



WISCONSIN LEGISLATIVE COUNCIL

APPLICABILITY OF OPEN MEETINGS LAW TO QUASI- GOVERNMENTAL BODIES

Room 225 Northwest, State Capitol
Madison, Wisconsin

December 13, 2006
10:00 a.m. – 12:00 p.m.

[The following is a summary of the December 13, 2006 meeting of the Special Committee on Applicability of Open Meetings Law to Quasi-Governmental Bodies. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc>.]

Call to Order and Roll Call

Chair Fitzgerald called the meeting to order. The roll was called and it was determined that a quorum was present.

Ron Sklansky noted that Mr. Taffora resigned from the Special Committee because Mr. Taffora was recently appointed Deputy Attorney General.

COMMITTEE MEMBERS PRESENT: Sen. Scott Fitzgerald, Chair; Reps. Jeff Fitzgerald, Thomas Lothian, and Mark Pocan; and Public Members Duane Foulkes, Peter Fox, Joseph Hasler, Jeff Kitchen, John Laabs, Andy Lewis, James Otterstein, Melanie Swank, and Ellen Totzke.

COMMITTEE MEMBER ABSENT: Public Member Ray Taffora.

COUNCIL STAFF PRESENT: Ronald Sklansky, Senior Staff Attorney; Dan Schmidt, Senior Analyst; and Jessica Karls, Staff Attorney.

APPEARANCE: Monica Burkert-Brist, Assistant Attorney General, Wisconsin Department of Justice.

Approval of the Minutes from the October 18, 2006 Meeting

The minutes were approved by the unanimous consent of the committee members.

Description of Material Distributed

Memo No. 2, *Draft Options* (December 1, 2006)

Ron Sklansky described Memo No. 2 to committee members. He noted that the draft options would not apply to the open records law and that changes to the open records law should be considered to make the open records and open meetings laws consistent. In addition, he explained Minnesota's approach to open meetings law for economic development corporations.

Mr. Sklansky made some general observations about the procedure under which a closed meeting would be held under draft option 0021/1.

Mr. Foulkes mentioned that the draft options require the committee to define "quasi-governmental corporation."

Ms. Swank expressed concern that the draft language could be interpreted as allowing closed meetings for only economic development corporations or as limiting the purposes for closed meetings.

Mr. Sklansky indicated that a note could be included in the legislation to address the concerns expressed by Ms. Swank.

Invited Speaker

Monica Burkert-Brist is the lead Assistant Attorney General in the Department of Justice's (DOJ) Integrity Unit. She explained that DOJ has received complaints that government uses private entities to avoid compliance with the open records and open meetings laws. She addressed misunderstandings that she believes the committee has. She recommended the implementation of a bright-lined test, such as requiring compliance with the open meetings law for an economic development corporation that uses public funds for a specific percentage of its budget or that has a specific number of public officials on its board.

Ms. Burkert-Brist explained that citizen complaints often result from a lack of accountability and oversight when public money is used. She commented on the Beaver Dam case. In addition, she mentioned that DOJ provides advice regarding open records and open meetings laws. Lastly, she encouraged the committee to hear from other entities and citizens that may be affected by a change in the open meetings law.

In response to a question, Ms. Burkert-Brist stated that she has not received a large number of complaints related to economic development corporations and that the improper use of exemptions comprises many of the complaints.

Mr. Lewis stated that municipal attorneys interpret the law differently and that compliance would be easier if the open meetings law were clearer.

Ms. Burkert-Brist explained that DOJ only pursues complaints where the law has been violated, despite the fact that a government, using exemptions properly, may have a large number of complaints filed against it.

Ms. Burkert-Brist acknowledged that complaints often are caused by a heated political controversy.

Ms. Burkert-Brist stated that open records and open meetings laws are intended to protect minority interests.

Ms. Burkert-Brist described the complaint process in the DOJ's Integrity Unit.

Mr. Kitchen indicated that Beaver Dam was not bitterly divided and that its attorney found the 1991 Doyle opinion favorable to Beaver Dam.

Mr. Fox asked about the advantages and disadvantages of a definition of "quasi-governmental corporation" versus a balancing test for "quasi-governmental corporation."

Ms. Burkert-Brist explained that a bright-line test is less subject to interpretation and that the more factors in a balancing test, the more concerns it raises.

Mr. Otterstein asked how an organization should approach the open meetings law if it partners with an entity that must comply with the law.

Ms. Burkert-Brist responded that each entity should be evaluated to determine whether it must comply with open records and open meetings laws.

Mr. Lewis emphasized that some taxpayers want openness despite the fact that only 10% of an organization's funds come from public funds.

Discussion of Committee Assignment

Chair Fitzgerald suggested that the committee focus on defining "economic development corporation," rather than tackling the definition of "quasi-governmental corporation."

Ms. Swank suggested that the committee use draft option 0020/1 to define economic development corporation.

Mr. Fox agreed but expressed concern about defining an economic development corporation with reference to the corporation's use of housing, equipment, and staff of a government unit.

Ms. Swank suggested that the lynchpin of the Beaver Dam case was that staff moved from the government unit to the economic development corporation.

Mr. Faulkes recommended that the committee consider the authority of the economic development corporation.

Representative Lothian asked whether the committee should focus on the function of the economic development corporation, as opposed to considering the application of the law to quasi-governmental corporations in general.

Mr. Laabs raised the issue of an economic development corporation having to comply with the open meetings law one year but not the next year if the corporation's percentage of public funds falls below the designated amount.

Ms. Burkert-Brist responded that once an organization is required to comply with the open records and open meetings laws, it would probably continue complying even if it was no longer required to do so.

Representative Pocan stated that the issue with economic development corporations is public funds, and the issue is not about who created the corporation.

Mr. Sklansky said that the staff would draft legislation that exempts an economic development corporation from the open meetings law if less than 50% of its budget consists of public funds and less than one-half of its board membership consists of public officials. In addition, he stated that he would add a note to the legislation to address Ms. Swank's concerns about the applicability of open meetings exemptions to economic development corporations.

Mr. Fox suggested that, as an alternative, Mr. Sklansky not frame the legislation as an exemption.

Other Business

There was no other business brought before the Special Committee.

Plans for Future Meetings

The next meeting of the Special Committee will be held at the call of the Chair.

Adjournment

The meeting was adjourned at 12:00pm.