



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

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January 4, 2010

Mr. Erik Paulson
616 East Dayton Street, #7
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Dear Mr. Paulson:

This letter is in response to your November 18, 2009, email to Kevin Potter, Administrator of the Division of Legal Services in the Wisconsin Department of Justice, in which you asked two questions related to the public notice requirements of Wisconsin's open meetings law.

Your first question has to do with the application of the 24-hour public notice requirement of section 19.84(3) of the Wisconsin Statutes. You describe a hypothetical situation in which a meeting has initially been noticed to begin at 6:30 p.m. on a Wednesday, but an amended public notice of the meeting is posted at 6:45 p.m. on the preceding Tuesday. The amended notice, in your example, still lists the scheduled starting time as 6:30 p.m. on Wednesday, but the actual start of the meeting is delayed by 15 minutes in order to comply with the requirement that the amended notice be published at least 24 hours before the start of the meeting. You ask whether the amended notice, in such a situation, would comply with the open meetings law.

Clearly, the technically correct course of action in the situation you describe would be to change the starting time in the amended notice to 6:45 p.m. or later. At the point in time when the amended notice is posted, at 6:45 p.m. on Tuesday, section 19.84(3) plainly requires that the meeting in question cannot begin until at least 6:45 p.m. on Wednesday. Therefore, an amended notice that listed the starting time as 6:30 p.m. on Wednesday would, on its face, reflect a starting time that must be either inaccurate or unlawful. The open meetings law cannot be construed in a way that would authorize a governmental body to include in a meeting notice information that is known to be inaccurate or unlawful at the time when the notice is posted.

It does not necessarily follow, however, that the failure to change the scheduled starting time in the amended notice would be found, by a court, to rise to the level of an actionable violation of the open meetings law. See *State ex rel. Schaeve v. Van Lare*, 125 Wis. 2d 40, 370 N.W.2d 271 (Ct. App. 1985) (technical violation of strict statutory requirements of the open

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meetings law does not necessarily rise to the level of a violation where the public's right to full and complete information is not compromised). Here, the law provides, in pertinent part, that the public notice of a meeting of a governmental body must "set forth the time, date, place and subject matter of the meeting . . . in such form as is reasonably likely to apprise members of the public and the news media thereof." Sec. 19.84(2), Wis. Stats. This statutory language has been construed by the Wisconsin Supreme Court as requiring a case-specific balancing analysis for the purpose of determining whether the notice reasonably informs the public of the information in question under the particular factual circumstances of the case. See *State ex rel. Buswell v. Tomah Area Sch. Dist.*, 2007 WI 71, ¶¶ 22 and 27, 301 Wis. 2d 178, 732 N.W.2d 804.

In the hypothetical situation you describe, it is possible that a court could find that an amended notice that merely had the effect of leading members of the public to arrive 15 minutes early for a meeting is not so inaccurate as to be unreasonable. It is also possible, however, that the amended notice could be found unreasonable if there existed other circumstances that caused it to have the effect of deterring some members of the public from attending the meeting at all. Accordingly, absent a complete factual record of all the potentially relevant circumstances, it is impossible to speculate whether a court would find the amended notice unreasonable in the hypothetical situation you describe. Of course, the greater the chronological inaccuracy in the notice, the more likely that it would be found unreasonable. Likewise, a notice that caused members of the public to arrive *late* for a meeting, rather than *early*, would probably be found to be inherently unreasonable.

Your second question has to do with the specific method of giving public notice used by the Student Government of the University of Wisconsin-Madison. According to your email, the Student Government gives public notice of its meetings by placing a packet of materials on a shelf in a public area outside its offices, typically consisting of a 1 to 2 page agenda on top followed by 15 to 20 pages of supporting materials. Occasionally, new supporting materials—sometimes including the precise wording of a motion to be made at the meeting—are inserted into the packet less than 24 hours before the start of the meeting without any change being made to the agenda on the top of the packet. You ask whether this practice complies with the reasonable notice requirement under section 19.84(2).

In my opinion, a court would be likely to find that, in the circumstances you describe, it would be reasonable for members of the public to rely on the agenda at the top of the packet to reasonably apprise them of the time, date, place, and subject matter of the meeting, without regard to the contents of the underlying supporting materials. The key question, then, is whether the agenda reasonably sets forth the subject matter of the meeting in a situation where an addition has been made to the supporting materials less than 24 hours before the start of the meeting.

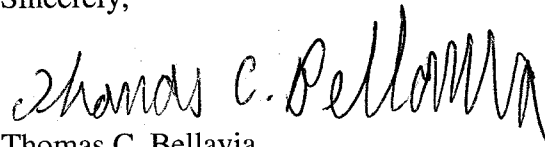
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Again, this is a fact-specific question that cannot be answered in a general or abstract way. The reasonableness standard under *Buswell* does not invariably require a public notice to enumerate every specific issue or sub-issue that may be discussed at a meeting. *Id.*, ¶ 33. Rather, particular issues may be discussed under more general subject headings if the general heading has reasonably apprised the public of the subject matter discussed at the meeting. *Id.* The factors to be considered in determining whether a subject description is reasonable under the circumstances include: (1) the burden on the body of providing a more detailed description; (2) whether the subject is of particular public interest, based on the number of people interested and the intensity of their interest; and (3) whether the subject involves non-routine action that the public would be unlikely to anticipate from a less detailed description. *Id.*, ¶ 28.

In your hypothetical situation, then, the question would be whether, under all the relevant circumstances, the agenda gave the public reasonable notice of the actual subject matter discussed at the meeting—including the contents of the additional materials added to the packet. If the additional materials are reasonably related to a subject that is already described with adequate specificity in the agenda, then a court would be unlikely to find a violation. Conversely, a violation could be found, if the additional materials introduce into the meeting a new topic of which the public was not, under all the circumstances, reasonably apprised by the agenda. Once again, such fact-specific determinations of reasonableness require a complete and specific factual record and are not subject to bright-line rules.

I hope that this information is helpful to you and thank you for your interest in promoting open government in Wisconsin.

Sincerely,



Thomas C. Bellavia
Assistant Attorney General

TCB:rk