filed *he shall enter upon the margin* of the record of such mortgage a memorandum of the filing of such notice and of the date thereof." (Emphasis added.)

The statute requires maintenance of (1) a separate book or register in which such officer shall enter an "abstract," *i.e.*, a summary limited to required specified information and details as to time of filing; (2) a specially arranged alphabetical index to such book or register of "abstracts"; (3) preservation of the originals left for "filing"; and (4) a duty to note on margin of separate mortgage books the date and fact of filing a notice of pendency affecting the specific mortgage.

One of the main purposes of the statute is to provide a ready index to "abstracts" of the documents involved so that the searcher need not have to initially read the whole document on file. Resort to such entire document may be necessary, and the statute and secs. 59.512, 228.07 and 889.30, Stats., make provision for preservation of the original or photographic copy.

This does not mean that such officer cannot, with county board approval, utilize microfilm or photographic copies pursuant to provisions of sec. 59.512, Stats. Even where authorization pursuant to sec. 59.512, Stats., is present and in a case where the county has not elected to be covered by ch. 228, Stats., the original document would have to be retained in an authorized storage place with the microfilm or photocopy being kept in the office of such officer. See secs. 59.512 and 59.54, Stats. In 60 Op. Att'y Gen. 459 (1971), it was stated that registers of deeds in counties under 500,000 cannot utilize microfilming or photocopying to comply with the initial duty to record or file documents unless the county board has elected to be controlled by ch. 228, Stats., as permitted by sec. 228.07, Stats., although secs. 59.512 and 889.30, Stats., authorize such officers, with county board approval, to make microfilm or photographic copies of original records. Also see sec. 910.05, Stats.

BCL:RJV

Collective Bargaining; Open Meeting; Public Records; Public Utilities; Salaries And Wages; Where Water and Light Commission has power to fix compensation of employes, it may meet in closed session to discuss and vote upon increases for non-union employes. A record must be made of motions and roll-call votes at open and closed meetings. Such record is open to inspection and copying subject to sec. 19.21, Stats., and common-law limitations with respect thereto. OAG 24-78

April 21, 1978.

WILLIAM R. HEATH, *Editor*
The Marshfield News-Herald
City of Marshfield

Pursuant to sec. 19.98, Stats., you request advice with respect to the Wisconsin open meeting law.

You state that the Marshfield Water and Light Commission held a duly noticed meeting on January 9, 1978, and voted to go into closed session "to discuss union negotiations and non-union and supervisory wage increases." Wage increases for non-union personnel were approved at the closed session, but the record of such approval was not made public until nearly 24 hours after the vote was taken when the minutes of the Commission were approved by the Marshfield Common Council at its regular meeting.

In 65 Op. Att'y Gen. 243 (1976), it was stated that a municipal public utility commission managing a city-owned public utility pursuant to sec. 66.068, Stats., was a governmental body under sec. 19.82(1), Stats., and that its meetings were subject to sec. 19.81-19.98, Stats.

Part of the difficulty in handling your questions is the extent to which the Common Council of the City of Marshfield has delegated power to the Water and Light Commission to fix the salaries and wages of employes of the utility. For the purposes of this opinion, it is assumed that such Commission has the power to "employ and fix the compensation of such subordinates as shall be necessary" in accordance with the provisions of sec. 66.068(3), Stats.

Your first question is whether the Commission, when duly convened in closed session for the purpose of considering wage increases for non-union employes, can vote to approve increases in closed session.

I am of the opinion that it can vote in the closed session. Pursuant to sec. 19.85(1)(c), Stats., a governmental body which has given the required notice can convene in closed session for the purpose of:

> "Considering employment, promotion, compensation or performance evaluation data of any public employe over which the governmental body has jurisdiction or exercises responsibility."

Whereas the singular of public employe is used, the singular includes the plural. See sec. 990.001(1), Stats. Increases in the compensation of more than one employe could therefore be "considered" in closed session. We are not concerned with the final ratification or approval of a collective bargaining agreement. Where such an agreement is involved, final ratification or approval must be accomplished in open session by reason of sec. 19.85(3), Stats. A governmental body generally may take final action and vote in closed session where the vote is an integral part of the deliberation process. In *State ex rel. Cities S. O. Co. v. Bd. of Appeals*, 21 Wis.2d 516, 124 N.W.2d 809 (1963), the court was dealing with former sec. 14.90, Stats. (1959), which provided in part:

> "(2) ... No formal action of any kind shall be introduced, deliberated upon or adopted at any closed executive session or closed meeting of any such body.
>
> "(3) Nothing herein contained shall prevent executive or closed sessions for purposes of:
>
> "(a) Deliberating after judicial or quasi-judicial trial or hearing."

The court held that after hearing a zoning appeal in public, the board of appeals could convene in closed session to "deliberate" and could vote in closed session, as it was an integral part of the deliberation process, and that the Board need not reconvene in open session to announce its result.

I am of the opinion that if the utility Commission has power to increase compensation of non-union employes, a court would hold that it could consider increases in closed session and could vote in closed session to finalize its action.

Your second question is whether the vote should be available immediately after the meeting.

Whereas I am of the opinion that the result in most cases should be announced as soon as possible, there may be grounds for withholding for some period of time.

State ex rel. Cities S. O. Co., supra, indicates that under prior law no immediate announcement or reconvening into open session was required. Under present law a body could not reconvene into open session after closed session within twelve hours unless notice of such intention to reconvene in open session was given at the same time and in the same manner as the public notice of the meeting convened prior to the closed session. Sec. 19.85(2), Stats. This would not preclude the presiding officer from making an announcement to anyone present or from issuing a news release after the closed session terminated.

Whether there must be disclosure of the vote depends in part on whether the reason for convening into closed session continues. Section 19.88(3), Stats., is applicable to open and closed sessions and provides:

> "The motions and roll call votes of *each meeting* of a governmental body shall be recorded, preserved and open to public inspection to the extent prescribed in s. 19.21." (Emphasis added.)

Under sec. 19.21(2), Stats., the right to inspect and copy is limited in certain respects, including "with proper care, *during office hours* and subject to such orders or regulations as the custodian thereof prescribes." (Emphasis added.)

Your letter does not disclose whether there was a deliberate withholding of the record of the motions and votes or whether there was a mere delay in disclosure because of a lack of a demand to see the record. If it was the former, I am not aware of any sufficient reason to justify a 24-hour delay. In other situations where competitive or bargaining reasons may continue or where detection of

crime is currently involved or where disclosure of financial, medical, social histories or disciplinary data of specific persons would have substantial adverse effect upon the reputation of any person referred to, the custodian may refuse disclosure where specific reason is given. The person seeking inspection may then institute an action in mandamus to test the reason. See 63 Op. Att'y Gen. 400 (1974).

BCL:RJV

Counties; County Board; Court Commissioner; Employer And Employe; Retirement Systems; Either the county board as employer or the judges of the county as appointing authority has the authority under sec. 41.11(1), Stats., to extend the employment of a family court commissioner beyond normal retirement date. OAG 25-78

April 21, 1978.

RAYMOND L. PAYNE, *District Attorney*
Douglas County

You have requested my opinion as to whether the Douglas County Board of Supervisors can compel the family court commissioner, over the age of 65, to retire prior to the completion of his term of appointment. The facts that you have provided to me are as follows:

The family court commissioner for Douglas County was reappointed, by the judges of Douglas County, on June 22, 1977, for a term of one year or until his successor is qualified. Douglas County has not placed the position of family court commissioner under civil service as authorized by sec. 247.13, Stats., but has an ordinance which requires the retirement of all county employes at age 65 unless extended by the county board. The present family court commissioner reached age 65 on October 15, 1977.

In my opinion, the family court commissioner must retire at age 65 under sec. 41.11(1), Stats., unless his employment is continued by his employer or appointing authority. Either the county board as employer or the Douglas County judges collectively, as the appointing authority, may relieve the family court commissioner from the requirement to retire by continuing him in employment.

Section 41.11(1), Stats., reads in part:

> "... any participating employe ... who reaches his normal retirement date shall be retired at the end of the calendar quarter year in which such date occurs, unless ... his employment is continued by his employer or appointing authority."

The family court commissioner is a participating employe, sec. 41.02(7), Stats., with normal retirement date of 65 years. Sec. 41.02(23), Stats. The calendar quarter year in which the subject family court commissioner reached 65 years ended on December 31, 1977. Sec. 41.02(33), Stats. Thus, under the provisions of sec. 41.11(1), Stats., he was subject to retirement unless his employment was continued by his "employer" or "appointing authority."

The family court commissioner is a county employe, thus the county board is the "employer" as such term is used in sec. 41.11(1), Stats. *State ex rel. Sheets v. Fay*, 54 Wis.2d 642, 650, 196 N.W.2d 651 (1972). Section 247.13(1), Stats., however, specifies the judges of the county as the "appointing authority" for family court commissioners. I conclude, therefore, that either the county board or the judges have the authority under sec. 41.11(1), Stats., to extend the employment of the family court commissioner beyond age 65.

BCL:WMS

Land; Ordinances; Plats And Platting; Chapter 236, Stats., discussed in reference to the platting, replatting and division of lots within a recorded subdivision. OAG 26-78

April 24, 1978.

ALEXANDER HOPP, *Corporation Counsel*
Sheboygan County

You request my opinion with respect to how the replat provisions of ch. 236, Stats., apply to division of lots within a recorded subdivision. Apparently, some confusion has arisen from statements made in earlier opinions, 63 Op. Att'y Gen. 193 (1974) and 64 Op. Att'y Gen. 80 (1975).