



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

PEGGY A. LAUTENSCHLAGER  
ATTORNEY GENERAL

Daniel P. Bach  
Deputy Attorney General

17 W. Main Street  
P.O. Box 7857  
Madison, WI 53707-7857  
[www.doj.state.wi.us](http://www.doj.state.wi.us)

Alan Lee  
Assistant Attorney General  
608/266-0020  
[leeam@doj.state.wi.us](mailto:leeam@doj.state.wi.us)  
FAX 608/266-9594

September 27, 2004

Mr. Paul E. Bucher  
District Attorney  
Waukesha County  
515 West Moreland Boulevard, Room CG-72  
Waukesha, WI 53188-7076

Dear Mr. Bucher:

You have asked whether a 1977 Attorney General Opinion, 66 Op. Att'y Gen. 106 (1977), is "still valid." You indicate your belief that the opinion does not accurately reflect the open meetings law as interpreted by numerous court decisions and Attorney General's opinions that have been issued after the 1977 opinion.

The opinion answered the question whether a governmental body could go into closed session at a properly convened open session, for a proper purpose, where advance 24 hour or two hour notice of the closed session was not given at the time notice of the open session was given. This office answered yes. That answer followed the clear language of the statute, Wis. Stats. §19.84(2) which provided then, and provides now, that a public notice of a meeting of a governmental body must set forth the time, date, place and subject matter of the meeting "including that intended for consideration at any contemplated closed session." The opinion concluded that if the chief presiding officer or designee knows that a closed session is contemplated, the person is obligated to give the required notice. If, however, the person required to give notice did not have knowledge that a member wished to move for a closed session and no closed session had, in fact, been contemplated on the date the open session notice was given, the governmental body could still go into closed session if it followed the requirements of Wis. Stats. §19.85(1). That statute provided then, and provides now, that any meeting of a governmental body, upon motion duly made and carried, may be convened in closed session. The statute specifically provides: "[N]o motion to convene in closed session may be adopted unless the chief presiding officer announces to those present at the meeting at which such motion is made, the nature of the business to be considered at such closed session, and the specific exemption or exemptions under this subsection by which such closed session is claimed to be authorized."

Mr. Paul E. Bucher  
September 27, 2004  
Page 2

Contrary to your assertion the opinion does not indicate "that a governmental body need not give prior notice that it intends to go into a closed session, so long as when it does go into a closed session, it is on a topic that the Open Meetings law allows for." The opinion quite clearly requires notice of the subject matter of a closed session if a closed session is contemplated. The opinion does not require anything more, or anything less, than the statute.

Your letter also states: "Basically this 1977 opinion indicates a governmental body may go into closed session whenever notice of the open session was given, but notice of any contemplated closed session was not given." Again, you misconstrue the opinion. If the closed session was contemplated, the statute and the opinion require that notice of the closed session be given. The open meetings law quite clearly allows governmental bodies to go into closed session on agenda items which have been noticed for open session if the body follows the requirements of Wis. Stats. §19.85(1). Certainly, the Legislature could have provided that a governmental body could not go into closed session unless the closed session was announced on the meeting notice. One can debate whether the Legislature made a wise decision when it chose to allow governmental bodies to go into closed session when a closed session was not contemplated at the time of the open session notice, but the Legislature quite clearly made the policy decision to allow those closed sessions. The 1977 opinion simply reflects that legislative policy.

Sincerely,



Alan Lee  
Assistant Attorney General

AL:ljh

c: H. Stanley Riffle