There is no similar provision permitting agreements to waive for other than vocational-adult courses. It is a rule of statutory construction that the express mention of one item impliedly excludes another. *Appleton v. ILHR Department*, 67 Wis. 2d 162, 172-73, 226 N.W.2d 497 (1975). Having expressly authorized waivers in vocational-adult courses, it follows by implication that there is no authority for waivers in other situations.

Moreover, agencies created by the Legislature have only such powers as expressly are granted to them or necessarily are implied, and any power must be found within the four corners of the statutes under which they proceed. *State ex rel. Farrell v. Schubert*, 52 Wis. 2d 351, 357, 190 N.W.2d 529 (1971). There being no express provision for waiver except for vocational-adult courses, there is no authority for waivers in other situations.

This result is consistent with sec. 66.30(2), Stats., which provides that municipalities may contract with each other "for the receipt or furnishing of services." Each municipality, however, can act only "to the extent of its lawful powers." *Id.* As noted above, the Legislature has taken in hand the question of waiver, has limited it to vocational-adult education, and has not otherwise empowered waivers in additional areas.

Similarly, it follows that the power under sec. 38.24(3)(c), Stats., to contract with other district boards for instructional services cannot imply the power to contract for the services at any price. The Legislature itself has limited the circumstances in which tuition costs can be waived.

In reliance upon 31 Op. Att'y Gen. 155 (1942), it has been suggested that the power of the district boards to charge tuition is discretionary and that, therefore, the power to contract away the nonresident tuition requirements is implied from the discretionary power. 31 Op. Att'y Gen. 155 (1942) discusses an earlier statute relating to charging nonresident tuition. Section 41.19, Stats. (1941), provided that the local VTAE board "is authorized to charge tuition for nonresident pupils." The opinion concluded that the term "is authorized" is permissive rather than mandatory. In contrast to the statute then in effect, however, sec. 38.24(3)(a), Stats., now provides that the VTAE state board "shall establish" nonresident tuition fees which "shall be the liability of the student," except as provided in sec. 38.24(3)(c), Stats. Thus, the language under the current statute is mandatory rather than permissive.

BCL:CDH

Emergency Number Systems Board; Open Meeting; A telephone conference call involving members of a governmental body is a meeting which must be reasonably accessible to the public and the required public notice must be given. OAG 39-80

June 17, 1980.

KENNETH E. LINDNER, *Secretary*
Department of Administration

You note that on May 21, 1979, the Governor issued a memorandum to all state agencies to conserve energy by limiting travel and in part suggested "[t] here should be maximum usage of the telephone and telephone conferencing capabilities, the mails, and other available communication networks in lieu of travel." You state that the Emergency Number Systems Board, which is created by sec. 15.105(9), Stats., and is composed of eleven members, many of whom reside in areas distant from Madison, would like to conduct certain business by telephone for a number of reasons including the conservation of energy.

You inquire "[w] hether telephone conference calls between members of a public body is permissible or whether it constitutes a 'meeting' under Wisconsin's Open Meeting Laws."

The alternatives you present in your question are not necessarily mutually exclusive. Rather, there are two distinct questions. 1. Does a telephone conference call among members of a governmental body constitute a meeting for the purpose of the open meetings law? 2. If it does, is such a meeting permissible?

As to the first question, it is my opinion that a telephone conference call among members of a governmental body, and especially a majority thereof, does constitute a "meeting" as the term is defined in sec. 19.82(2), Stats.:

> "Meeting" means the convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. If one-half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. The term does not include any social or chance gathering or conference which is not intended to avoid this subchapter.

It is true that in a telephone conference call participants do not convene in the traditional sense because they are not physically gathered together. But they are convened in the sense that they can effectively communicate and exercise the authority vested in the body. To hold otherwise would allow the intent and purpose of the law to be frustrated by resort to any one of a number of modern communication techniques that permit communication without the participants being physically gathered together.

The second question is whether a telephone conference meeting may be conducted in a manner that satisfies the open meetings law. It is my opinion that it can.

The legislative policy underlying the open meetings law is stated in sec. 19.81(2), Stats.: "To implement and ensure the public policy herein expressed, all meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times unless otherwise expressly provided by law."

As stated in 67 Op. Att'y Gen. 126 (1978):

> The statute does not require that all meetings be held in publicly owned places but rather in places "reasonably accessible to members of the public." There is no requirement that the place which has the greatest accessibility be utilized or that it be owned by the public. Public meetings are often held in privately owned hotels, theaters, etc.

> *... The test to be utilized is whether the meeting place is "reasonably accessible," and that is a factual question to be determined in each case.*

(Emphasis added.)

A telephone conference meeting may be considered "reasonably accessible" if the public and news media may effectively monitor it. This can be accomplished by the use of a speaker that broadcasts the telephone conference located at one or more sites to which the public and news media have access. In such a situation the public and the media have the same "access" to the discussions as each member of the body who is on the line.

Conversely, a telephone conference meeting that was conducted in such a manner that would deny the public and news media an opportunity to effectively monitor would not comply with the open meetings law.

I might point out that by using more than one public listening site, there is the potential for making a meeting accessible to more people at more locations than the traditional single meeting where the members of a governmental body physically gather.

There are several types of public business which I would consider inappropriate for a conference call meeting. As an example, many public bodies conduct business in a manner which encourages, and in some instances requires, public participation or comment at the meeting. While current technology would allow members of the public to "plug in" or participate through a speaker phone, the process would likely be cumbersome and discouraging to participants. Similarly, many bodies routinely conduct hearings or inquiries where the demeanor of witnesses or participants is valuable in assessing both the weight and credibility of the presentation. Finally, there are meetings where complex plans, engineering drawings, charts, and the like need to be displayed and explained. In my view each of the above situations and like situations would not be "reasonably accessible to the public" because important parts of the deliberations could not or would not be communicated to the public or the media.

As you know, the open meetings law applies to all governmental bodies in the state. Your concern for energy savings and convenience should not in most instances be an excuse for holding telephone con-

ference meetings at the local level where distances are smaller. In principle, the public should be getting the most open and accessible government possible. This opinion holds only that telephone conference calls are an acceptable method of convening a meeting. They are probably not the most desirable method of doing so and should be used sparingly and with the spirit of the law in mind.

Finally, any meeting conducted via a telephone conference call is subject to all the provisions of the open meetings law, secs. 19.81-19.89, Stats., including the public notice requirements under sec. 19.84, Stats.

BCL:DJH:RWL

County Board Of Adjustment; County Planning And Zoning Committee; Zoning; The extent to which sec. 59.99, Stats., authorizes the County Board of Adjustment to grant zoning variances and review decisions of the County Planning and Zoning Committee, discussed. OAG 40-80

June 24, 1980.

JAMES T. BARR, *Corporation Counsel*
Waushara County

You advise that questions have arisen concerning the responsibilities of your County Zoning Board of Adjustment, created under sec. 59.99, Stats. Your first inquiries are in reference to the criteria which it must use in granting zoning variances. You cite several instances where you, the County Planning and Zoning Committee created under sec. 59.97(2)(a), Stats., and the County Zoning Administrator apparently feel that the grant of particular zoning variances by the Board of Adjustment constituted an abuse of discretion.

Before answering your specific questions, I point out that judicial review of decisions of the County Board of Adjustment may be obtained by writ of certiorari upon a proper petition specifying the grounds upon which it is asserted such decisions are illegal. Sec. 59.99(10), (11), (12), (13), Stats. Our supreme court has long held that where a zoning board of appeals has acted arbitrarily and in

abuse of its discretion, its decision will be reversed upon appeal. *State ex rel. Schleck v. Zoning Board of Appeals*, 254 Wis. 42, 35 N.W.2d 312 (1948).

You first ask whether it is proper for a county zoning board of adjustment to grant more than one variance if more than one variance is necessary to allow a structure on a particular lot. In my opinion the answer is yes.

The criteria for granting county zoning variances is set forth in sec. 59.99(7)(c), Stats., as follows:

> (7) **Powers of board.** The board of adjustment shall have the following powers:
>
> ....
>
> (c) To authorize *upon appeal* in specific cases *such variance* from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in *unnecessary hardship*, and so that the spirit of the ordinance shall be observed and substantial justice done.

The word "variance" as used in this provision may be viewed as including the plural as well as the singular. Sec. 990.001(1), Stats. Thus, the validity of the variances granted does not necessarily depend on their number but rather upon whether, upon a full review of the facts, the grounds cited to justify such variances fall within the standards established by sec. 59.99(7)(c), Stats., particularly the requirement that there be "unnecessary hardship." These requirements were most recently discussed and explained in *Snyder v. Waukesha County Zoning Board*, 74 Wis. 2d 468, 479, 247 N.W.2d 98 (1976), where our supreme court sustained a variance denial, holding that the hardship there relied upon by the appellant was "either self-created or no more than personal inconvenience."

In the course of discussing the grant or denial of both use and area zoning variances, the court set forth the following general guidelines:

> In *State ex rel. Markdale Corp. v. Board of Appeals*, 27 Wis. 2d 154, 133 N.W.2d 795 (1965), the court considered, in relation to an appeal for a *use* variance, the definition of unnec-