



WISCONSIN LEGISLATIVE COUNCIL

APPLICABILITY OF OPEN MEETINGS LAW TO QUASI- GOVERNMENTAL BODIES

Room 225 Northwest, State Capitol
Madison, Wisconsin

January 31, 2007
10:00 a.m. – 10:45 a.m.

[The following is a summary of the January 31, 2007 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.

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, Melanie Swank, and Ellen Totzke.

COMMITTEE MEMBER ABSENT: Public Member James Otterstein.

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

<p>*ATTENTION: This was the final meeting of the Special Committee on Applicability of Open Meetings Law to Quasi-Governmental Bodies. Committee members are requested to send any corrections regarding these Minutes to the Legislative Council staff. After the incorporation of any corrections, these Minutes will be considered approved by the committee.</p>

Approval of the Minutes from the December 13, 2006 Meeting

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

Description of Materials Distributed

Ron Sklansky described bill drafts WLC: 0047/1 and WLC: 0048/1 to committee members. He explained that WLC: 0047/1 excludes certain economic development corporations from complying with the open meetings law, that WLC: 0048/1 requires certain economic development corporations to comply with the open meetings law, and that the drafts have the same effect. He mentioned that the definitions of "economic development corporation" contain references to 50% of a corporation's funds and to half of a corporation's board or officers consisting of public officers or employees. He stated that the 50% figure comes from open records law.

Mr. Sklansky referred to *Cavey v. Walwrath*, 229 Wis. 2d 105, 598 N.W.2d 240 (Ct. App. 1999), in which a former employee of the Legal Aid Society of Milwaukee sued the Legal Aid Society for its refusal to release documents under the open records law. The court found that in order to determine how much of an organization's funding comes from public funds, one must look at total public funds, not only at property taxes. Mr. Sklansky suggested that the court may have been willing to look at the issue on a year-to-year basis. He noted that the bill drafts define funds broadly and that the issue of year-to-year changes in public funding has not been litigated.

Discussion of Committee Assignment

Chair Fitzgerald expressed hope that economic development corporations will use the 50% figure as guidance and that the committee does not view the 50% figure as a way for economic development corporations to manipulate the open meetings law. He mentioned that economic development corporations work towards growth and only look at compliance with the open meetings law as one piece of their operation.

Mr. Fox stated that the 50% figure in the open records law pertains to a small group of entities, such as health and social service entities. He maintained that 50% is too high and that some believe that any amount of public involvement should be reported.

Mr. Laabs mentioned that the committee could include a requirement that if an economic development corporation reaches 50% one year, then the corporation would be required to continue to comply with the open meetings law, regardless of whether the corporation's portion of public funds falls below 50%. Mr. Sklansky said that the committee could include the requirement but that an organization may disband and recreate itself to avoid the open meetings law.

Mr. Lewis stated that a majority of economic development corporations receive more than 50% of their funding from public sources. He expressed concern about the closed session provision in s. 19.85 (1) (e), Stats., namely whether the authority exists to review confidential business records during a closed session.

Mr. Foulkes mentioned that business plans need to be protected.

Mr. Laabs said that business plans would be confidential business records and expressed concern about what else would be included under the notion of business records.

Chair Fitzgerald questioned whether economic development corporations would have to open their records and mentioned that the interaction between government and economic development corporations may not be the only transaction affected by the open meetings law.

Mr. Lewis stated that an informal opinion from the Attorney General could be requested regarding the review of business records during a closed session.

Ms. Swank approved of the definition of “economic development corporation” but was not sure that current law needs to be amended. She mentioned that current law allows a closed session to consider a business proposal. She referred to an Attorney General opinion that stated that records could be denied under the open records law if received under a pledge of confidentiality if public policy reasons are also provided.

Chair Fitzgerald stated that the committee might be unable to bring the different perspectives of the committee together.

Mr. Kitchen said the public funding figure in the bill drafts should be 100%, not 50%. He stated that the bill drafts may not eliminate the issues with economic development corporations and the open meetings law. He expressed concern that fewer proposals would be brought to government by economic development corporations because of the open meetings law and that the committee has not accomplished its task of clarifying the obligations of economic development corporations.

Representative Pocan mentioned that the committee’s discussions have clarified the obligations of economic development corporations. He stated that the pledge of confidentiality, as mentioned by Ms. Swank, could be useful to economic development corporations.

Mr. Lewis pointed out that attorneys interpret requirements under the open meetings law differently.

Ms. Swank referred to an Attorney General opinion which applied the closed session exception to bids for construction.

Mr. Foulkes said that the original purpose of the committee was to determine whether an economic development corporation is “quasi-governmental” and that the committee has lost focus.

Mr. Fox stated that there needs to be greater public understanding at key points in the progress of a plan and that it is more difficult to modify a plan at the end than as it progresses.

Chair Fitzgerald concluded from the discussion of the members that the committee could not come to a consensus over the appropriate application of the open meetings law to an economic development corporation. He stated that he would inform the Legislative Council of the result of the committee’s deliberations and invited more input on this subject from committee members.

Chair Fitzgerald thanked the committee members for their participation and stated that he may have legislation drafted amending the open meetings law following a discussion of the issue with the legislative members of the committee.

Other Business

There was no other business brought before the Special Committee.

Adjournment

The meeting was adjourned at 10:45 a.m.

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