



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

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June 9, 2004

Ms. Ginny Strobl  
N5957 Woodlawn Road  
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Dear Ms. Strobl:

Attorney General Peggy A. Lautenschlager has asked me to reply to your April 28, 2004, letter asking whether it is permissible for a school board to vote to approve administration contracts while remaining in a closed session.

It is the position of the Attorney General's Office that it is usually preferable for governmental bodies to vote in open session, but that they may sometimes vote in closed session, if the vote is an integral part of an authorized, closed deliberation process.

The Wisconsin Supreme Court, in *State ex rel. Cities S. O. Co. v. Bd. of Appeals*, 21 Wis. 2d 516, 538-39, 124 N.W.2d 809 (1963), held that section 14.90 of the Wisconsin Statutes (1959), a predecessor to the current open meetings law, permitted a governmental body to vote in closed session as long as the vote was an integral part of deliberations on matters that were the legitimate subject of a closed session.

In contrast, the Wisconsin Court of Appeals, in *State ex rel. Schaeve v. Van Lare*, 125 Wis. 2d 40, 53, 370 N.W.2d 271 (Ct. App. 1985), commented on the propriety of voting in closed session under the current open meetings law and indicated that a governmental body must vote in open session unless a closed-session vote is expressly authorized by one of the exemptions in section 19.85(1). The comment, however, was not essential to the holding of the case and it is unclear whether the supreme court would adopt a similar interpretation of the current open meetings law.

Given this uncertainty, the Attorney General's Office recommends that voting generally should take place in open session, unless the vote is clearly an integral part of deliberations authorized to be conducted in closed session under section 19.85(1). Stated differently, a governmental body should vote in open session unless doing so would compromise the need for the closed session.

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Whether a court would find it permissible for a school board to vote on administration contracts in closed session thus depends on more detailed facts than are contained in your letter. The open meetings law requires governmental bodies to identify the specific portion of section 19.85(1) that purports to justify closure of the meeting. Without knowing a school board's precise reason for deliberating in closed session, it is impossible to say whether a particular vote would or would not be an integral part of an authorized closed session discussion.

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

Sincerely,



Thomas C. Bellavia  
Assistant Attorney General

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