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January 3, 2007

Senator Scott Fitzgerald, Chair
Special Committee on Applicability of Open Meetings Law
to Quasi-Governmental Bodies
Room 202 South
State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Dear Senator Fitzgerald and Members of the Committee:

After considerable thought and research following our Dec. 13, 2006, meeting, I write regarding an element which continues in the newly drafted WLC:0047/1 and WLC: 0048/1 from earlier Legislative Council drafts we examined. My concern rests with the "carry-over" provision from Wisconsin's Open Records Law – specifically, s.19.32 (1) – that stipulates when a nonprofit becomes subject to Open Records provisions: "... a nonprofit corporation which receives more than 50% of its funds from a county or a municipality, as defined in s. 59.001 (3), and which provides services related to public health or safety to the county or municipality ..."

The portion cited above pertains to only a limited range of circumstances and, in my opinion, sets too high a threshold for public funding in requiring public disclosure. Legislative Council staff identified the 50% threshold for inclusion in their earlier drafts as it is the only such cutoff identified in Wisconsin's "open government" statutes. I do understand staff was asked to be aware of parities that would need to be maintained between Open Meetings and Open Records provisions of state law, and that is the reason for the wording carryover. However, I do not believe there is appropriate transference of this limited provision in the Open Records Law to the wider scope of meetings conducted by quasi-governmental economic development corporations.

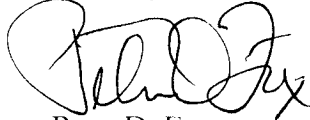
However, many would say that *any* amount of public funding should make the quasi-governmental entity subject to the Open Meetings and Open Records provisions. Should there even be a threshold? For the sake of continuing the open discussion within our committee, I am reluctant to pose an answer now other than to say that 50% is extraordinarily high – so high, that it could prompt quasi-governmental entities to manage their finances so as to be in compliance during some periods and purposefully avoid compliance during other times. The unintended consequence would be to confuse rather than clarify public policy.

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Given that our time as a committee is limited and that progress to date has brought greater understanding of the issue before us, may I suggest that staff be asked to develop an alternative draft(s) not dependent upon such a high threshold of public funding? Or, in the alternative, if it is not practical to ask staff to undertake this work before your call of the next meeting, may I recommend that staff provide the committee with as much detail as available concerning the legislative intent behind the 50% threshold provision and its practical application to Open Records issues?

I am raising this concern now because I think this aspect of the LRB drafts will be our next significant discussion, and any additional preparation will be helpful to the committee in the work ahead of us.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter D. Fox". The signature is fluid and cursive, with the first name being the most prominent.

Peter D. Fox
Executive Director
Wisconsin Newspaper Association

cc: Ron Sklansky, Senior Staff Attorney, Joint Legislative Council