ful statute." 2A Sands, *Sutherland Statutory Construction*, sec. 49.03 at 233 (4th ed. 1973).

Further, as pointed out in *Sutherland*, "Interpretive regulations by officers, administrative agencies, departmental heads and others officially charged with the duty of administering and enforcing a statute, and their practices which reflect the understanding they have of provisions they are charged to carry out, have *great weight* in determining the operation of a statute." *Id.*, sec. 49.05 at 238 (emphasis supplied).

I have been advised that the departments of state government charged with enforcement of the provisions here involved, which have from time to time been the Department of Justice and the Department of Revenue and is now the Department of Revenue, have in fact interpreted these provisions. Since 1950 the statutes have been continuously interpreted and applied to require exclusion of the general public from all facilities, including golf courses, of a club in order for that club to qualify for the "country club" liquor licenses issued pursuant to the instant statutes. If the club allows its golf course, its dining room or bar facilities, or any other facilities to be used by the general public, that club loses its status as a "country club" under the pertinent statutes and is disqualified from obtaining country club liquor licenses. There has therefore been thirty years of contemporaneous and practical interpretation of these statutes by the agencies involved in, and charged with, their enforcement.

It may also be interesting to note that the Legislature apparently gave recognition to this long-standing construction in 1969 by virtue of 1969 Assembly Bill 75. That bill attempted to amend that statute by adding the following language: "Neither status of patrons as to whether or not they are club members, guests or members of the general public nor source or amount of income of the club shall be considered in determining whether any country club is entitled to any license under this chapter." On August 29, 1969, the Governor vetoed that bill. The Legislature failed to override that veto on October 22, 1969, and the Legislature has apparently never attempted again to amend that statute.

It should also be noted that it has been said in this regard that to interpret a statute in a way which would overtax enforcement machinery is considered to be unreasonable and is therefore disfavored. *See United States v. Del Toro*, 513 F.2d 656 (2d Cir. 1975).

It would appear reasonable to conclude further that to interpret these statutes so as to allow the general public to use part of the facilities, but not other parts, would result in overtaxing the enforcement machinery in checking to see whether or not any members of the general public who have been using the golf course have entered and are using the clubhouse bar facilities thereby resulting in violation of the liquor and beer laws. Such an interpretation would therefore be unreasonable and should be disfavored.

Therefore, based upon the approximate thirty years of contemporaneous and practical interpretation of the statutes involved, together with the Legislature's apparent recognition of that interpretation and failure to change the law, I conclude that if a country club opens any of its facilities to the use of the general public it becomes ineligible to receive a "country club" liquor or beer license from the Secretary pursuant to secs. 176.05(4a) and 66.054(23), Stats. In addition, to conclude otherwise would unreasonably overtax the enforcement machinery.

BCL:JCM

Open Meeting; State governmental bodies are required to hold meetings in places which are accessible, without assistance, to persons with disabilities. Local governmental bodies are required to hold meetings in places which are accessible with or without assistance to persons with disabilities. OAG 67-80

December 4, 1980.

LEE SHERMAN DREYFUS, *Governor*
State of Wisconsin

At the request of the Governor's Committee for People with Disabilities you ask my opinion on three questions which relate to the open meetings law.

1. Does s. 19.81, Wisconsin Statutes, mean that governmental bodies including local governmental bodies are limited in

their discretion in deciding whether to conduct the meetings in places that are physically accessible to persons with disabilities?

The answer is yes. Section 19.81(2), Stats., provides: "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."

The statute is applicable to both state and local governmental bodies and to meeting places for open as well as closed sessions. A meeting cannot be initially convened in closed session. An open session must precede a closed session for the purposes of taking a vote and making announcement as required by sec. 19.85(1), Stats., even though notice of the contemplated closed session has been given pursuant to sec. 19.84(2), Stats. *See* sec. 19.83, Stats. The words in sec. 19.81(2), Stats., "shall be publicly held in places reasonably accessible to members of the public" when read in conjunction with the words "open to *all citizens* at all times unless otherwise expressly provided by law" mean that meeting places must be reasonably accessible to all citizens, including those with disabilities.

A local governmental body has greater leeway in the selection of a meeting place than does a state governmental body. The Legislature has defined what standards are applicable to state governmental bodies. Sections 19.82(3) and 101.13(1), Stats., provide:

> (3) "Open session" means a meeting which is *held in a place reasonably accessible to members of the public* and open to *all citizens* at all times. In the case of *a state governmental body*, it means *a meeting* which is *held in a building and room thereof which enables access by persons with functional limitations, as defined in s. 101.13 (1)*.

> 101.13(1) In this section, "access" means the physical characteristics of a place which allow persons with functional limitations caused by impairments of sight, hearing, coordination or perception or persons with semiambulatory or nonambulatory disabilities to enter, circulate within and leave a place of employment or public building and to use the public toilet facilities and passenger elevators in the place of employment or public building without assistance.

In my opinion local governmental bodies can utilize meeting places reasonably accessible, *with assistance*, to persons with disabilities.

> 2. If a reasonable opportunity exists to conduct such meetings in accessible rooms of comparable size, is there discretion to choose a non-accessible location on the basis of convenience (i.e. immediate access to records or files) or tradition?

The answer is no. The statutory provisions set forth above indicate a legislative intent that reasonable access to all members of the public is to be accorded a higher priority than access of members to records and files or tradition.

> 3. If an accessible room for such meeting is not available and a person with physical limitations expresses a desire to attend, does the governmental body have a duty to make special arrangements to enable the person to attend?

As noted above, state governmental bodies must schedule meetings for and meet in a building and room which enables access by persons with functional limitations as defined in sec. 101.13(1), Stats. That provision would be violated if a meeting were held in a building or room which did not meet the standards set forth in sec. 101.13(1), Stats., even if assistance were given to a disabled person. Local governmental bodies should attempt to schedule and hold meetings in buildings and rooms which meet the standards set forth in sec. 101.13(1), Stats. Where a local governmental body is involved, a place which would not qualify under sec. 101.13(1), Stats., might still be reasonably accessible to persons with disabilities if some assistance were furnished to such persons. The governmental body would have a duty to furnish reasonable assistance to make the building and room reasonably accessible, or in the alternative, would have to adjourn the meeting until a reasonably accessible meeting place were available.

You also request my opinion on five questions which relate to obligations of counties to deliver services to mentally and physically disabled persons in a county other than that of residence and under various, and sometimes disputed, residency conditions. The underlying theme of the five questions is a delineation of state versus county responsibility for the individuals in the various hypothetical situations. It would be improper for me to offer an opinion on these five

questions at this time since these matters are presently in litigation in which our office is serving as counsel for state interests. We will respond to the five questions when the litigation is completed if the litigation does not answer the questions.

BCL:RJV

Courts; Criminal Law; Law enforcement officials may require a person appearing pursuant to a summons to be fingerprinted and photographed. A court may condition a person's release from custody on bail upon the taking of fingerprints and photographs. OAG 68-80

December 10, 1980.

JOHN R. WAGNER, *Circuit Judge*
Grant County

This is in response to your inquiry as to whether a person may be fingerprinted and photographed when he or she appears at an initial appearance as a result of a summons. You also ask if a person's release from custody on bail may be conditioned upon the taking of fingerprints and photographs.

It is my opinion that a person may be fingerprinted and photographed when he or she appears at an initial appearance as a result of a summons for offenses embraced in sec. 165.83(2)(a), Stats.[1] It is also my opinion that a court may require fingerprinting and

[1] Section 165.83(2)(a), Stats., reads in material part:

1. For an offense which is a felony.

2. For an offense which is a misdemeanor or a violation of an ordinance involving burglary tools, commercial gambling, dealing in gambling devices, contributing to the delinquency of a child, dealing in stolen property, controlled substances under ch. 161, firearms, dangerous weapons, explosives, pandering, prostitution, sex offenses where children are victims, or worthless checks.

3. For an offense charged as disorderly conduct but which relates to an act connected with one or more of the offenses under subd. 2.

4. As a fugitive from justice.

5. For any other offense designated by the attorney general.

photographing as a condition to be fulfilled prior to release from custody on bail.

Section 165.84(1), Stats., requires law enforcement agencies to obtain fingerprints and photographs "of each person arrested or taken into custody for an offense of a type designated in sec. 165.83(2)(a)." The offenses for which a person may be subject to fingerprinting and photographing are not limited to felonies. Fingerprints and photographs may be required of those charged or taken into custody for certain misdemeanors as well. Section 165.83(2)(a)2, Stats. While it is clear, under sec. 165.84(1), Stats., that a person may be fingerprinted and photographed when arrested, the question here is whether a person who is appearing pursuant to a summons is one who is "taken into custody" and therefore subject to fingerprinting and photographing.

A person is in custody when appearing pursuant to a summons, because a summons duly served is a mandate requiring the individual to appear. There is no doubt that an individual appearing pursuant to a summons is "in custody," and therefore subject to having fingerprints and photographs taken because failure to appear pursuant to the summons would result in a warrant for arrest. *United States v. Laub Baking Co.*, 283 F. Supp. 217 (N.D. Ohio 1968).

In answering your second question, it is my opinion that a judge, although not required to do so, may impose a fingerprinting and photographing requirement as a condition of bail.

A defendant has both a statutory and constitutional right to bail. Section 969.01(1), Stats.; *Whitty v. State*, 34 Wis. 2d 278, 149 N.W.2d 557 (1967). The court can, however, condition release on bail on the defendant's compliance with certain conditions. The conditions imposed must be authorized, explicitly or impliedly, by law.

Section 969.03(1)(e), Stats., as amended by ch. 112, Laws of 1979 (effective March 1, 1980), provides that the court can impose a bail condition deemed reasonably necessary to assure appearance or deemed reasonably necessary to protect public or individual safety. Requiring a defendant to submit to fingerprinting and photographing appears reasonably necessary both to assure appearance and to protect public or individual safety.