

prosecutes a forfeiture action under sec. 19.97(1), Stats., the forfeiture is payable to the county which also bears the cost of prosecution. Construction of sec. 895.46(1), Stats., to require the county to also pay the judgment of forfeiture, costs, and attorneys' fees of a county official adjudged to be in violation of the open meeting law would lead to an absurd result. Similar absurdity would result if sec. 895.46(1), Stats., were construed to require a city to pay the judgment of forfeiture, costs, and attorneys' fees of a city official adjudged to be in violation of the open meeting law even where such official had timely requested and had been denied legal representation. A city may directly provide its officials with legal representation to defend alleged violations of the open meeting law, and may, insofar as sec. 895.35, Stats., permits, reimburse such officials for reasonable expenses incurred, but cannot reimburse for any forfeiture imposed, and cannot utilize the provisions of sec. 895.46(1), Stats., with respect to the payment of judgments for forfeitures, costs or attorneys' fees.

You also inquire whether a council member can have legal fees incurred in defending an action, in which such member has been charged with a violation of the open meeting law, paid by a liability insurance policy covering city officials.

Section 66.18, Stats., empowers municipalities to procure liability insurance to cover their officers, agents and employees. If a policy were available it is my opinion that the same tests as given above would apply as to the payment of legal costs or forfeiture. It is my opinion that such officer could not be reimbursed, indirectly, for payment of the "forfeiture," from a policy purchased by the municipality. Section 19.96, Stats., prohibits the municipality from direct reimbursement of any forfeiture imposed, and that which is prohibited directly cannot be accomplished by indirect means involving payment of public funds by the municipality.

BCL:RJV

Newspapers; Open Meeting; Requirements of notice given to newspapers under sec. 19.84(1)(b) and (3), Stats., discussed. OAG 65-77

August 3, 1977.

JOSEPH A. SCHACKELMAN, *Publisher and General Manager*
Union Co-operative Publishing Company

You ask what duties are imposed on a newspaper to publish notice when given to the newspaper by a governmental body as provided by sec. 19.84(1)(b), Stats.

Section 19.84, Stats., provides in part as follows:

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

"(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."

A governmental body, thus, must give notice to the public (by posting in the courthouse or other place frequented by the public), to the requesting news media, to the official newspaper (daily or weekly), but if none exists, to a news medium (newspaper, radio, television) "likely to give notice in the area."

As to the newspaper, official or otherwise, the governmental body has satisfied the statutory requirement by giving timely notice of its meeting to the newspaper. When the governmental body transmits a meeting notice to the newspaper, the newspaper is not obliged to publish the notice. Further, the governmental body is not obliged to pay for publication of such notice as in the case of an official legal notice. The governmental body would be required to publish legal notice in a newspaper only if required by another statute. Sec. 19.84(1)(a), Stats.

The publishing schedule of a particular newspaper does not dictate the giving of notice. The statute governs notice. Section 19.84(3), Stats., provides:

"(3) Public notice of every meeting of a governmental body shall be given at least 24 hours prior to the commencement of

such meeting unless for good cause such notice is impossible or impractical, in which case shorter notice may be given, but in no case may the notice be provided less than 2 hours in advance of the meeting.”

Where a newspaper or other news media publish notices of meetings of governmental bodies as a public service, however, a governmental body is well advised to submit notices of meetings, or better yet notices of meetings plus agenda thereof, well in advance of the minimum 24-hour requirement in order to take advantage of the news media’s public service policy, especially when the news media publishes only weekly.

Upon receipt of a notice of a meeting of a governmental body not required to be published as a legal notice, the newspaper, thereupon, may publish notice of the meeting as a public service, dispatch a reporter to cover the meeting or possibly answer inquiries by the public about the meeting.

BCL:JPA

Articles Of Incorporation; Charitable Organizations; Corporations; Housing; Taxation; Standards for determining whether a nonprofit corporation qualifies for tax exempt status as a retirement home under sec. 70.11(4) discussed. OAG 66-77

August 10, 1977.

CAROL TOUSSAINT, *Secretary*

Department of Local Affairs and Development

Your predecessor asked whether certain apartment buildings, owned and operated by private, nonprofit corporations, and occupied to a certain extent by elderly tenants, qualify for general property tax exemption under sec. 70.11(4), Stats. The pertinent portion of that statute, which exempts certain property from general property taxes, provides:

“Property owned and used exclusively by educational institutions offering regular courses 6 months in the year; or by churches or religious, educational or benevolent associations,

including benevolent nursing homes and retirement homes for the aged” (Emphasis supplied.)

The underscored language was added to the statute by ch. 64, Laws of 1967.

Your predecessor stated that this question is one of increasing concern to local government, to your Department, to the Wisconsin Housing Finance Authority, and to the Federal Department of Housing and Urban Development and Farmers Home Administration. Some private nonprofit housing corporations have applied to your Department and to the Wisconsin Housing Finance Authority for approval of the use of certain federal subsidy funds, on the assumption that their apartment buildings will enjoy a tax exempt status. Your Department and the Wisconsin Housing Finance Authority have taken the position that such applications cannot be approved on a tax exempt basis. Your predecessor pointed out that a person need not be retired to rent one of these apartments, but priority must be given to persons over 62 years of age. To achieve a desired occupancy rate, apartments may be rented to persons under 62 years of age, who may, upon notice, be required to vacate in favor of an eligible person over 62 years of age. These buildings must contain certain design features, such as handrails in the corridors, which make the buildings more suitable for elderly residents. Services such as meals, housekeeping, or nursing care are not provided, and the occupant must be capable of living independent of such support services.

A leading case on this subject is *Milwaukee Protestant Home v. Milwaukee*, 41 Wis.2d 284, 164 N.W.2d 289 (1969). The Milwaukee Protestant Home for the Aged brought an action to have its real and personal property declared exempt from property taxation by the City of Milwaukee. The home was a nonstock, nonprofit, membership corporation organized solely for charitable purposes. The specific purpose, as set forth in its charter, was “specifically, to own and operate a residence and nursing home for aged persons and to do and perform any and all acts as may be necessary to the furtherance of such purposes.” 41 Wis.2d at 288. The articles of incorporation provided that no part of the home’s net earnings should inure to the benefit of or be distributable to its members, directors, officers, or any private shareholder or individual. Since it was founded in 1884, the home had grown from a small