



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

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September 6, 2006

Mr. John E. Kosobucki  
Director  
Supreme Court of Wisconsin  
Board of Bar Examiners  
110 East Main Street, Suite 715  
Madison, WI 53703-3328

Dear Mr. Kosobucki:

I have been asked to respond to your June 21, 2006 letter requesting written confirmation of advice received in a telephone conversation with Assistant Attorney General Bruce Olsen. According to your letter, Mr. Olsen informed you that due to separation of powers principals, meetings held by the Supreme Court Board of Bar Examiners are not subject to the state's open meetings law.

Mr. Olsen's advice is accurate. According to the "*Wisconsin Open Meetings Law: A Compliance Guide*," a manual put out by the Department of Justice,

The Wisconsin Supreme Court has held that bodies created by the court, pursuant to its superintending control over the administration of justice, are not governed by the open meetings law. *State ex rel. Lynch v. Dancey*, 71 Wis. 2d 287, 238 N.W.2d 81 (1976). Thus, generally speaking, the open meetings law does not apply to the supreme court or bodies created by the supreme court. In the *Lynch* case, for example, the supreme court held that the former open meetings law, Wis. Stat. § 66.77(1) (1973), did not apply to the Wisconsin Judicial Commission, which is responsible for handling misconduct complaints against judges. Similarly, the Attorney General has indicated that the open meetings law does not apply to the Board of Attorneys Professional Responsibility. OAG 67-79 (July 31, 1979) (unpublished opinion). In addition, in an informal opinion, the Attorney General concluded that the monthly judicial

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administration meetings of circuit court judges, conducted under the authority of the supreme court's superintending power over the judiciary, were not subject to the open meetings law. Correspondence, February 28, 2000.

Wisconsin Department of Justice, "*Wisconsin Open Meetings Law: A Compliance Guide*" (August 2005), at 4.

*State ex rel. Lynch v. Dancey*, 71 Wis. 2d 287, 238 N.W.2d 81 (1976) is the authority upon which the Compliance Guide and the Attorney General opinions cited therein rely. In *Dancey*, the Supreme Court held that it has broad superintending control over the administration of justice, and so it is not subject to restraint by legislative provisions contrary to its duties. *Id.* According to *Dancey*,

"The function of the judiciary is the administration of justice, and this court, as the supreme court within a statewide system of courts, has an inherent power to adopt those statewide measures which are absolutely essential to the due administration of justice in the state." . . .

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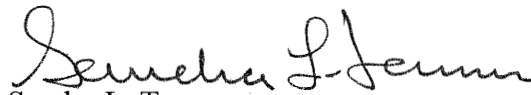
" . . . This power of superintending control is 'unlimited in extent . . .' 'a clear, unequivocal grant of power' . . . as broad and as flexible as necessary to insure the due administration of justice in the courts of this state."

*Dancey*, 71 Wis. 2d at 294 (citations omitted). Not only is the superintending control broad, but it is also exclusive. "The judicial department of government is responsible for the plane upon which the administration of justice is maintained. Its responsibility in this respect is exclusive. . . ." *Dancey*, 71 Wis. 2d at 295 (quoting *In re Cannon*, 206 Wis. 374, 383, 240 N.W. 441 (1932). In particular, "in matters of ethical supervision and maintenance of standards, the power of this court is exclusive." *Dancey*, 71 Wis. 2d at 295. *Dancey's* holding applies to not just the Wisconsin Judicial Commission but also to the Board of Bar Examiners and all other bodies created by the Supreme Court, because they all fall under the court's broad responsibility over the administration of justice in this state.

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Thus, because the Board of Bar Examiners is under the exclusive control of the Wisconsin Supreme Court, it is not subject to the Wisconsin open meetings requirements. I hope you find this discussion helpful, and always feel free to contact this office if we can be of further assistance to you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sandra L. Tarver".

Sandra L. Tarver  
Assistant Attorney General

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