

September: Court shapes open government in key cases

Written by By Christa O. Westerberg

The Wisconsin Supreme Court is making open government rulings at an unprecedented clip. Two rulings so far support the public's right to access -- and three upcoming cases will further determine how open Wisconsin government will be to the public.

Last term, the court decided two important cases:

-- **Buswell v. Tomah Area School District**, was an open government blockbuster. The court said government meeting notices must contain reasonably detailed information about subjects up for discussion. Although the Open Meetings law has been on the books for more than three decades, only one previous case had addressed this issue. In 1999, an appeals court found that the term "licenses" in a notice was sufficient to inform the public that a controversial liquor license would be discussed, a finding many open government advocates found inadequate.

The Buswell decision overruled that case. Using a reasonableness approach, the Supreme Court decided that the Tomah School District gave insufficient notice to the public that it planned to discuss a policy regarding the hiring of coaches.

-- **Zellner v. Cedarburg School District** clarified public records law. The case involved a high school teacher dismissed for viewing adult Web sites on his work computer. The court rejected Zellner's attempt to block release of records related to his termination. It said that because the disciplinary investigation had been completed, and because the public's right to know was so important, the records could be released.

The Buswell and Zellner decisions strongly favor public access, but what can we expect from the Court this term? Three open government cases are on the docket, out of 25 accepted for review. They have far-reaching implications for Wisconsin's open government laws.

-- **State v. Beaver Dam Area Development Corporation** may determine whether governmental bodies can essentially circumvent open government laws. The case was brought by the Wisconsin Attorney General's Office against the Beaver Dam Area Development Corporation, which is publicly funded and performs economic development services for the city of Beaver Dam.

September: Court shapes open government in key cases

Written by By Christa O. Westerberg

But the corporation claims to be private, and doesn't observe open records or open meetings laws. The court must determine whether the corporation should obey these laws as a "quasi-governmental corporation." I have filed a brief arguing that the corporation is subject to these laws on behalf of a Beaver Dam citizens' group, the Wisconsin Freedom of Information Council, the Wisconsin Newspaper Association, and the Wisconsin Broadcasters Association.

-- **WIREData, Inc. v. Village of Sussex** will interpret the public records law as it intersects with the evolving area of information technology. At issue is whether a government authority must provide large databases of public information created by private contractors. In this case, the requester was a company that wanted to access municipal property assessment databases. The appeals court said local government must provide the databases to the requester in the electronic format in which they were created and maintained, and not just in a PDF document, which cannot be used like a database. The appeals court also held that local governments, not the contractors who created the databases, are responsible for complying with public records laws.

-- **Sands v. Whitnall School District** will determine whether exemptions to the Open Meetings law may overrule a person's ability to obtain information from an opposing party in a lawsuit. In Sands, a fired school district employee sued the district, alleging wrongful termination. The school board discussed Sands' termination in closed meetings. No one disputes that the discussions were properly held in closed session; the question is whether Sands could obtain the content of those discussions through her lawsuit. The court of appeals said the information was appropriately withheld from Sands in this case because the discussions were properly closed to the public under an exemption to the Open Meetings law.

While the Wisconsin Supreme Court has recently made decisions that support open government, keep your eye on the court this term. Your access to government may depend on it.

Christa O. Westerberg is an attorney at Garvey McNeil & McGillivray S.C. in Madison. Your Right to Know is a monthly column distributed by the Wisconsin Freedom of Information Council, a nonprofit group dedicated to open meetings and open records, www.wisfoic.org