



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

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February 21, 2003

Mr. William R. Barth  
Beloit Daily News  
149 State Street  
Beloit, WI 53511

Dear Mr. Barth:

I am writing in response to your January 13, 2003, letter in which you alleged a violation of the open meetings law by the Rock County Board of Supervisors.

You state that the Rock County Board of Supervisors met in closed session and subsequently voted during that session to approve a negotiated settlement between the county and 31 retired members of the Rock County Sheriff's Department union over insurance benefits the county changed. You contend that governmental bodies may never vote in closed session, but must reconvene in open session to take action.

I believe that governmental bodies may sometimes vote in closed session. My decision is based on the supreme court's decision in *State ex rel. Cities S. O. Co. v. Bd. of Appeals*, 21 Wis. 2d 516, 538, 124 N.W.2d 809 (1963) which stated:

We cannot believe the legislature intended that the board, after concluding its deliberations in executive sessions, was then required to schedule a public meeting and publish notice thereof in order to record the vote embodying the result reached in a prior executive session. It seems to us that voting is an integral part of deliberating and merely formalizes the result reached in the deliberating process.

However this decision must be viewed together with the court of appeals decision in *State ex rel. Schaeve v. Van Lare*, 125 Wis. 2d 40, 53, 370 N.W.2d 271 (Ct. App 1985) which stated:

All meetings of governmental bodies must be held in open session unless exempted under sec. 19.85, Stats. These exemptions expressly limit the conduct of governmental bodies in closed session. None of the exemptions listed in sec. 19.85 expressly permits the Board to vote on any matter in closed session. If an exemption does not apply, then the general rule of holding open sessions applies. Because none of the exemptions apply to voting on a matter, we conclude that it was proper for the Board to vote in open session.


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The court of appeals is bound by prior decisions of the supreme court even if it disagrees with the precedent. The supreme court's decision in *State ex rel. Cities S. O.* that a vote may be taken during the closed session if the vote is an integral part of the deliberation process remains unchanged.

Turning to the specific vote with which you are concerned, your letter does not provide enough information about the settlement to predict how a court would resolve the question whether the vote to approve portions of the negotiated settlement agreement was an integral part of the deliberation process. A newspaper article published the day after the county board's vote described the terms of the settlement agreement approved by the board. That information suggests that the terms of the agreement were not confidential. The non-confidential nature of the terms might weigh against the conclusion that the vote was an integral part of the deliberation process. On the other hand, there may be factors in the deliberation process not reflected in the newspaper article which the board could explain to justify the necessity of voting in closed session on this particular agreement.

I hope this information is useful to you. Thank you for your interest in assuring compliance with the open meetings law. Please contact this office if we can be of further assistance to you.

Very truly yours,



Peggy A. Lautenschlager  
Attorney General

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