

jurisdiction by a resolution of the governing body filed with the register of deeds”

In light of the foregoing, it is evident that a municipal subdivision control ordinance, enacted under sec. 236.45, Stats., automatically applies within the extraterritorial plat approval jurisdiction of the enacting municipality. In order to waive part or all of this statutory grant, the governing body must take appropriate legislative action.

BCL:JCM

Anti-Secrecy; Open Meeting; Newspapers; Where a governmental body has convened in open session on proper notice, it can convene in closed session for proper purposes to discuss an element of subject matter for which the meeting was called, and which is proper to discuss in closed session, upon motion made and adopted with vote of each member recorded, if proper public announcement is made to those present at the meeting and if such closed session was not contemplated at the time notice for the open session was given. OAG 29-77

April 4, 1977.

LLOYD J. PAUST, *City Attorney*
Columbus

Pursuant to sec. 19.98, Stats., you request my advice on the following question:

Can a governmental body go into closed session at a properly convened open session, for a proper purpose, where advance 24 or 2 hour notice of the closed session was not given at the time notice of the open session was given pursuant to sec. 19.84, Stats.?

The answer is yes, provided that at the time of giving notice of the subject matter or agenda of the session, the chief presiding officer or his or her designee did not contemplate, nor have knowledge that any member of the governmental body contemplated, a closed session.

Section 19.83, Stats., provides:

“Every meeting of a governmental body shall be preceded by public notice as provided in s. 19.84, and shall be held in open session. At any meeting of a governmental body, all discussion shall be held and all action of any kind, formal or informal, shall be initiated, deliberated upon and acted upon only in open session *except as provided in s. 19.85.*” (Emphasis added.)

Sections 19.84(1) and (2), Stats., provide:

“(1) Public notice of all meetings of a governmental body shall be given in the following manner:

“(a) As required by any other statutes; and

“(b) *By communication from the chief presiding officer of a governmental body or such person’s designee to the public, to those news media who have filed a written request for such notice, and to the official newspaper designated under ss. 985.04, 985.05 and 985.06 or, if none exists, to a news medium likely to give notice in the area.*

“(2) Every public notice of a meeting of a governmental body shall set forth the time, date, place and subject matter of the meeting, *including that intended for consideration at any contemplated closed session* in such form as is reasonably likely to apprise members of the public and the news media thereof.” (Emphasis added.)

The obligation to give the required notice is on the chief presiding officer or his designee. Such notice must include information as to subject matter “intended for consideration at any contemplated closed session.” If the chief presiding officer or his designee knows that a closed session is contemplated, such person is obligated to give the required notice. He may actually contemplate a closed session or know that some member will move to go into closed session for some specific purpose. In such case he should give the required notice even though the body may not be able to muster the vote necessary to actually go into closed session. A governmental body may have voted at a properly called open session to go into closed session at a subsequent session. In such case the chief presiding officer should give notice of the subsequent session with contemplated closed session *subject matter noticed. On the given date the body should be convened in open session for again taking a vote of the members then present to determine whether the body should go into closed session.*

In other cases the chief presiding officer or his designee would not have knowledge that a member wishes to move for a closed session and no closed session may in fact have been contemplated on the date the open session notice was given. This would not foreclose a governmental body from going into closed session, for proper purpose, to discuss one or more of the items, or elements thereof, which had been noticed for the open session. Section 19.85(1), Stats., makes specific provision for the procedure to be followed in such case and for *public announcement* of the business to be considered and requires reference to the statutory exemption or exemption by which such closed session is claimed to be authorized.

Section 19.85(1), Stats., provides in material part:

“(1) *Any meeting of a governmental body, upon motion duly made and carried, may be convened in closed session under one or more of the exemptions provided in this section. The motion shall be carried by a majority vote in such manner that the vote of each member is ascertained and recorded in the minutes. No motion to convene in closed session may be adopted unless the chief presiding officer announces to those present at the meeting at which such motion is made, the nature of the business to be considered at such closed session, and the specific exemption or exemptions under this subsection by which such closed session is claimed to be authorized. Such announcement shall become part of the record of the meeting. No business may be taken up at any closed session except that which relates to matters contained in the chief presiding officer’s announcement of the closed session. ...*” (Emphasis added.)

BCL:RJV

Counties; County Board; Forests; Land; Natural Resources, Department Of; Public Lands; County boards cannot sell or exchange county forest lands without first withdrawing them from the county forest program under sec. 28.11(11), Stats. The term “exchange” does not include a sale for valuable consideration. OAG 30-77

April 5, 1977.

PATRICK H. STIEHM, *District Attorney*
Washburn County

Your predecessor asked whether sec. 28.11(3)(c), Stats., allows a county board to “exchange” 80 acres of isolated county forest land for 40 privately-owned acres surrounded by other county forest land, along with \$6,000 cash as added consideration.

The term “exchange” signifies a transaction in which the parties give each other things of approximately equal character or value, each as consideration for the other, but in which neither offering consists wholly or in substantial part of money. *Black’s Law Dictionary*, 4th Edition. See also, *Lang v. Fuller*, 21 Wis. 122 (1866); *Topzant v. Koshe*, 252 Wis. 585, 9 N.W.2d 136 (1943). Thus, the proposed transaction described in your letter may be more aptly characterized as an “exchange” of 40 acres for 40 acres, coupled with a “sale” of another 40 acres for money.

Section 28.11(3)(c) authorizes the exchange of “other county-owned lands” for the purpose of consolidating and blocking county forest holdings. This is the only proper purpose for such exchange. 40 OAG 57, 58 (1951). However, I read the power to exchange to be limited to non-forest lands. This is based upon the use of “other” to describe those county-owned lands subject to exchange. The term “other county-owned land” is not synonymous with “county forest land.” While all land in a county forest is county-owned land, all county-owned land is not in county forest status. Section 28.11(3) is at least ambiguous, and I believe the ambiguity should be resolved in favor of the legislative scheme to preserve county forest land or at least subject its withdrawal to the scrutiny of the public and the Department of Natural Resources.

Hence, before the county board either exchanges the first portion or “sells” the second portion of the county forest acreage, it first must withdraw the lands from the county forest under sec. 28.11(11), Stats. The terms of that section evince a strong legislative purpose to discourage the withdrawal of lands from the county forest program, although once withdrawn under sec. 28.11(11), they are subject to sale under sec. 59.07(1)(b), or exchange under sec. 28.11(3), Stats.