

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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August 29, 2006

Ms. Shannon Heupel
200 Haven Lane
Luxemburg, WI 54217

Dear Ms. Heupel:

You have requested an interpretation of Wisconsin's open meetings law as it applies to gatherings of members of the Village of Luxemburg ("Village") Streets Committee and a meeting notice for the August 1, 2006, meeting of the Village Board. Except as noted, the interpretations provided in this letter are based solely on the assumed truth of the information you provided to me, and have not been confirmed by my independent inquiry. If further inquiry were to reveal that the facts are not as you have described them, the conclusions stated in this letter may not be valid. At your request, I am providing a copy of this letter to Attorney Dennis Abts who you have represented is the attorney for the Village.

Streets Committee. You state that you live on a residential street that had a sign, erected by the Village, that stated "No Trucks." The Streets & Sidewalks Committee ("Committee") has jurisdiction over the placement and removal of such signs. You noticed one day that the sign had been removed, and that trucks were now traveling the street. You asked the Village Clerk for the minutes of the Committee meeting that reflected its decision to remove the sign. The clerk advised you that the Committee did not as a regular practice provide notice of its meetings, and that notice was not required because the Committee only made recommendations to the full Village Board, and did not make final decisions. Subsequently, you contacted the chairperson of the three-member Committee about the removal of the sign. The chairperson told you that he and one of the other members of the Committee discussed the removal of the sign with the Village President, that the three of them determined that the sign should be removed, and directed that the sign be removed. On the basis of the assumed truth of these facts, you ask: (1) whether the Committee is subject to the open meetings law; (2) if so, whether it must provide advance public notice of its meetings and must keep a record of its recommendations or decisions; and (3) whether the removal of the "No Trucks" sign was lawful.

1. The Village website, <http://luxemburgusa.com/committees> identifies seven members of the Village Board, and identifies three Village Board members as the members of the Committee. The Committee is therefore a "formally constituted subunit" of the Village Board;

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i.e., a separate smaller body created by a parent body and composed exclusively of members of the parent body. 74 Op. Att’y Gen. 38, 40 (1985) (copy enclosed). Formally constituted subunits of local boards are “governmental bodies” as defined by section 19.82(1) of the Wisconsin Statutes. Thus, the Committee is a “governmental body” subject to the requirements of the open meetings law. Section 19.83(1) provides that “[e]very meeting of a governmental body shall be preceded by public notice as provided in s. 19.84, and shall be held in open session.” “Open session” is defined as “a meeting which is held in a place reasonably accessible to members of the public and open to all citizens at all times.” Sec. 19.82(3), Wis. Stats. Meetings that are held without advance public notice, and meetings that do not begin in open session are unlawful under the open meetings law.

The open meetings law defines “meeting” broadly as “the convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body.” Sec. 19.82(2), Wis. Stats. If half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body; *i.e.*, the purpose of conducting governmental business. Sec. 19.82(2), Wis. Stats.; *State ex rel. Newspapers v. Showers*, 135 Wis. 2d 77, 102-03, 398 N.W.2d 154 (1987). Because the Committee consists of three members, any gathering of two or more members is rebuttably presumed to be for the purpose of conducting the Committee’s business. It does not matter that the Committee’s authority may be limited to making recommendations to the Village Board. Even purely advisory bodies created by ordinance or order are subject to the law. *State v. Swanson*, 92 Wis. 2d 310, 317, 284 N.W.2d 655 (1979). Moreover, the *Showers* case defined “governmental business” broadly, to include any formal or informal action, including discussion, decision or information gathering, on matters within the governmental body’s realm of authority. *Showers*, 135 Wis. 2d at 102-03.

It is therefore my opinion that the Committee is a governmental body subject to the open meetings law.

2. Governmental bodies must provide the public with advance notice of their meetings. Sec. 19.83(1), Wis. Stats. Because a “meeting” subject to the open meetings law occurs when two Committee members gather to discuss or decide or gather information about a subject within the realm of the Committee’s business, those gatherings must be preceded by public notice if they are to be lawful under the open meetings law.

The open meetings law provides that every governmental body must give advance notice of its meetings to: (1) the public, (2) any members of the news media who have submitted a written request for notice and (3) the official newspaper, designated pursuant to state statute, or if none exists, to a news medium likely to give notice in the area. Sec. 19.84(1), Wis. Stats. The chief presiding officer of the body may give notice of a meeting to the public by posting the

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notice in one or more places likely to be seen by the general public. 66 Op. Att'y Gen. 93, 95 (1977) (copy enclosed). Alternatively, the chief presiding officer may give notice to the public by paid publication in a news medium likely to give notice in the jurisdiction area the body serves. 63 Op. Att'y Gen. 509, 510-11 (1974) (copy enclosed). If the presiding officer gives notice in this manner, he or she must ensure that the notice is actually published. As a general rule, a body must give at least 24 hours advance public notice of its meetings, whether that notice is posted or given through paid publication. Sec. 19.84(3), Wis. Stats. Unless a parent body directs a subunit to publish its meeting notices, nothing in the open meetings law prevents a subunit from giving notice of its meetings through posting, even if the parent body uses paid publication as its method for giving public notice of the parent body's meetings.

The open meetings law requires a governmental body to keep a record of the motions and roll call votes at each meeting of the body. Sec. 19.88(3), Wis. Stats.. Meeting minutes are the most common method bodies use to comply with the recordkeeping requirement, but that requirement can also be satisfied if the motions and roll-call votes are recorded and preserved on a tape recording. I-95-89, November 13, 1989 (copy enclosed). The open meetings law does not expressly require that bodies keep records of votes on motions determined in ways other than roll-call votes; e.g., calling for the ayes and nays. Prudent bodies keep records of the outcomes of motions as well as the motions themselves, as a way of demonstrating that the body authorized the action that was taken or declined as a result of the motion.

Thus, it is my opinion that the open meetings law requires the Committee to provide advance public notice of its meetings, to keep records of the motions or other proposals it considers at its meetings and to keep records of any roll-call votes it conducts with respect to those motions and other proposals. The Committee's obligation to keep a record of motions and other proposals includes the obligation to keep a record of the recommendations it makes to the Village Board.

3. If the chairperson of the Committee discussed the "No Trucks" sign with another Committee member, and if the erection and removal of such signs was within the realm of the Committee's authority, the two members held a meeting covered by the open meetings law when they discussed the removal of the sign. That meeting would be unlawful if it were not preceded by advance public notice of the meeting that indicated that the subject would be addressed. If the discussion was whether to recommend to the Village President that the sign be removed, the Committee was obligated to keep a record of that motion. If the discussion was whether the Committee should direct that the sign be removed, the Committee was obligated to keep a record of that motion. If the Committee failed to keep a record of whatever motion or proposal precipitated the removal of the sign, it committed that additional violation of the open meetings law.

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Meeting notice. You provided me with a copy of the meeting notice for the Village Board's August 1, 2006, meeting, published in a local paper. I enclose with this letter a copy of the notice you sent. I confirmed with the Village Clerk that the Village Board gives public notice of its meetings through paid publication, and does not post its meeting notices.

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." Sec. 19.84(2), Wis. Stats. 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. 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) (copy enclosed). In an informal opinion, the Attorney General opined that a chief presiding officer may not avoid liability for a legally deficient meeting notice by assigning to a non-member of the body the responsibility to create and provide a notice that complies with section 19.84(2). Correspondence, October 17, 2001 (copy enclosed).

Governmental bodies may not use general subject matter designations such as "miscellaneous business," or "agenda revisions" or "such other matters as are authorized by law" as a justification to raise any subject, since those designations, standing alone, identify no subjects. *Wisconsin Open Meetings Law: A Compliance Guide* (2005), at 9; see also Correspondence, November 30, 2004 (copy enclosed). 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-05-93, April 26, 1993 (copy enclosed). Moreover, the Attorney General has advised in informal opinions that the practice of elected officials and public administrators to use agenda items designated "mayor comments," or "alderman comments" or "staff comments" for the purpose of communicating information on matters within the scope of the governmental body's authority "is, at best, at the outer edge of lawful practice, and may well cross the line to become unlawful." Correspondence, March 5, 2004 (copy enclosed).

Measured against these standards, agenda items 7 ("Village Engineer"), 9 ("Other New Business") and 11 ("Old Business") are legally deficient. Item 7 identifies the speaker, but none of the subjects that will be addressed. Items 9 and 11 likewise identify no subjects. Items 4 ("Update Report from Street & Utility Dept. on July Work Projects") and 10 ("Committee Reports") are probably also legally deficient. Item 4 identifies generally the subject of an update on July's work projects, but again does not identify which work projects will be reported on. Item 10 does not identify the Committees that will make reports, and does not identify the

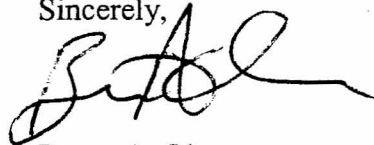
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subjects that will be reported on. As noted in the paragraphs above, the description of the subjects need not be lengthy—just informative. For example, “sealcoating” or “water main flushing” are adequate descriptions of projects that might be the subject of a Street and Utility Department report.

You have asked me to provide the Village’s attorney with a copy of this letter. Based on the facts as you have described them, and based on my review of the meeting notice for the August 1, 2006, meeting, it is possible that the Village’s open meetings law noncompliance may be the result of misunderstanding by some Village officials about what the law requires. If so, additional training and guidance may bring about the compliance you seek. In my judgment, the Village attorney is likely in the best position to provide any needed education or oversight. If in the future you come to believe that the Village’s governmental bodies continue to be in noncompliance, or if you come to believe that violations are intentional rather than inadvertent, you have the right to file a complaint about those violations with the Kewaunee County District Attorney. A complaint form is included in the 2005 Open Meetings Law Compliance Guide, which you already have.

Thank you for your interest in the Village’s compliance with the open meetings law.

Sincerely,



Bruce A. Olsen
Assistant Attorney General

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Enclosures

c: Dennis Abts
Village Attorney
Village of Luxemburg