



WASHINGTON COUNTY DISTRICT ATTORNEY TODD K. MARTENS

Assistant District Attorneys

Peter J. Cannon
Stephanie L. Hanson
Mark D. Bensen
Mandy Schepper

(262) 935-4911
(262) 335-4739 FAX

Office Supervisor
Jane Koepke

Victim/Witness Services
All Krueger, Coordinator

January 19, 2010

Gregory P. Myers
Mayor
City of Cedarburg
Cedarburg, Wisconsin

(faxed only 262-375-7906)

Re: Verified complaint concerning the Town of Cedarburg

Dear Mayor Myers:

You filed a verified open meetings complaint dated December 17, 2009 with the Ozaukee County District Attorney. Due to that office's conflict of interest, I was appointed special prosecutor to review the matter by Hon. Tom R. Wolfgram's order dated December 23, 2009.

In connection with my appointment, I reviewed: the materials you submitted; materials submitted by Attorney Brad M. Hoeft on behalf of the Town of Cedarburg; investigative reports of Detective DeMaine Millbach of the Ozaukee County Sheriff's Department; and applicable Wisconsin statutes and case law. After reviewing the above materials, I conclude the Town of Cedarburg did not violate any provision of Wisconsin law and I therefore decline to take action under Secs. 19.96 and 19.97, Stats., against the Town, its employees or any members of its governing body.

Your complaint alleges at least 3 distinct violations of Chapter 19, Stat. You allege the July 1, 2009 Town Board meeting was improperly noticed. Second, you allege numerous "walking quorums" of the Town Board where Town business was conducted and decisions made. Third, you allege the Town Board utilized closed sessions in excess of those authorized by Sec. 19.85(1)(e), Stat. I find none of these allegations to be substantiated.

Inadequate notice of July 1, 2009 Town Board meeting. Section 19.84(3), Stat. requires at least 24 hours notice be given prior to commencement of a meeting of a governmental body. If such notice is impractical, as little as two hours' notice will suffice if there is good cause.

You indicate a revised Agenda for the July 1, 2009 Town Board meeting was posted at 6:00 p.m. June 30, 2009. The Minutes of the July 1, 2009 Town Board meeting indicate the meeting was called to

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order at 7:00 p.m. Thus, the Town Board complied with the notice requirements of Sec. 19.84(3), Stat.

You allege the notice was not reasonable because it was merely 24 hours before the meeting and identified the property by tax key numbers. I disagree. The Town Board complied with statutory timing requirements. And identification of the property by tax key number is a precise, accurate way to identify property.

“Walking quorums” of the Town Board. A “meeting” of a governmental body occurs whenever a number of members of a governmental body sufficient to make a decision gathers for the purpose of engaging in governmental business. *State ex rel. Badke v. Greendale Vill. Bd.*, 173 Wis. 2d 553, 572, 494 N.W.2d 408 (1993). You allege there were “likely numerous walking quorums” but only provide details concerning one.

Jim Culotta, Cedarburg Town Administrator, sent the City of Cedarburg an October 19, 2009 letter in which Culotta indicated the Town’s position on the City’s proposed shared revenue agreements (received October 13) had not changed since the Town’s October 7 meeting. (On October 7, the Town Board rejected a proposed shared revenue agreement with respect to the library.) Because the Town Board did not meet between October 7 and October 19, you argue an illegal quorum of the Town Board must have met to discuss and decide on whether to accept the October 13 proposal.

Your argument is without merit. After receiving the October 13 proposal from the City, Culotta (who is not an elected member of the Town Board) solicited feedback from Town Board members individually on a proposed response to the City. After receiving this individual feedback, he sent the Town’s October 19 response to the City. Culotta specifically (and appropriately) took no position on the possibility of mediation, because in his judgment that alternative required a Town Board meeting to discuss.

The actions of Culotta and the Town Board were entirely appropriate and in accord with Wisconsin law. No quorum met in person or electronically to conduct Town business. I conclude your complaint alleging the Town Board made decisions during an illegal “walking quorum” is without merit.

Excessive closed sessions. A governmental body may meet in closed session under certain circumstances, including: for the purposes of deliberating or negotiating purchase of properties or conducting other business where competitive or bargaining reasons require a closed session (Sec. 19.85(1)(e), Stat.); or for conferring with legal counsel concerning strategy with respect to actual or likely litigation (Sec. 19.85(1)(g), Stat.).

Although you repeatedly point out the number of alleged closed sessions of the Town Board under these provisions, you cite no statute or case (nor am I aware of any statute or case) which limits the number of times a governing body may appropriately go into closed session. Your allegation that discussions of “spin” was the reason for the closed session is speculative.

You argue that the Town’s desire to keep its strategy with respect to negotiations with the City confidential is insufficient to justify closed session. Yet that is precisely what the City did when it went into closed session on September 23, 2009 under Secs. 19.85(1)(e) and (g), Stats. The Town,

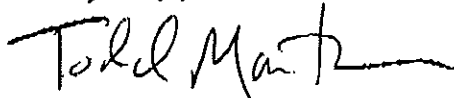
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like the City, is entitled to go into closed session to discuss the negotiations with its counterpart and to confer with legal counsel concerning pending or likely litigation. Thus, I conclude your complaint alleging excessive closed sessions is without merit.

Relations between Cities and adjoining Towns are often rocky, frequently contentious and sometimes litigious. Relations between the City and Town of Cedarburg are no exception. I believe the Town scrupulously adhered to the requirements of Chapter 19 of the Wisconsin Statutes. I believe there is no basis to take any action against the Town, its employees or Board members. To do so would be to inappropriately exercise my prosecutorial discretion to influence a political dispute. Therefore, I decline to take any enforcement action.

Thank you for your inquiry.

Very truly yours,



Todd K. Martens
District Attorney

TKM:mp

cc: Attorney Brad M. Hoefl (fax 262-284-6697)
Town of Cedarburg Administrator Jim Culotta (fax 262-377-0308)