



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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February 13, 2019

Dennis Krueger
[REDACTED]
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Dear Mr. Krueger:

The Wisconsin Department of Justice (DOJ) is in receipt of your correspondence, dated May 18, 2018, in which you asked, "Does a lake district have to go into closed session if it is posted and on the agenda? and not addressed at the beginning during agenda approval?" You wrote, "I am the president of our district and need clarification."

Before addressing the specific concerns outlined in your correspondence, I would first like to give you some general information regarding the Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, that I hope you will find helpful. The open meetings law acknowledges that the public is entitled to the fullest and most complete information regarding government affairs as is compatible with the conduct of governmental business. Wis. Stat. § 19.81(1). All meetings of governmental bodies shall be held publicly and be open to all citizens at all times unless otherwise expressly provided by law. Wis. Stat. § 19.81(2). The provisions of the open meetings law are to be construed liberally to achieve that purpose. Wis. Stat. § 19.81(4).

With respect to notice, the open meetings law provides for the level of specificity required in agenda items for open and closed meetings, as well as the timing for releasing agendas in order to provide proper notice. Wis. Stat. § 19.84(2). Public notice of a meeting must provide the "time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session." *Id.* The notice must be in such a form so as to reasonably apprise the public of this information. *Id.*

Whether the notice is specific enough is determined on a case-specific basis, based on a reasonableness standard. *State ex rel. Buswell v. Tomah Area Sch. Dist.*, 2007 WI 71, ¶¶ 27-29, 301 Wis. 2d 178, 732 N.W.2d 804. The notice requirement in the open meetings law functions to assure that members of the public are reasonably apprised of what is discussed at such meetings. *Id.* ¶ 34. The Wisconsin Supreme Court has reasoned that the notice requirement gives the public information about the business to be conducted that will alert them to the importance of the meeting, so that they can make an informed decision whether to attend. *State ex rel. Badke v. Vill. Bd. of Vill. of Greendale*, 173 Wis. 2d 553, 573-

74, 577–78, 494 N.W.2d 408 (1993). Therefore, a governmental body, when conducting a meeting, is free to discuss any aspect of any subject identified in the public notice of that meeting, as well as issues reasonably related to that subject, but may not address any topics that are not reasonably related to the information in the notice. *Buswell*, 301 Wis. 2d 178, ¶ 34 (a meeting generally “cannot address topics unrelated to the information in the notice.”).

There is no requirement, however, that a governmental body must follow the agenda in the order listed on the meeting notice, unless a particular agenda item has been noticed for a specific time. *See Stencil Correspondence* (Mar. 6, 2008). If an agenda item has been noticed for a specific time, the governmental body should make certain that the agenda item is discussed at that time, because citizens might have relied on the fact that a specific time was given. *Id.* But if an agenda item does not have a specific time listed, it is within the discretion of the governmental body to reorganize its agenda at the meeting. *Id.*

Nor is a governmental body required to actually discuss every item contained in the public notice. *See Black Correspondence* (Apr. 22, 2009). It is reasonable, in appropriate circumstances, for a body to cancel a previously planned discussion or postpone it to a later date. *Id.*

With respect to closed sessions, the open meetings law lists exemptions in which meetings may be convened in closed session. Wis. Stat. § 19.85. Any exemptions to open meetings are to be viewed with the presumption of openness in mind. Such exemptions should be strictly construed. *State ex rel. Hodge v. Turtle Lake*, 180 Wis. 2d 62, 71, 508 N.W.2d 603 (1993). The exemptions should be invoked sparingly and only where necessary to protect the public interest and when holding an open session would be incompatible with the conduct of governmental affairs. “Mere government inconvenience is . . . no bar to the requirements of the law.” *State ex rel. Lynch v. Conta*, 71 Wis. 2d 662, 678, 239 N.W.2d 313 (1976).

Every meeting must be initially convened in open session. At an open meeting, a motion to enter into closed session must be carried by a majority vote. No motion to convene in closed session may be adopted unless an announcement is made to those present the nature of the business to be considered at the proposed closed session and the specific exemption or exemptions by which the closed session is claimed to be authorized. Wis. Stat. § 19.85(1).

Under Wis. Stat. § 19.84(2), notice of any “contemplated” closed session (and any motion to enter into closed session) must contain the subject matter to be considered in closed session. Merely identifying and quoting a statutory exemption is not sufficient. The notice or motion must contain enough information for the public to discern whether the subject matter is authorized for closed session. If a body intends to enter into closed session under more than one exemption, the notice or motion should make clear which exemptions correspond to which subject matter.

Furthermore, some specificity is required since many exemptions contain more than one reason for authorizing a closed session. For example, Wis. Stat. § 19.85(1)(c) provides an exemption for the following: “Considering employment, promotion, compensation or

performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility." Merely quoting the entire exemption, without specifying the portion of the exemption under which the body intends to enter into closed session, may not be sufficient. Only aspects of a matter that fall within a specific exemption may be discussed in a closed session. If aspects of a matter do not properly fall within an exemption, those aspects must be discussed in an open meeting.

Turning now to the specific questions in your correspondence, I first note that, although the open meetings law governs public access to meetings of governmental bodies, it does not dictate all procedural aspects of how bodies run meetings. Thus, although Wisconsin law has provisions allowing closed sessions in limited circumstances, the law does not require that the governmental body go into closed session when such a "contemplated" closed session is noticed on the agenda. So long as governmental bodies follow the requirements for adequate and timely notice to the public, the notice complies with the open meetings law.

In other words, there is no requirement within the open meetings law that a meeting must go into closed session if a "contemplated" closed session was posted or on the agenda. Moreover, before going into closed session, a governmental body must still move to go into closed session, even if the closed session was noticed on the agenda. Wis. Stat. § 19.85(2). Accordingly, even if a subject was previously noticed for a closed session, it is permissible to discuss that subject in open session, so long as the previous notice for the closed session fulfills the notice requirements of the open meetings law. *See* Wis. Stat. § 19.84(2). Indeed, DOJ's Office of Open Government encourages transparency and openness to the greatest extent possible, because the law is designed with the presumption of openness in mind. *Hodge*, 180 Wis. 2d at 71.

You also asked a question as to whether it was permissible to discuss the subject in open session when the decision not to go into closed session was "not addressed at the beginning [of the meeting] during agenda approval." As noted earlier, there is no requirement that the governmental body must follow the agenda in the order listed on the meeting notice, unless a particular agenda item has been noticed for a specific time. *See* Stencil Correspondence (Mar. 6, 2008). Nor is a governmental body required to actually discuss every item contained in the public notice. *See* Black Correspondence (Apr. 22, 2009). Further, there is no requirement under the open meetings law that the governmental body approve the agenda at the beginning of each meeting, although such an action would be permissible under the open meetings law. I do not have sufficient information from your correspondence to fully analyze your question, but I hope you find this information helpful.

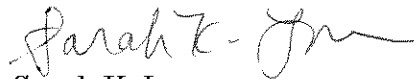
If you would like to learn more about the open meetings law, DOJ's Office of Open Government offers several open government resources through the Wisconsin DOJ website (<https://www.doj.state.wi.us/office-open-government/office-open-government>). DOJ provides the full Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, maintains an Open Meetings Law Compliance Guide, and provides a recorded webinar and associated presentation documentation.

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The Attorney General and DOJ's Office of Open Government are committed to increasing government openness and transparency, and we are dedicated to the work necessary to preserve Wisconsin's proud tradition of open government. If you have additional questions, please contact the Office of Open Government's Public Records Open Meetings (PROM) Help Line at (608) 267-2220. Thank you for your correspondence.

The information provided in this letter does not constitute an informal or formal opinion of the Attorney General pursuant to Wis. Stat. § 165.015(1).

Sincerely,



Sarah K. Larson
Assistant Attorney General
Office of Open Government

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