



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

PEGGY A. LAUTENSCHLAGER
ATTORNEY GENERAL

Daniel P. Bach
Deputy Attorney General

114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857

March 5, 2004

Mr. Charles A. Rude
Mayor
City of Lake Geneva
Post Office Box 340
Lake Geneva, WI 53147

Dear Mayor Rude:

I am responding to your February 9, 2004, letter inquiring about the application of the open meetings law to city council agenda items called "Staff Comments" "Alderman Comments," and "Mayor Comments." You state:

Each staff member, i.e., the City Administrator, Director of Public Works, City Clerk and City Attorney are given an opportunity to comment about such things as forthcoming events or other informational matters. Each Alderman, as well as the Mayor, have the same opportunity. There can be no action discussion, or vote of any kind, on any comments made, whether by Staff Members, Aldermen or the Mayor.

There has been a complaint that allowing such comments is a violation of the Open Meetings Statute, since no specific agenda item other than "comments" is listed. I would appreciate your review of the matter, and letting me know if we are inadvertently violating the statute by following this practice.

Every public notice of a meeting must give the "time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session, in such form as is reasonably likely to apprise members of the public and the news media thereof." Wis. Stat. § 19.84(2). The notice need not contain a detailed agenda, but because the public is entitled to the fullest and most complete information compatible with the conduct of governmental business, the notice should be specific. This requires that when a member of the governmental body knows in advance of the time notice is given that a matter may come before the body, that matter must be described in the meeting notice. 66 Op. Att'y Gen. 143, 144 (1977). The chief presiding officer of the governmental body is responsible for providing notice, and when he or she is aware of matters which may come before the body, those matters must be included in the meeting notice. 66 Op. Att'y Gen. 68, 70 (1977).

In formulating descriptions of the subject matter of a meeting, the chief presiding officer should keep in mind that the public is entitled to the best notice that can be given at the time the

Mr. Charles A. Rude
Page 2

notice is prepared. A good rule of thumb is to ask whether a person interested in a specific subject would be aware, upon reading the meeting notice, that the subject might be discussed. For example, the court of appeals has held that the subject matter designation "licenses" was specific enough to apprise members of the public that a liquor license would be considered for approval. *State ex rel. H.D. Ent. v. City of Stoughton*, 230 Wis. 2d 480, 486, 602 N.W.2d 72 (Ct. App. 1999). Cf. *State ex rel. Olson v. City of Baraboo*, 2002 WI App 64, 252 Wis. 2d 628, ¶¶ 13-17, 643 N.W.2d 796 (meeting notice that a Joint Review Board would deliberate a resolution was sufficient to notify the public that the board would take action on the resolution). General subject matter designations such as "miscellaneous business," or "agenda revisions," or "such other matters as are authorized by law" should be avoided. The Attorney General advised in an informal opinion that if a meeting notice contains a general subject matter designation and a subject that was not specifically noticed comes up at the meeting, a governmental body should refrain from engaging in any information gathering or discussion or from taking any action that would deprive the public of information about the conduct of governmental business. I-5-93, April 26, 1993.

1997 Wisconsin Act 123, effective May 2, 1998, created Wis. Stat. §§ 19.83(2) and 19.84(2) to allow governmental bodies to receive information from members of the public if the public notice of the meeting designates a period of public comment. The law also allows a governmental body to discuss, but not to act on, any matter raised by the public during a comment period. Although discussion of a general public comment item is permissible, it is advisable to defer extensive discussion and action on such an item until specific notice of the subject matter of the proposed action can be given. By following this practice, a governmental body will accommodate the two somewhat competing public policies raised by public comment periods: first, the laudable public policy that governmental bodies benefit by hearing from the constituents they serve; second, the open meetings policy that members of the public are entitled to the "fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business." Wis. Stat. § 19.81(1).


Applying these principles, it is my opinion that the practice you describe is, at best, at the outer edge of lawful practice, and may well cross the line to become unlawful. Wisconsin Stat. §§ 19.83(2) and 19.84(2) allow citizens to present information to governmental bodies on subjects not included in the meeting notice because citizens do not have access to the body's process for creating meeting notices. The members of governmental bodies and the officials of the governmental unit are not so limited. They have regular opportunities to suggest meeting subjects to the presiding officer responsible for establishing the agenda. If, for example, a member of the body knows in advance of the time the meeting notice is given that there are "forthcoming events" about which the public may be interested, that matter must be described in the meeting notice. 66 Op. Att'y Gen. at 144. In my opinion, the subject matter "forthcoming events" would be minimally adequate to satisfy the requirements of the open meetings law when such matters are raised at the body's meeting.

Mr. Charles A. Rude
Page 3

The practice of allowing members of the body and governmental officials to present non-specific "informational items" to the members of the body is even more troublesome. Information by definition relates to a particular subject matter. That subject matter is capable of description in a way that is "reasonably likely to apprise members of the public and the news media thereof." Wis. Stat. § 19.84(2). There is no good reason why the subjects of the informational items cannot be identified in a meeting notice more specifically than "Staff Comments" or "Alderman Comments" or "Mayor Comments." The city's current policy prohibits discussion, action and voting on any subject addressed in staff, alderperson and mayor comment periods. The city's policy does not appear to limit the amount of information on a subject that a staff member, alderperson or the mayor can provide to the common council during such a comment period. If only a small amount of information is communicated during one of these comment periods, members of the public who are interested in the subject but not present at the meeting because the subject was not part of the meeting notice would be deprived of only a small amount of the information to which they were entitled. On the other hand, if substantial amounts of information are communicated during the comment periods, the interested public is deprived of a substantial amount of information. At the extreme end, an alderperson or the mayor might provide enough information on a subject during one of the comment periods that the members of the body have all the information they need to take action on the subject, eliminating the need for any discussion of the matter at a subsequent meeting where the noticed subject is brought up for action. In that circumstance, the public is deprived of all of the information to which it is entitled.

Thank you for inquiring about the open meetings implications of the city's current practice. I encourage you to alter that practice to eliminate the staff, alderperson and mayor comment items in the meeting notice. I encourage you to substitute for those comment periods a subject designated as "forthcoming events" for those items currently subsumed in the comment periods. I further encourage you to eliminate the practice of allowing staff, alderpersons and the mayor to communicate information on subjects without designating those subjects in the meeting notice.

Very truly yours,


Peggy A. Lautenschlager
Attorney General

PAL:BAO:cla



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

September 3, 2004

Mr. Dan Thompson
Executive Director
League of Wisconsin Municipalities
202 State Street, Suite 300
Madison, WI 53703-2215

Dear Mr. Thompson:

I am writing to clarify a March 5, 2004, letter I wrote to Lake Geneva Mayor Charles A. Rude published in the June 2004 edition of *The Municipality*. In that letter, I strongly encouraged governmental bodies to designate the subjects to be addressed when members, staff, and elected officials communicate information on subjects within the scope of the body's authority, under headings such as "mayor's comments" or "alderpersons' comments" or "staff comments." Governmental bodies should not use the March 5 letter as a reason for eliminating public comment periods.

The March 5 letter addressed two types of general subject matter designations in meeting notices. The designation "forthcoming events" was used to provide information to the public about future events involving the governmental body or the jurisdiction it serves. The March 5 letter concluded that while the subject matter designation "forthcoming events" satisfied the requirements of the open meetings law, the best practice is to include in the meeting notice the specific future events whenever possible.

The second type of general subject matter designation addressed in the March 5 letter was items such as "mayor's report," or "alderpersons' comments" or "staff comments" or "committee report." The March 5 letter concludes that, to the extent those designations are used to provide information to the public and to members of the body on subjects within the scope of the body's authority, the subjects of the comments or report should be specifically identified. As discussed in the March 5 letter, members of the governmental body are prohibited from discussing or taking action with respect to information provided as part of the comments and reports, but there is no constraint on the amount of information the members of the body could gather on the subject through those comments and reports. Since information gathering on a subject within the realm of the body's authority meets the test of "governmental business" under *State ex rel. Newspapers v. Showers*, 135 Wis. 2d 77, 102-03, 398 N.W.2d 154 (1987), the substance of the comments and reports are part of the "subject matter of the meeting" which must be included in the meeting notice. Sec. 19.84(2), Wis. Stats.

Mr. Dan Thompson
Page 2

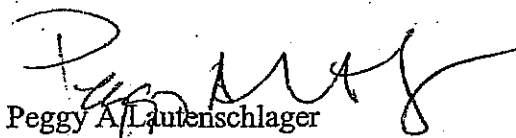
The March 5 letter specifically distinguishes between permissible meeting notices with "public comment" subject designations, and impermissible meeting notices with subject matter designations like "mayor's report" or "alderpersons' comments" or "staff comments" or "committee report." The reason for the distinction is that the members of the body and officials of the governmental unit have greater and more regular access than the public has to the process for creating meeting notices, and should therefore be held to a higher standard of specificity regarding the subjects they intend to address.

On a closely related subject, I have been asked whether the members of a governmental body may participate in public comment segments of meetings, either to respond to comments on subjects within the realm of the body's authority raised by members of the public, or to initiate subjects as members of the public. As I indicated in the March 5 letter, the law allows a governmental body to discuss, but not to act on, any matter raised by the public during a comment period.

In summary, and to reiterate my March 5, 2004, opinion: 1) public comment periods are authorized by state law; and 2) where the presiding officer contemplates a meeting notice that contains expected reports or comments by a member, the presiding officer should obtain from the member intending to make the comments or report(s) the subjects that will be addressed in the comments or the report(s). Such adherence to our state's open meetings law should in no way hinder the public participation that is essential to our representative form of government but rather enhance it.

Thank you for providing me the opportunity to offer this clarification of the March 5, 2004, letter.

Very truly yours,


Peggy A. Lautenschlager
Attorney General

PAL:BAO:cla