

# OFFICE OF THE DISTRICT ATTORNEY

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W A U S H A R A C O U N T Y , W I S C O N S I N

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July 2, 2018

Roger L. Volden  
W4596 S. Pearl Lake Rd  
Redgranite, WI 54970

RE: Open Meetings Violation Complaint – December 2, 2017 Pearl Lake Protection and Rehabilitation District

Dear Mr. Volden :

My office is in receipt of an Open Meetings Violation Complaint relating to the December 2, 2017 meeting of the Pearl Lake Protection and Rehabilitation District. Upon reviewing the evidence in this matter, I have decided not to file any formal charges. However, there were legitimate issues that were raised that give me cause for concern and need to be addressed in the future to comply with the law, specifically Wisconsin Open Meetings Law (which is covered in Wisconsin Statutes 19.81-19.98) and laws regarding Lake Protection and Rehabilitation Projects/Public Inland Lake Protection and Rehabilitation Districts (which are covered in Wisconsin Statutes 33.11-33.37).

Some of the concerns raised and my advice and recommendations include the following:

**1) Notice of Meetings**

It appears that there may have not been full compliance with the notice requirements for the district's open meetings.

To comply with the open meetings law under Wis. Stats. 19.84, notice of each meeting of the District must be given to: 1) the public; 2) any members of the news media who have submitted a written request for notice; and 3) the official newspaper designated pursuant to

state statute or, if none exists, a news medium likely to give notice in the area. Notice to the public can be accomplished by posting notices in at least three different locations within the jurisdiction that the governmental body serves. Alternatively, the chief presiding officer may give notice to the public by paid publication in a news medium likely to give notice in the area the body serves. Meeting notices may also be posted at the governmental body's website as a supplement, but not as a substitute for the other methods described above. Notice to the officially designated newspaper or alternative is required, but it is not required that the governmental body pay for and the newspaper is not required to publish such notice. Public notice of each meeting must be given at least 24 hours prior to commencement of the meeting barring an exceptional circumstance.

Notice for the *annual* meeting has additional requirements under Wis. Stats. 33.30. It must meet between May 22 and September 8 unless decided on by majority vote at the prior annual meeting. Notice of the annual meeting must be mailed at least 14 days in advance of the meeting to all electors within the district whose address is known or can be ascertained with reasonable diligence, to all owners of property within the district, and to the Wisconsin Department of Natural Resources. As an alternative to mailing notice to the electors, the district may publish notice of the meeting in two successive issues of the local newspaper (known as Class 2 notice), but this must be decided by resolution.

## 2) Contents of Notice/Agenda

The contents of each notice must include the: time, date, place and subject matter of the meeting. One of the complaints raised was that the agenda was not specific enough to give notice of what would be discussed and what decisions may be made. The Wisconsin Supreme Court, in *State ex rel. Buswell v. Tomah Area School District*<sup>1</sup>, has determined that Wis. Stats. 19.84(2) sets forth a reasonableness standard between the public's right to information and the government's need to efficiently conduct its business. A good rule of thumb is to ask whether a person interested in a specific subject would be aware, upon reading the notice, that the subject might be discussed.

A couple of specific considerations:

- a) A meeting cannot address topics unrelated to information in the notice. Items not listed on an agenda cannot be discussed.
- b) 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, discussion, or taking any action at that meeting and instead put it on the agenda for the next meeting.
- c) Generic Agenda Items – Purely generic subject matter designations – such as old business, new business, miscellaneous business – are insufficient because, standing alone, they identify no particular subjects at all.
- d) Action Agenda Items – It is not expressly required that a notice indicate whether a meeting will be purely deliberative or if action will be taken. Adequate notice may

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<sup>1</sup> *State ex rel. Buswell v. Tomah Area Sch. Dist.*, 2007 WI 71, 301 Wis. 2d 178, 732 N.W.2d 804.



not require information about whether a vote on a subject will occur, so long as the subject matter of the vote is adequately specified. The information in the notice must be sufficient to alert the public to the importance of the meeting, so that they can make an informed decision whether to attend. Thus, in some circumstances, a failure to expressly state whether action will be taken at a meeting could be a violation of the open meetings law.

For example, the December 2, 2017 Notice/Agenda lists: "3 Water patrol through Waushara County Sheriffs Dept. Sheriff Jeff Nett to speak. Contract decision with Sheriffs Dept". This item specifically indicates that a decision will be made regarding water patrol with the Sheriff's Department, and while not incredibly specific or detailed, is probably sufficient for purposes of open meetings law.

On the contrary, the same notice lists: "7 Fish stocking/habitat committee". In the minutes for the December 2 meeting, it shows that a vote for expending funds (for crib and shoreline improvement) was taken on this topic. I do not believe there was sufficient notice for this vote and expenditure of funds to take place.

Likewise, the notice lists: "9 Eurasian milfoil treatment by Case for Spring 2018". The minutes for the meeting reflect that an estimate for treatment was discussed and a vote was taken to approve the treatment. While a close call, I'm not sure that sufficient notice was provided on this agenda item.

Clearly, there has been a lack of sufficient specificity and detail on the notices/agendas. I believe this issue can be solved in large part by simply providing more detail and specificity to each agenda item to avoid future problems. If it is known that a vote will be taken and/or money spent, include that in the notice. If new topics are raised at a meeting, it is advisable to limit discussion on the subject and defer any extensive deliberation to a later meeting where more specific notice can be given.

### **3) Meeting Minutes**

Open meetings law requires a governmental body to create and preserve a record of all motions and roll-call votes at its meetings. While, there is not a specific time frame in which a body must create a record of all motions and roll-call votes, it is advisable to record at the time of the meeting or soon thereafter. While Wis. Stats. 19.88(3) does not indicate how detailed the record of motions and votes should be, the general policy is that public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business. A governmental body's records should provide the public with a reasonably intelligent description of the essential substantive elements of every motion made, who initiated and seconded the motion, the outcome of any vote on the motion, and, if a roll-call vote, how each member voted. Making decisions by general consent without a formal vote should only be used for routine procedural matters such as approving the minutes of prior meetings or adjourning.

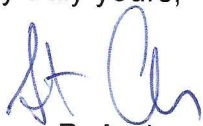
In reviewing the minutes from the December 2, 2017 meeting, the records do not include the members involved in the voting process, including who initiated and seconded the motions. This is a simple fix, but this level of detailed is required by law.

In closing, this letter is meant to be informative and a tool to help your organization come into compliance with the laws that cover open meetings in Wisconsin. In reviewing more recent agendas and minutes, it is clear that steps have already begun to be taken to improve and come into compliance with the law. Some additional changes still need to be implemented as discussed above. There are many resources available for organizations like yours available to the public, including the "Wisconsin Open Meetings Law Compliance Guide" which is created by the Wisconsin Department of Justice and is available for free on their website (<https://www.doj.state.wi.us/sites/default/files/office-open-government/Resources/2018%20OML%20Compliance%20Guide.pdf>).

In light of the potential violations in regards to the crib and shoreline improvement expenditure and milfoil treatment expenditure, it may be wise to re-visit and re-vote on those topics at the next scheduled meeting.

I hope you find this letter of assistance. I wish to thank you and your officers for the time and effort you put in to representing your district and members. Please let me know if you have any questions or concerns regarding this correspondence.

Very truly yours,



Steven P. Anderson  
District Attorney