



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

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April 26, 1993

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I-5-93

Ms. Elizabeth Adelman  
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308 East Juneau  
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Dear Ms. Adelman:

You have requested my opinion on whether it is permissible under the open meetings law for a governmental body to discuss a subject matter at a meeting, although the subject matter is not included in the public notice of the meeting. I understand that this issue has come up a couple of times when you have been advising a town board on compliance with the open meetings law. In one specific instance, a member of the public raised an issue at a meeting of the town board. Members of the town board discussed but did not take formal action on the issue. The public notice for the meeting included neither the specific subject matter raised by the citizen nor a general subject matter such as "citizens and delegations."

You indicate that you have advised the town board that the open meetings law requires the board to refrain from discussing any subject matter that is not contained in the public notice of the meeting. In my opinion, your advice is correct.

As you are aware, the open meetings law requires that a governmental body give advance public notice of each of its meetings. Sec. 19.84, Stats. The law provides that every public notice of a meeting "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." Sec. 19.84(2), Stats. As you point out, on at least two occasions, the supreme court has unequivocally held that the open meetings law applies when a governmental body is merely gathering information on or discussing a subject matter, not simply when a governmental body is taking action. State ex rel. Badke v. Village Board of the Village of Greendale, Case No. 91-0126, (January 26, 1993) at 14; State ex rel. Newspaper v. Showers, 135 Wis. 2d 77, 92, 398 N.W.2d 154 (1987). Reading the requirement in section 19.84(2), Stats., that a governmental body provide notice of the subject matter of its meetings, in conjunction with the court's holdings in Badke and Showers, compels the conclusion that

a governmental body violates the open meetings law if it engages in information gathering or discussion on a subject matter that is not included in the public notice of the governmental body's meeting.

An attorney from the Wisconsin Towns Association has advised you that the town board may discuss subject matters that are not of great importance or public concern at a meeting for which notice of the specific subject matter was not given, provided that the public notice contains a general subject matter designation such as "citizens and delegations" or "miscellaneous business." In so advising you, the Towns Association attorney relied on a series of opinions issued by my predecessor in 1977, which concluded that, in limited circumstances, a governmental body could legitimately discuss, and even act on, subject matters that were not specifically noticed, provided that the public notice of the meeting contained a general subject matter designation. See 66 Op. Att'y Gen. 68 (1977); 66 Op. Att'y Gen. 93 (1977); 66 Op. Att'y Gen. 143 (1977) and 66 Op. Att'y Gen. 195 (1977). It is my understanding that the public notices for the meetings about which you are concerned did not contain a general subject matter designation. The 1977 opinions by my predecessor are not relevant under the facts as I understand them.

Moreover, the prior opinions draw a distinction between discussion and decision-making by suggesting that the extent to which a governmental body may discuss a matter under a general subject matter designation is broader than the extent to which a governmental body may take action under a general subject matter designation. At the time my predecessor issued the opinions, the supreme court had suggested that the open meetings law applied to information gathering and discussion, as well as decision-making, but had not explicitly held so. See State ex rel. Lynch v. Conta, 71 Wis. 2d 662, 684, 239 N.W.2d 313 (1977). Since that time, the supreme court has unequivocally held, in both Showers and Badke, that the open meetings law applies to information gathering and discussions, as well as decision-making. Badke, Case No. 91-0126 (January 26, 1993) at 11-22; Showers, 135 Wis. 2d at 92.

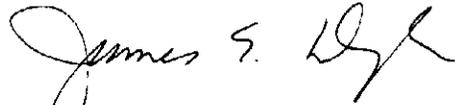
In the prior opinions, my predecessor stressed that reliance on general subject matter designations was minimal compliance with the open meetings law. See 66 Op. Att'y Gen. at 96; see also 66 Op. Att'y Gen. at 197. Reliance on such general subject matter designations is now even more suspect in light of the Showers and Badke decisions. In light of those decisions, I am of the opinion that the only way to strictly comply with the letter and spirit of the open meetings law is to adopt a policy under which board members and citizens wishing to bring up items for discussion at a meeting must contact the chairperson in advance in order to have the specific subject included on the public notice of the meeting. If the meeting notice contains a general subject matter designation

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and a subject that was not specifically noticed comes up at the meeting, a governmental body should refrain from engaging in any information gathering or discussion or from taking any action that would deprive the public of information about the conduct of governmental business. More specifically, the governmental body should limit itself to answering basic questions from the public that do not require board discussion or deliberation (questions, for example, regarding when the body will consider the matter raised; how long a particular policy has been in place; when committees meet, etc.) and to placing the matter on a future agenda or referring it to an official or a committee.

I hope that these guidelines are helpful to you in providing advice on the requirements of the open meetings law. Obviously, there are going to be some gray areas even after applying the guidelines. In those cases, a governmental body should rely on the advice of its legal counsel and should keep in mind that, when in doubt, the body should resolve questions in favor of affording the public the greatest possible access to the government body's information gathering and discussions, as well as decision-making.

Sincerely,

  
James E. Doyle  
Attorney General

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