



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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I-20-89

Mr. Peter M. Borgo
Route 1, Box 940
Lake Geneva, Wisconsin 53147

Dear Mr. Borgo:

You have related problems concerning the manner in which board meetings and town business are conducted in the town of Linn. You state that the board does not take action at meetings, which indicates that the action is taken somewhere other than in open meetings. You also report that the board conducts some discussions in a manner inaudible to the audience, that meetings are not formally called to order, that minutes of prior meetings are not read, that there is no financial report and that votes are not recorded during meetings.

You have enclosed a copy of an article from the January 12, 1989, issue of the Lake Geneva Regional News in which town board Chairman Franklin Walsh is quoted as saying that the open meetings law does not apply to board meetings because the board is a committee as a whole and not a governmental body. The story also reports that Chairman Walsh said, "no" when asked if the board conducted town business at a time that was announced.

Apparently many of the problems you discuss stem from a mistaken belief that the town board is not subject to the open meetings law. The board is a governmental body under section 19.82(1), Stats., of the open meetings law; and section 60.20(3) specifically provides that meetings of the town board are subject to subchapter IV of chapter 19, which is the open meetings law (sections 19.81 to 19.98).

According to the Wisconsin Supreme Court in State ex rel. Newspapers v. Showers, 135 Wis. 2d 77, 102, 398 N.W.2d 154 (1987), a gathering of board members constitutes a meeting under the open meetings law when a two-part test is satisfied: "First, there must be a purpose to engage in governmental business, be it discussion, decision or information gathering. Second, the number of members present must be sufficient to determine the parent body's course of action regarding the proposal discussed."

Therefore, when any two of the three board members meet and discuss town business, they are meeting subject to the open meetings law, which means that there should have been notice of

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the meeting and that the meeting should be open to the public, unless closure of the meeting is authorized by section 19.85(1).

The comments attributed to Chairman Walsh in the article indicate that the board conducts business outside of open meetings for which notice has been given. If the board is conducting business in such a manner, it is doing so in violation of the open meetings law.

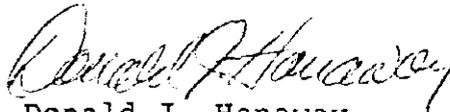
The open meetings law does not require that minutes be taken, but it does require that all motions and roll call votes be recorded and open for inspection. Sec. 19.88(3), Stats. The town clerk is required by section 60.33(2)(a) and (7) to keep a full record of board proceedings and to comply with subchapter II of chapter 19 (the public records law) concerning any record of which he or she is legal custodian.

Although the open meetings law does not require that the town board use microphones that are part of an amplification system, the public policy stated in section 19.81(1) and (2) of the open meetings law does require that members of the public attending the meeting be able to hear and see, within reasonable limits, the utterances and actions of the members of the board when meetings are conducted in open session. It is the duty of the presiding officer to prompt members of the board if their tone of voice becomes too soft for the public to hear.

The open meetings law does not require that minutes be read or that financial reports be made during the meetings. Such things depend upon the procedure followed by the board and the manner in which it conducts business.

If the board has questions concerning how to conduct meetings in compliance with the open meetings law, the board should consult with its attorney for guidance.

Sincerely,



Donald J. Hanaway
Attorney General

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