

December: Early case sheds light on records

Written by By Bill Lueders

Walter H. Besley may well have been Wisconsin's first open-government crusader.

Back in 1853, five years after Wisconsin became a state, Besley, the clerk of circuit court in Jefferson County, billed the county board of supervisors \$22 for two expenses: wood to furnish his office, and a large box of candles to light and warm it.

The board rejected the expenditure. Besley sued and won. The board was ordered to pay these expenses, plus interest and "the costs of suit."

In 1856, the Wisconsin Supreme Court heard the case on appeal. It affirmed the circuit court's ruling, citing a state law mandating that the clerk and other county officials "keep his office open during business hours, Sundays excepted, and all books and papers required to be kept in this office shall be open for the examination of any person."

The court said the legislature's intent was clear, "to accommodate the wants of the citizens" who had business to transact. "To require these officers to keep their offices open during business hours," it wrote, "and yet provide no means of warming or lighting them, would be simply absurd."

While the law did not require the clerk "to keep a tavern" – which presumably would also accommodate the wants of some citizens – "it is clearly the object and intention of the statute that these county offices shall be kept open, and in a suitable condition...." Thus the expenses presented by Besley were "a proper and legal county charge" that the board was wrong to reject.

This case, *The County of Jefferson vs. Besley*, was uncovered recently by lawyers at the Madison office of Godfrey & Kahn who were researching the authenticity of an entry on Wikipedia, the online encyclopedia.

The entry, "Freedom of Information in the United States," states that the nation's first open

December: Early case sheds light on records

Written by Bill Lueders

records law was passed in Wisconsin shortly after it became a state.

This was news to me and other members of the Wisconsin Freedom of Information Council. We knew the state's current public records law was passed in 1981, replacing an earlier version that was on the books since 1917. But Wisconsin's pioneering role in this area was apparently lost to history – until this Wikipedia entry.

The Besley case in hand, I located a bound volume of the Revised Statutes of 1849 in the State Law Library, a book so old that some its pages had come loose. There, under Chapter 10, Section 137, was the statute cited by the Supreme Court.

It required every sheriff, circuit court clerk, county board clerk, register of deeds and county treasurer in the state to “open for the examination of any person” all of their books and papers. Any officer who neglected to comply “shall forfeit for each day he shall so neglect, the sum of five dollars.”

Five dollars was a lot of money in those days – more than 200 current dollars, according to one inflation calculator. A public official who refused to let the public see records faced serious consequences. (The law is still on the books, under 59.20(3), and the fine is still \$5 a day!)

But this statute would not have meant much for the citizens of Jefferson County had Walter Besley not gone to the mat to defend their right for a place to review records, and candles to provide light and heat.

The citizens of Wisconsin owe a debt of gratitude to Besley -- and modern-day counterparts including Brian Buswell, who sued a school district for using a deliberately vague meeting notice so the public wouldn't know what the school board planned to decide. Earlier this year, the Wisconsin Supreme Court deemed this improper, and instructed public bodies to make fuller disclosure.

Credit goes also to the citizens group that won an important case against the city of Milton, which reached a secret deal to subsidize an ethanol plant. “Now,” the mayor of Milton recently

December: Early case sheds light on records

Written by By Bill Lueders

stated, “we’re taking care to make sure everything is done properly.” Hooray for that.

Throughout Wisconsin are people committed, in word and deed, to the public’s right to know. Now and then we should light a candle in their honor.

Your Right to Know is a monthly column distributed by the Freedom of Information Council (www.wisfoic.org), a nonprofit group dedicated to open government. Lueders is the group's president.