

**CITY OF MADISON  
CITY ATTORNEY'S OFFICE  
Room 401, CCB  
266-4511**

January 22, 1998

**OPINION 98-001**

TO: Bill Fruhling, Planner IV

FROM: Eunice Gibson, City Attorney

SUBJECT: **R2 Zoning Code Advisory Committee Work Groups**

You asked my opinion as to whether or not the R2 Zoning Code Advisory Committee may establish work groups without having them be considered subcommittees within the meaning of the open meeting statute. The work groups would include persons who are not members of the Advisory Committee. The Advisory Committee has assigned specific tasks to the work groups and the work groups have been instructed to report their work product to the Advisory Committee for its approval. In my opinion, this procedure does not comply with the open meeting law or with Madison ordinances.

Sec. 3.27 (4)(c), Madison General Ordinances (MGO), provides, in part:

Any board, committee or commission may create committees or subcommittees and may appoint any of its members to serve on such committees or subcommittees. No board, committee or commission may appoint to any of its committees or subcommittees any person who is not a member of the board, committee or commission unless the person has been nominated by the board, committee or commission and approved by the Common Council.

The Advisory Committee's minutes indicate very clearly that the Committee intended for these work groups to include individuals who are not members of the Advisory Committee and have not been approved by the Council. This is contrary to the requirement of Sec. 3.27(4)(c), MGO.

The open meeting statute, Sec. 19.81 et seq., Wis. Stats., applies to meetings of "governmental bodies," and to "a formally constituted subunit" of a "governmental body." The Advisory Committee is a governmental body. The work groups are not formally constituted subunits of the Advisory Committee, because they contain members who are not members of the Advisory Committee. See *Wisconsin Open Meetings Law, A Compliance Guide*, Wisconsin Department of Justice, 1993, page 3.

If, however, the membership of the work groups is approved by the Council, as is required by Sec. 3.27(4)(c), MGO, the work groups will be "governmental bodies."

The work groups may be "governmental bodies," already. A "governmental body" includes a "state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order." Sec. 19.82(1), Wis. Stats. The work group is a "committee," and, arguably, it is a committee created by order of the Advisory Committee. The work groups are created by a motion adopted by the Advisory Committee and have been given very specific work assignments. This action by the Advisory Committee could be considered an "order" and the work groups would already then be "governmental bodies," subject to the open meeting law, even before their membership is approved by the Common Council.

In any event, the procedure adopted by the Advisory committee will have to be changed. Please let me know if I can be of any further assistance to you.

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Eunice Gibson  
City Attorney

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CAPTION: Sec. 3.27, MGO, does not permit City committees to create work groups which contain members who are not members of the parent body. Such a work group, if it complies with Sec. 3.27, MGO, and does not contain members who are not members of the parent body, or who are approved by the Common Council would be covered by the open meeting law.