

committee's duties, viz., the construction or maintenance of highways.

Your second question is whether, if this land is owned by the county for highway purposes, sale must be at "public sale" under sec. 83.08(4), Stats., or whether the land may be sold at private sale pursuant to sec. 59.07(1)(c), Stats.

I am of the opinion that the land must be sold at "public sale" pursuant to sec. 83.08(4), Stats., since that is a specific statute which would control over power the county has under sec. 59.07(1)(c), Stats., which is a general statute. The opinion in 60 Op. Att'y Gen. 425 (1971) did not refer to sec. 83.08(4), Stats., but did cite cases which indicated that sales of public lands may be limited by express statute.

Section 83.08(4), Stats., provides:

"(4) Subject to the approval of the highway commission *the county board is authorized and empowered to sell at public sale property, owned by the county in fee for highway purposes*, when the county board shall determine that such property is no longer necessary for the county's use for highway purposes. *The funds derived from such sale shall be deposited in the county highway fund* and the expense incurred in connection with the sale shall be paid from that fund. However, approval of the highway commission is not required where county funds only have been used." (Emphasis added.)

If purchased pursuant to sec. 83.07(2), Stats., the necessary funds came from the county highway fund, and sec. 83.08(4), Stats., provides that where lands held for highway purposes are sold, the proceeds of sale be deposited to such fund.

Your third question is as to the meaning of "public sale" as that term is used in sec. 83.08(4), Stats.

The term is not defined in the statutes and I have not found a Wisconsin case which is directly in point. In *Eldred v. Sexton*, 30 Wis. 193, 199 (1872), the court was concerned with interpretation of a federal statute dealing with the sale of public lands. The court stated:

"It is very evident that the purposes sought to be accomplished by requiring the public lands to be offered at

public sale before they become subject to private entry, are, 1. To give all persons an equal opportunity to purchase the same; and 2, to give the government the benefit of the increased price which might result from competition. ..."

In my opinion a "public sale" as used in sec. 83.08(4), Stats., can be by auction or written bids, and must be held in a public place, to which the public as such has access, pursuant to notice of the time and place of such sale in order that the purchasers may advise themselves of the terms and title of the property and be able to bid on an intelligent and competitive basis, and wherein the property is sold to the highest qualified bidder. See *Matthews v. Linn*, 78 S.D. 203, 99 N.W.2d 885 (1959); *Howell v. Gibson*, 208 S.C. 19, 37 S.E.2d 271, 276 (1946); *In re Nevada-Utah Mines & Smelters Corporation*, 198 F. 497 (S.D. N.Y. 1912); and other cases cited in 35 Words & Phrases, pp. 625-627.

BCL:RJV

Anti-Secrecy; Contracts; Open Meeting; Schools And School Districts; Teachers; "Private conference" held under sec. 118.22(3), Stats., on nonrenewal of teacher's contract is a "meeting" within sec. 19.82(2), Stats., and school board could hold closed session under sec. 19.85(1)(c), Stats., although specific notice to teacher under sec. 19.85(1)(b) would have to be given where nonrenewal was based on charges and teacher would have right to require open meeting where evidentiary hearing was held or before final action or nonrenewal where charges were involved. OAG 60-77

July 19, 1977.

JAMES F. CLARK, *Legal Counsel*

Wisconsin Association of School Boards

You asked what effect subch. IV of ch. 19, Stats., entitled "Open Meetings of Governmental Bodies," has on the provisions of sec. 118.22(3), Stats.

Section 118.22(3), Stats., provides:

“At least 15 days prior to giving written notice of refusal to renew a teacher’s contract for the ensuing school year, the employing board shall inform the teacher by preliminary notice in writing that the board is considering nonrenewal of the teacher’s contract and that, if the teacher files a request therefor with the board within 5 days after receiving the preliminary notice, the teacher has the right to a private conference with the board prior to being given written notice of refusal to renew his contract.”

Specifically you ask the following questions:

“Question 1: Is the ‘private conference’ a ‘meeting’ within s. 19.82(2), stats.?”

Subchapter IV of ch. 19, Stats., applies to every “governmental body” defined by sec. 19.82(1), Stats., holding “meetings” as defined by sec. 19.82(2), Stats. Section 118.22(3), Stats., grants the teacher a right to a private conference with the “board,” not merely a conference with a representative of the board. A school board convening under sec. 118.22(3), Stats., is holding a meeting “for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body” (sec. 19.82(2), Stats.), and therefore, is subject to the provisions of subch. IV of ch. 19, Stats.

“Question 2: If so, is the proper purpose for convening the ‘private conference’ in closed session the consideration of employment under s. 19.85(1)(c), stats., or the consideration of dismissal under s. 19.85(1)(b)? Please note that the Wisconsin Supreme Court has characterized ‘nonrenewal’ as *not re-hiring*, while ‘dismissal’ means to *remove from employment*, as by *discharge*. *Hortonville Education Association v. Joint School District No. 1*, 66 Wis. 2d 469, 481 (1975); *Richards v. Board of Education*, 58 Wis. 2d 444, 460b (1973); and *Millar v. Joint School District*, 2 Wis. 2d 303, 312 (1957).”

The first stage in the usual nonrenewal case is properly a matter for a closed session under sec. 19.85(1)(c), Stats.¹ The board should

¹ Section 19.85(1)(c) permits closed sessions for the purpose of “Considering employment, promotion, compensation or performance evaluation data of any public

give notice of the meeting with the agenda item that the board will convene in closed session, pursuant to sec. 19.85(1)(c), Stats., to consider the nonrenewal of teacher contract or contracts. The procedure for convening in closed session in sec. 19.85(1), Stats., should be followed. Names need not be given and no notice need be given, at this stage, to individuals involved, where no charges have been made which will be investigated. Nonrenewal is “Considering employment” and it is proper to consider performance evaluation data. The board can determine which teacher contracts it tentatively intends not be renewed in closed session.

The second stage of nonrenewal proceedings is the procedure under sec. 118.22(3) involving notice to the individual teacher and an opportunity for a private conference. Notice of this conference must be given under sec. 118.22(3), Stats., to the individual teacher. The teacher has a right to a private conference before there is any final determination of nonrenewal and before written notice of nonrenewal is given. Nonrenewal not based on charges is not dismissal in the usual sense. *Hortonville Ed. Asso. v. Joint Sch. Dist. No. 1*, 66 Wis.2d 469, 481, 225 N.W.2d 658 (1975). When a school board proceeds under sec. 118.22, Stats., to consider the renewal of a contract of a nontenured teacher, it is considering an employment relation, and a “hearing” is not required unless charges are made which damage his or her good name, reputation, honor or integrity or when refusal to reemploy imposes stigma or other disability. *Richards v. Board of Education*, 58 Wis.2d 444, 206 N.W.2d 597 (1973).

The question remains, however, whether the word “dismissal” in sec. 19.85(1)(b) should be given a broader meaning allowing the teacher in a private conference to decide under sec. 19.85(1)(b) whether the meeting should be open to the public. The plain language of sec. 118.22(3), Stats., does not grant a right to a hearing, but rather to a private conference. Our courts have said that a nonrenewal is not a dismissal. Consequently I am of the opinion that notice is properly given under sec. 19.85(1)(c) and that a teacher does not have a right to turn such private conference into an open

employe over which the governmental body has jurisdiction or exercises responsibility.”

meeting unless the test for damage or disability set forth in *Richards, supra*, is met.

“Question 3: Under what circumstances or occurrences, if any, are the provisions of s. 19.85(1)(b) regarding an ‘evidentiary hearing’ applicable to the ‘private conference’?”

If a nonrenewal is preceded by charges which might damage the good name, reputation, honor or integrity of a teacher or where nonrenewal may impose substantial stigma or other disability, a board should initially give notice of the meeting with an agenda item that it intends to go into closed session under both subsecs. (b) and (c) of 19.85(1), Stats. Subsection (b) is involved where the board is to investigate “charges against such person” and although nonrenewal may not be dismissal, it borders on discipline where serious charges are concerned, especially where the charges involve reputation, etc., as above. The individual would not have to have personal notice of the initial closed session (although I would recommend such notice), but would have to have actual notice of any closed session which consisted of an evidentiary hearing, or at which final action of nonrenewal were to be taken so that he or she could exercise the right to have such evidentiary hearing or meeting held in open session.

I consider the words “evidentiary hearing” as meaning a formal examination of *charges* by the receiving of testimony from interested persons, irrespective of whether oaths are administered, and receiving evidence in support or in defense of specific charges which may have been made. Where an evidentiary hearing is held, the parties are entitled to seasonably know the charges and claims preferred, have a right to meet such charges or claims by competent evidence, and the right to be heard by counsel upon the probative force of evidence adduced and upon the law applicable thereto.

BCL:RJV

Automobiles And Motor Vehicles; Intoxicating Liquors; Malt Beverages; Minors; Motor Vehicles; Section 346.93, Stats., contains two prohibitions: first, an absolute ban on a minor’s possession of intoxicating liquor in a motor vehicle; second, a ban on a minor’s possession of any malt beverage in a motor vehicle while any person under 18 years of age is a passenger or present in such motor vehicle. In order for a violation of that second prohibition to occur, a person under the age of 18 years *in addition to the violator of the statute* must be present in the vehicle. OAG 61-77

July 21, 1977.

DAVID T. PROSSER, JR., *District Attorney*
Outagamie County

Your predecessor, Mr. Kenneth F. Rottier, requested my opinion regarding the proper interpretation of sec. 346.93, Stats.:

“**346.93 Intoxicants in vehicle carrying minor.** No person under the age of 18 years, unless he is a parent, guardian or spouse of the minor, may knowingly possess, transport or have under his control any intoxicating liquor in any motor vehicle, or knowingly possess, transport or have under his control any malt beverage in any motor vehicle while any person under 18 years of age is a passenger or present in such motor vehicle unless such person is employed by a liquor licensee, wholesaler, retailer, distributor, manufacturer or rectifier and is possessing, transporting or having such beverage in a motor vehicle under his control during the regular working hours and in the course of his employment.”

He stated that there are two different interpretations that have been accorded the statute. It was his view that the statute means “a minor is proscribed from possessing, transporting or controlling intoxicating liquor or beer in a motor vehicle while *another person*, who is also a minor, is present in that motor vehicle.” (Emphasis yours.) He described the opposing view as follows:

“Other municipalities in this county, however, interpret the statute to mean that a juvenile who possesses, transports, or controls intoxicating liquor or beer in a motor vehicle may be