



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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October 25, 2005

Ms. Gina Kaminski
Wisconsin Land and Water
Conservation Association
One Point Place, Suite 101
Madison, WI 53719

Dear Ms. Kaminski:

You ask, on behalf of the Board of Directors of the Wisconsin Land and Water Conservation Association ("Association"), whether the Association is subject to Wisconsin's open meetings law, sections 19.81-19.98 of the Wisconsin Statutes. The open meetings law applies to every meeting of a governmental body, which includes a "governmental or quasi-governmental corporation." Sec. 19.82(1), Wis. Stats. The term "governmental or quasi-governmental" includes a corporation created directly by the state Legislature or by some other governmental body. See 66 Op. Att'y Gen. 113, 115 (1977). The Association was not created directly by a governmental body. The issue is, therefore, whether the Association "resemble[s] a governmental corporation in purpose, effect or status closely enough to constitute a 'quasi-governmental corporation' within the meaning of section 19.82(1)." 80 Op. Att'y Gen. 129, 136 (1991).

The Association's By-Laws state that the purpose of the organization is "[t]o assist Land Conservation Committees and Departments with the protection, enhancement and sustainable use of Wisconsin's natural resources and represent Land Conservation Committees and Departments through education and governmental interaction." Section 2 of the By-Laws. The committees themselves were created by section 92.06(1), which requires that the county boards appoint committee members. Each committee is a voting member of the Association unless the committee declines in writing to be a member or its membership dues are lapsed. Sections 3 and 5 of the By-Laws.

The Association's By-Laws provide that the business of the organization is to be managed by a board of directors. Section 6 of the By-Laws. The Association divided the State of Wisconsin into 8 geographical areas, each of which includes from 7 to 11 committees. At the annual meetings of the 8 association areas, each area elects a director to the Association's Board of Directors with each committee entitled to one vote. *Id.* The board of directors then internally elects a president, vice-president and secretary-treasurer. Section 8 of the By-Laws.

The 1991 Attorney General's opinion concluded that the Milwaukee Economic Development Corporation ("MEDC") was a "quasi-governmental body" and set forth three factors that led to its conclusion that the open meetings law applied:

- (1) The By-Laws reserved four of nine directors' positions for specified city officials;
- (2) The city selected the officers of the corporation; and
- (3) The corporation was housed in city-owned buildings, used city equipment and supplies, and its officers and staff were paid by the city.

80 Op. Att'y Gen. at 136. The opinion also noted that most of the funding for MEDC came from public sources and that MEDC served a public purpose by promoting economic development in the City of Milwaukee.

The opinion noted the uncertainty of applying a fact-based analysis when determining whether a corporation is quasi-governmental but emphasized the importance of affording the public "the 'fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.'" *Id.* at 137. This policy of broadly interpreting the coverage of the open meetings law is further bolstered "by resolving any question as to the applicability of the open meetings law in favor of complying with the law." *Id.*

All seven current directors of the Association are county officials, serving in their official capacities, not as private citizens. Three of the seven directors act as officers. Although the counties themselves do not actively select the officers of the Association, the counties retain some level of control by initially appointing the committee members who could eventually act as Association officers. The By-Laws make no provision for financial compensation to board members, which suggests that board members are paid by their respective counties. On the other hand, the Association's staff and business office are paid by the Association. Unlike the situation discussed in a 1991 opinion, the Association's offices are not housed in public buildings and the Association's staff are not public employees. Of course, the Association's funds are derived from committee dues, and, therefore, the Association's funds are derived from public funds. The factors discussed in the 1991 opinion do not lead to a definitive decision, but those factors suggest a conclusion that the Association is a quasi-governmental corporation.

Under the Association's By-Laws, one of the board's duties is "[t]o arrange the annual meeting of the members of the association" Section 7.B. of the By-Laws. The board of directors meets during the annual meeting of the committees as well as other meetings when deemed necessary by the president. Section 11.B. of the By-Laws. Under section 15.135(4)(b)2., the annual meeting of the committees in even-numbered years chooses three members of county land conservation committees to be members of the state land and water conservation board. It appears that the Association's annual meeting is the same meeting required by statute. Section 15.135(4), however, first appeared in 1981, more than 10 years before the Association was incorporated. *See* sec. 15.135(4), Wis. Stats. (1981-82).

Section 15.135(4)(c) states that the state board may invite the United States Secretary of Agriculture to appoint advisory members of the board and extends the same courtesy to the dean of the College of Agriculture and Life Sciences of the University of Wisconsin-Madison, the director of the University of Wisconsin-Extension and the staff of the county land conservation committees. The Association's By-Laws create a category of non-voting members. Section 4 of the By-Laws. Among those non-voting members are the U.S.D.A. Natural Resource Conservation Service, the University of Wisconsin-Extension, the Wisconsin Department of Natural Resources, the U.S.D.A. Farm Service Agency, the Wisconsin Department of Agriculture, Trade and Consumer Protection, the University of Wisconsin College of Agriculture and Life Sciences and the Wisconsin Association of Land Conservation employees.

The Association's purpose certainly resembles the purpose of the land and water conservation board and committees. The membership of the respective entities are essentially identical. The goals of the entities are essentially identical. The Association is completely funded by dues assessed to the local committees which in turn are 100% taxpayer funded. Finally, the By-Laws themselves recognize that the Association serves as essentially the alter ego of the committees and the board. Section 11.F. of the By-Laws states: "To comply with Section 15.135(4) Wis. Stats., the following procedure shall be followed: The Board of Directors request that each Area Association nominate one LCC member to serve on the state Land and Water Conservation Board. Nominations may be accepted from the floor at the annual meeting if approved by two-thirds (2/3) of the members present and voting. Candidates must be LCC members when elected. Election of the three Land and Water Conservation Board members shall be conducted at the association's annual meeting in even-numbered years for a two year term or until replaced."

For the reasons stated above, I must conclude that the Association resembles a governmental corporation in purpose, effect and status closely enough to constitute a "quasi-governmental corporation" subject to Wisconsin's open meetings law.

In closing, I would emphasize that the fact that I have concluded that this Association of public entities is a quasi-governmental corporation does not necessarily mean that any other association of public entities, even an association whose members are all governmental entities, is necessarily a quasi-governmental corporation.

Very truly yours,



Peggy A. Lautenschlager
Attorney General