as well as the judicial, branch of the state government has been seeking to improve the administration of justice. It is apparent to us that the legislature intended to further this purpose in providing for the transfer of all civil actions to one of the specified courts. In the rural areas where such courts are not available the police justice courts established by the cities or villages will still have exclusive jurisdiction of city and village-ordinance violations as against other justices of the peace. The statutes, although apparently in conflict, are not irreconcilable, and our interpretation leaves all of the statutes in effect."

In my opinion the reasoning of the court in *Mitchell* is applicable to the reconciliation of secs. 345.315 and 300.055, Stats., and thus, sec. 345.315 does not supersede sec. 300.055. It is my opinion that the Legislature did not intend to override the important right of a defendant in a traffic case to transfer from a municipal court to the county court.

Your predecessor also pointed out that there is some difficulty with the provision in sec. 300.055 which provides that a transfer may be requested "at any time prior to trial." You inquire whether municipal judges may require defendants to pay witness fees and clerk's fees as a condition to last minute transfers. In my opinion, such transfers are a matter of right upon request and payment of the $1.00 fee. The statute does not permit imposition of other conditions.

BCL:RJV

Anti-Secrecy; Open Meeting; Schools And School Districts; Where school board permits citizens to appear at regular meeting and notes fact in agenda and notice, board may discuss and act on such matters, if urgent, even though express subject was not referred to in notice. There is no requirement that the board delay the matter until the next meeting, although nothing would prevent it from doing so either. OAG 19-77

February 28, 1977.

GARY K. JOHNSON
State Representative

Pursuant to sec. 19.98, Stats., you request my advice on two questions under facts stated below.

You state that the Beloit School Board utilizes an agenda for its regular meetings and that a portion of the meeting is devoted to presentations by "Citizens and Delegations." In the past, certain citizens who have been permitted to speak have requested the board to act on subjects which were not included in the matters which the board had included in its agenda and which the board had given notice to the public and news media as being within the stated purpose of the meeting. On January 7, 1977, the board's attorney advised that "The basic concept of the open meeting law is to give notice, in advance, of the subject matter that will be acted upon or even discussed," and that "unless extreme urgency exists, the board may wish to withhold all discussion or consideration of a subject presented by a member of the board or audience so that the subject matter can be incorporated in a written notice for a future meeting." At the February 1, 1977, meeting, the board refused to permit a delegation of students to address the board to present a school smoking proposal and to discuss cheerleading at games because the subjects were not listed on the agenda and notice. The board did receive written proposals on the smoking proposal and referred it to the policy committee for consideration at the March meeting. The board adopted a policy that citizens or board members wishing to bring up new items for discussion at meetings must contact the Superintendent by the Monday a week prior to the meeting in order to have the subject included on the agenda.

Your specific questions are:

"(1) Does anything in Subchapter IV of Chapter 19, Wis. Stats., prohibit a governmental body from receiving at a meeting a communication from a citizen or group which relates to a matter not identified in the notice of that meeting which was given under s. 19.84?

"(2) Would a governmental body violate Subchapter IV of Chapter 19, Wis. Stats., by referring to a committee or agency,

or laying over until the next meeting of the body, a matter which was not noticed under s. 19.84, but which was raised by a member of the public at the meeting?"

Your two questions may be conveniently broken into three questions and answered one at a time.

The first question is whether an agenda item stating simply "Citizens and Delegations" is adequate notice under sec. 19.84(2), Stats. Section 19.84(2), Stats., provides as follows:

> "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 supplied.)

It is my opinion that an agenda item such as "Citizens and Delegations" gives adequate notice to the public of the proposed subject matter of the meeting. If time is set aside in the agenda and notice of the meeting for such matters there is nothing in subch. IV of ch. 19, Stats., which would preclude a governmental body from hearing orderly presentations even though the express subject matter has not been included on the agenda and in the notice of the meeting. Further, such governmental body could on motion of a member, discuss and if urgency required take action on the matter. My opinion assumes that there is no conspiracy between the citizen and the presiding officer to evade the notice requirements of the open meeting law.

The basic thrust of the open meeting law is to provide the best notice available to the public of the nature of the governmental business which will be conducted. This policy does not, in my opinion, require exacting specificity. Thus, such general designations as "miscellaneous business" or "such other matters as may come before the body" are probably adequate notice to the press and the public that items not specifically listed on the agenda may be considered. I would caution, however, that where the presiding officer of a governmental body has specific knowledge that matters may come before the body, they should be included on the agenda.

The second question is whether anything in subch. IV of ch. 19, Stats., requires that a governmental body delay action on matters

which are not specifically noticed under sec. 19.84, Stats., until the next meeting. The answer to this question is no. So long as some general notice of the type of business to be conducted at the meeting is provided, and the general notice is not a subterfuge, the governmental body is not required to refer to committee or delay action until the next meeting of the body.

The third question is whether a governmental body has discretion to refer to committee or delay matters which were generally noticed under sec. 19.84, Stats., until the next meeting. In my opinion, the governmental body does have such authority. The fact that meetings are open to the public does not mean that persons other than board or committee members have a right to speak or otherwise participate in meetings. The degree of participation is a matter for determination by the governmental agency except in the case of an adversary proceeding or hearing required by law in which an interested party may have special rights. Wisconsin Constitution art. I, secs. 3 and 4, and the first amendment to the United States Constitution protect the right of freedom of speech and petition to government for redress of grievances. These constitutional protections are not absolute and are subject to reasonable regulation. Further, they do not mandate the particular procedure to be followed by a governmental body.

State v. Swicker, 41 Wis.2d 497, 164 N.W.2d 512 (1969), appeal dismissed, 396 U.S. 26.

State v. Givens, 28 Wis.2d 109, 135 N.W.2d 780 (1965).

State ex rel. Poole v. Menomonee Falls, 55 Wis.2d 55, 200 N.W.2d 580 (1972).

An agenda item such as "Citizens and Delegations" or "Miscellaneous Business" means only that the governmental body within its discretion may decide to hear such matters. Nothing in the open meeting law or the Constitution prevents any governmental body from referring matters on an agenda to a committee for further study or recommendation or from adjourning without completing all of the business contained on the agenda. These are questions of policy to be resolved by the governmental body.

The provision of a forum for citizen participation and some assurance that this forum is provided on an equal basis to all interested parties is a particularly compelling interest to be weighed

when deciding the question of how to proceed in individual cases on determining a general policy.

BCL:RJV:DJH

Counties; Agriculture; County Board; Supervisors, Board Of; Land; Municipalities; Real Estate; Pursuant to secs. 59.07(1)(a) and 59.873, Stats., a county can own and operate a lime pit in another county, within reasonable distance, if such operation is necessary to obtain sufficient supply to furnish lime at cost to farmers within the county operating such pit. However, absent a cooperation agreement pursuant to sec. 66.30, Stats., lime cannot be sold or distributed to farmers in such other county. OAG 20-77

March 8, 1977.

JAMES C. EATON, *District Attorney*
Barron County

You state that Barron County owns and operates lime quarries in both Barron County and Dunn County and sells lime at cost to farmers in both counties.

You request my opinion whether a county which does not have a cooperation agreement with another county can own and operate a lime pit in another county and can sell lime to farmers in such other county at cost.

I am of the opinion that Barron County can own and operate a lime pit in another county if such pit is within reasonable distance from the boundaries of Barron County, and such operation is necessary for the purpose of selling and distributing lime at cost to Barron County farmers, but that, absent a cooperation agreement, Barron County cannot sell and distribute lime to farmers in such other county.

A "county is a creature of the state and exists in large measure to help handle the state's burdens of political organization and civil administration" at the local level. *State v. Mutter*, 23 Wis.2d 407, 127 N.W.2d 15 (1964), appeal dismissed 379 U.S. 201 (1964). A county board has only such powers as are expressly conferred upon it

by statute or which may be necessarily implied from those expressly given. *Dodge County v. Kaiser*, 243 Wis. 551, 11 N.W.2d 348 (1943).

Wis. Const. art. IV, sec. 22, provides:

> "The legislature may confer upon the boards of supervisors of the several counties of the state such powers of a *local*, legislative and administrative character as they shall from time to time prescribe." (Emphasis added.)

Section 59.873, Stats., provides:

> "The board may manufacture agricultural lime and sell and distribute it at cost to farmers and acquire lands for such purposes."

Section 59.07(1)(a), Stats., provides in part that the county board may:

> "(1)(a) Take and hold land sold for taxes and acquire, lease or rent property, real and personal, for public uses or purposes of any nature, including without limitation acquisitions for county ... lime pits for operation under s. 59.873 ...."

In *Heimerl v. Ozaukee County*, 256 Wis. 151, 157, 40 N.W.2d 564 (1949), which held that then sec. 86.106, Stats., which provided that counties could construct and maintain private roadways and driveways, was unconstitutional, the court referred to then sec. 59.08(18), Stats., which is now sec. 59.873, Stats., the lime statute quoted above, and by *dicta* indicated that the manufacture, sale and distribution of lime at cost to farmers was a *governmental function* necessary to the health, safety and welfare of the *community* as a whole. The conclusion was based on benefit to the community or county concerned. One of the reasons given for striking down sec. 86.106, Stats., was that the power granted was not limited to exercise within the county or municipality concerned but would permit any municipality to "enter into contracts with any county in the state."

In 36 OAG 14 (1947), it was stated that sec. 59.08(18), Stats. (1947), would permit a county to sell lime at cost to a federal agency which would then sell to farmers at the same cost. There was no indication that sales could be to farmers of other counties. In 52 OAG 222 (1963), it was stated that a county could acquire lands outside the county but within three-fourths mile of the county line for a