



STATE OF WISCONSIN
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Mr. Randy Erickson
Editor
Courier-Life/Coulee News
Post Office Box 140
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Dear Mr. Erickson:

This letter is in response to your March 16, 2009, email to the Wisconsin Department of Justice ("DOJ"), in which you express concerns about whether the meeting agendas of the West Salem Village Board ("the Board") contain enough specificity to satisfy the public notice requirements of Wisconsin's open meetings law.

According to your email, the Board was planning, at a meeting scheduled for March 17, 2009, to vote to approve or deny a request for conditional-use permits to build triplex housing. You have also submitted with your email a copy of an agenda for the March 17, 2009, Board meeting. That agenda says nothing on its face about conditional-use permits or housing construction, but it does contain an agenda item entitled: "Planning Commission meeting of March 3, 2009." According to your email, the conditional-use permit issue was expected to be raised under the portion of the agenda related to that planning commission meeting. You wonder whether that agenda heading provided sufficient public notice that the Board might consider the conditional-use permit issue and request guidelines on the specificity of meeting notices that you may share with village officials.

The open meetings law provides, in pertinent part, that the public notice of a meeting of a governmental body must "set forth the . . . subject matter of the meeting . . . 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 statutory language requires a case-specific balancing analysis for the purpose of determining whether the notice reasonably informs the public of the subject in question under the particular circumstances of the case. *State ex rel. Buswell v. Tomah Area Sch. Dist.*, 2007 WI 71, ¶¶ 22 and 27, 301 Wis. 2d 178, 732 N.W.2d 804.

The factors to be considered in determining whether a subject description is reasonable under the circumstances include: (1) the burden on the body of providing a more detailed

description; (2) whether the subject is of particular public interest, based on the number of people interested and the intensity of their interest; and (3) whether the subject involves non-routine action that the public would be unlikely to anticipate from a less detailed description. *Id.*, ¶ 28. Particular issues may be discussed under more general subject headings only if the general heading has reasonably apprised the public of the subject matter of the meeting. *Id.*, ¶ 33. Where adequate notice has been given for a particular subject, the governmental body is free to discuss any aspect of that subject, “as well as issues that are reasonably related to it.” *Id.*, ¶ 34.

In addition, the Wisconsin Court of Appeals has noted that “Wis. Stat. § 19.84(2) does not expressly require that the notice indicate whether a meeting will be purely deliberative or if action will be taken.” *State ex rel. Olson v. City of Baraboo*, 2002 WI App 64, ¶ 15, 252 Wis. 2d 628, 643 N.W.2d 796. The *Buswell* decision inferred from this that “adequate notice [...] may not require information about whether a vote on a subject will occur, so long as the subject matter of the vote is adequately specified.” *Buswell*, 301 Wis. 2d 178, ¶ 37 n.7. Both in *Olson* and in *Buswell*, however, the courts reiterated the principle—first recognized in *St. ex rel. Badke v. Greendale Village Bd.*, 173 Wis. 2d 553, 573-74 and 577-78, 494 N.W.2d 408 (1993)—that the information in the notice must be sufficient to alert the public to the importance of the meeting, so that they can make an informed decision whether to attend. *Buswell*, 301 Wis. 2d 178, ¶ 26; *Olson*, 252 Wis. 2d 628, ¶ 15. The *Olson* decision thus acknowledged that, in some circumstances, a failure to expressly state whether action will be taken at a meeting could be a violation of the open meetings law. *Id.* Although the courts have not articulated the specific standard to apply to this question, it appears to follow from *Buswell* that the test would be whether, under the particular factual circumstances of the case, the notice reasonably alerts the public to the importance of the meeting.

In most circumstances, whether a particular agenda item is reasonable under the circumstances is a fact-dependent and case-specific question that can only be properly addressed in the context of an open meetings law enforcement action in which all parties would have an opportunity to develop a complete factual record regarding all the circumstances that might be related to the reasonableness issue. For this reason, it is generally not possible for DOJ to provide specific, across-the-board guidelines on how detailed a meeting notice must be, beyond indicating that it must be sufficiently detailed so that a person interested in a particular subject would be aware, upon reading the notice, that the subject might be discussed.

Although it is impossible to generalize about what is reasonable under all circumstances, however, it can nonetheless be said that a meeting notice is not reasonably specific if it fails to give the public any notice at all that the governmental body is going to be considering a particular issue. For this reason, DOJ has taken the position that purely generic subject matter designations such as “old business,” “new business,” “miscellaneous business,” “agenda revisions,” or “such other matters as are authorized by law” are inherently insufficient because, standing alone, they identify no particular subjects at all.

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Similarly, in the type of fact situation that you have described, the use by a village board of a heading such as "Planning Commission meeting of March 3, 2009" in a public notice for a meeting of the village board appears not to identify any particular subject from the planning commission meeting that might be taken up by the village board. A heading of that type is so lacking in informational value that it almost certainly fails to give the public reasonable notice of what aspect of the planning commission meeting the village board intends to discuss.

Of course, many governmental bodies have a practice of using headings of this nature when they plan to receive or approve the minutes of an earlier meeting of another governmental body. In my opinion, an appropriate agenda heading for such a purpose should be similar to the following: "Receive and approve minutes of the planning commission meeting of [date]." Under a heading in that form, it would be proper for the governmental body in question to discuss whether the minutes under review accurately reflect the contents of the designated planning commission meeting. It would not be proper, however, for the governmental body to engage in any substantive discussion or consideration of any of the subjects contained within those planning commission minutes. If the governmental body wishes to conduct such a substantive discussion, then its meeting notice must identify the subject matter in question with reasonable specificity under all of the relevant circumstances, as required by the *Buswell* decision.

I hope that this information is helpful to you and thank you for your interest in compliance with the open meetings law. Please note that the opinions expressed in this letter do not constitute a formal opinion of the Attorney General or the Department of Justice pursuant to section 165.015(2) of the Wisconsin Statutes.

Sincerely,



Thomas C. Bellavia
Assistant Attorney General

TCB:rk