the news media who have submitted a written request for such notice. Posting the agenda may satisfy the requirement of notice to the public, but it does not satisfy the separate requirement of notice to the official newspaper and to requesting members of the news media.

I hope this information is useful to you and thank you for your interest in compliance with the open meetings law.

Sincerely,



Thomas C. Bellavia
Assistant Attorney General

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