

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

Date: December 11, 2007

MEMORANDUM

TO: City Board, Commission and Committee Staff Persons

FROM: Roger Allen, Assistant City Attorney

RE: Important Change in Open Meetings Laws

You have received this memo because you are responsible for preparing and publishing the official agenda for a City commission, committee, board or other public body subject to the Wisconsin Open Meetings Laws, sec. 19.81-19.98, Wis. Stats.

A recent Wisconsin Supreme Court decision substantially alters the amount of detail or specificity required of meeting agendas. Prior to this decision, a Court of Appeals decision ruled it permissible for agendas to include broad and general topics, such as "license", "grants", "contracts", etc. We previously discussed this decision in a memorandum that was sent to all Department and Division Heads on June 25, 2007. Further analysis of that decision and the City's open meetings practices have necessitated this memorandum.

This office was dubious of the earlier Court of Appeals decision and instead recommended that agendas include a level of detail or specificity such that a member of the public who was following a particular matter would be able to determine whether that matter was coming before a particular public body. In other words, we recommended against the use of catchall general topics.

The Supreme Court case, (State ex rel. Buswell v. Tomah Area School District, 2007 WI 71) explicitly overturned the earlier Court of Appeals ruling. The Supreme Court explicitly rejected the use of general topics such as "new business", "old business", "licenses", "contracts", etc. The Court ruled that agendas must be detailed and specific. The new rule is that agendas must contain such detail as will reasonably inform the public of the specific items to be considered or placed before the public body. The court noted that public bodies must consider several factors to determining the appropriate level of detail to provide. First, the body must consider whether the subject matter is of particular public interest. If it is, then the body must provide a more detailed notice than if it is not. Second, the body must consider whether the matter is non-routine action that the public would be unlikely to anticipate coming before that body. This is another factor that would weigh heavily in favor of more detailed notice. Thirdly, the court held that a body may consider the burden incurred in providing more detailed notices. The

purpose of the law is to reasonably inform the public of potential governmental action, however, that purpose is not to interfere with the good conduct of government business.

We know that tests like these are sometimes less than helpful to those who have to prepare agendas. Our office believes that a more pragmatic statement of these tests addresses the concerns of the Supreme Court. When considering whether any agenda item is adequately stated, ask yourself the following question, "Would someone who knows nothing about the history of this item be able to tell generally what this item is about?" If the answer to that question is yes, then you probably have provided enough detail in your agenda. If the answer is no, then you will need to be more specific in stating the agenda item.

Under no means should you rely upon general statements such as "new business", "old business", "chairperson's report", "announcements." Such general terms may be helpful tools to employ as general topic headings to organize an agenda. If you use these general headings to organize your agendas you must advise the public body that no discussions can be engaged in nor any items considered there under unless the items they wish to discuss or consider are separately and specifically identified under those headings.

For example, let's say a Board President wishes to discuss her participation in a community forum on transportation issues. If the agenda has a heading for "President's Report" and no specific agenda items under that heading, the board president may not discuss her participation in the forum. On the other hand, she may discuss her participation in that forum if under the heading "President's Report", there appears a subheading such as "Elvehjem neighborhood forum on transportation issue." Public bodies should avoid entering into any discussions or taking any actions under broad and general headings unless there are separate, specific and detailed agenda items entered under those broad and general headings.

The inclusion of these specific subheadings will mean that more care must be taken in preparing agenda. Since the agenda is normally posted within a week or so of the meeting, however, it should not be difficult for the chair or director to make a quick list of topics to be covered.

The agenda for Common Council meetings is a good model to follow in constructing an agenda.

As always, if you have any questions, please contact me. I'd rather address your concerns up front and before a meeting than have to have us deal with them in a courtroom.