

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2132/1dn  
JTK:nwn:jf

March 2, 2009

Representative Mason:

Because the Wisconsin Constitution in art. IV, sec. 8 grants the power to the senate and assembly to determine their own rules of proceedings, if legislative caucus meetings are considered to be within the rubric of rules of proceedings, then the enforcement of the open meetings law with respect to those caucuses would be governed exclusively within the legislative branch and the courts would not be available to provide a remedy for any alleged noncompliance. *State ex rel. La Follette v. Stitt*, 114 Wis. 2d 358, 363-369 (1983). However, there is precedent for the open meetings law to be followed within the legislative branch and the courts have entertained some complaints of noncompliance. In *Custodian of Records v. State*, 272 Wis. 2d 208, 228-229 (2004), the Wisconsin Supreme Court held that not every statute that governs legislative affairs will be considered to be a "rule of proceedings." In addition, the legislature often chooses to follow statutory requirements even though, strictly speaking, it might not be required to do so. I just note this issue because it may be a factor if the executive or judicial branches of government become involved in enforcement of the requirements created by this draft.

Jeffery T. Kuesel  
Managing Attorney  
Phone: (608) 266-6778