



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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Ms. Kathy Chiaverotti
Executive Director
Muskego Area Chamber of Commerce
Post Office Box 234
Muskego, WI 53150-0234

Dear Ms. Chiaverotti:

Attorney General Peggy A. Lautenschlager has asked me to reply to your July 11, 2006, letter asking about the legality of a policy of the Muskego Common Council (“the Council”) governing public comment at Council meetings. The policy, as you describe it, appears to have three main features: (1) public comment is allowed only at the beginning of Council meetings; (2) public comment is restricted to subjects that appear on the agenda for the meeting in question; and (3) only residents and taxpayers from the community are allowed to speak during the public comment period—individuals from outside the community who represent local organizations such as the Chamber of Commerce, Lion’s Club, Historical Society, etc., are not allowed to participate. You ask whether this policy violates Wisconsin’s open meetings law.

In my opinion, the policy in question does not violate the open meetings law. That law is designed to foster public *awareness* of information about the affairs of government, but it does not require public *participation* to be permitted at all governmental meetings. *See* sec. 19.81(1), Wis. Stats. On the contrary, in the particular situations where public participation is mandatory, other statutes expressly and specifically require the conduct of a public hearing. *See, e.g.,* sec. 62.23(7), Wis. Stats. (enactment and amendment of zoning ordinance); sec. 65.90, Wis. Stats. (adoption of municipal budget); and sec. 66.1105(4), Wis. Stats. (creation of a tax incremental district). Where those more specific statutes do not apply, the open meetings law more generally *allows* a governmental body to designate a portion of any open meeting as a public comment period, but it does not *require* the body to permit public comment. *See* secs. 19.83(2) and 19.84(2), Wis. Stats.

If a body wants to have such a comment period, it must include that period in the meeting notice. *See* sec. 19.84(2), Wis. Stats. Beyond that requirement, however, the open meetings law is generally silent regarding the specific procedures to be followed in conducting a public comment session. Faced with such statutory silence, Wisconsin law generally gives local

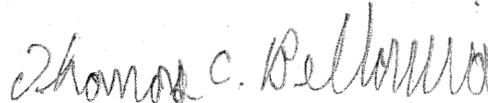
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governing bodies broad discretion to govern their own procedures. *See, e.g.*, sec. 62.11(3)(e), Wis. Stats. It follows that a governmental body has the power to determine for itself the specific procedures it will follow in holding a public comment period, including procedures governing the timing of such periods, the subjects that may be addressed, and who will be allowed to speak.

It is my conclusion, therefore, that Wisconsin's open meetings statutes do not preclude the Council from having a policy that confines public comment to the beginning of meetings, restricts the subject of comments to agenda items, and allows participation only by individuals who reside or pay taxes in the community.

Of course, once a public meeting is opened to public participation, the federal and/or state constitutions may also limit the degree to which government can restrict the speech of individual attendees. Such questions, however, are outside the scope of Wisconsin's open meetings law and, with regard to such matters, the Attorney General is legally precluded from giving legal opinions or advice to persons or entities other than state officers and agencies, the two branches of the Legislature, the Governor, county corporation counsel and district attorneys. You may wish to consult with private legal counsel concerning such questions.

Sincerely,



Thomas C. Bellavia
Assistant Attorney General

TCB:rkk