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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

APPEAL NO. 2011AP613-LV
TRIAL COURT CASE NO. 2011CV1244

STATE OF WISCONSIN *ex rel.*
ISMAEL R. OZANNE,

PLAINTIFF–RESPONDENT,

V.

JEFF FITZGERALD,
SCOTT FITZGERALD,
MICHAEL ELLIS,
SCOTT SUDER,

DEFENDANTS,

AND

DOUGLAS LAFOLLETTE,

DEFENDANT–PETITIONER–MOVANT

PARTIAL RESPONSE OF PLAINTIFF-RESPONDENT TO PETITION FOR LEAVE TO APPEAL NON-FINAL ORDER

STATEMENT OF ISSUE PRESENTED

1. Whether the trial court has authority to issue a temporary restraining order to enjoin Wisconsin Secretary of State Douglas La Follette from publishing 2011 Wisconsin Act 10.[1]

STATEMENT OF THE FACTS NECESSARY TO AN UNDERSTANDING OF THE ISSUE

Plaintiff-Respondent State *ex rel.* District Attorney Ismael R. Ozanne ("State" or "District Attorney") agrees that the facts as set forth in the petition for leave to appeal, insofar as they pertain to the issue addressed here, are complete and correct.

ARGUMENT

WHERE A VIOLATION OF THE OPEN MEETINGS LAW IS COMMITTED IN THE WISCONSIN LEGISLATURE, A COURT HAS THE AUTHORITY, WITHIN ITS DISCRETION, TO ENJOIN THE SECRETARY OF STATE FROM PUBLISHING THE ACT WHICH IS THE PRODUCT OF THE VIOLATION.

Wisconsin's Open Meetings Law is a wholly contained statutory regime designed to implement the constitutional commands of openness and transparency in government. The Legislature has bound itself to its requirements and has consented to be sued when violations occur. The Law provides standing in the Attorney General or a district attorney to enforce these requirements. It grants

[1]By order dated March 21, 2011, this Court directed the State to submit a response by 4:00 p.m. today on the issue raised on pages 21-23 of the Petition for Leave to Appeal. The balance of the State's response to the rest of the Petition's arguments is due tomorrow, March 23, 2011, by 4:00 p.m.

courts jurisdiction to hear claims arising under the Open Meetings Law. It provides remedies for when violations occur. It empowers a district attorney to seek, and a court to award, plenary relief, including forfeitures, declarations and injunctions. The Law authorizes a court to void action taken in violation of the Law's requirements. And the Legislature specified the test a court must apply in determining the appropriateness of this remedy.

In 1975, the Legislature repealed and recreated the Open Meetings Law in chapter 19. Significantly, the recreated law expressed the intent, purpose and will of the Legislature "to comply to the fullest extent with this subchapter." Wis. Stat. § 19.81(3) (1975). To reinforce this commitment, the new law provided that it "shall apply to all meetings of the senate and assembly and the committees, subcommittees and other subunits thereof," except under certain limited circumstances. Wis. Stat. § 19.87 (1975). The Legislature broadened considerably the remedies available to enforce the Open Meetings Law. First, the Legislature authorized that, in addition to a forfeiture action, the Attorney General or the District Attorney could seek "such other legal or equitable relief, including but not limited to a writ of mandamus, an injunction or a declaratory judgment, as may be appropriate under the circumstances." Wis. Stat. § 19.97(2) (1975). Second, the Legislature provided for the first time that actions taken at a meeting held in violation of the Open Meetings Law were voidable if a court found that the public interest in enforcing the Open Meetings Law "outweighs any public interest which there may be in sustaining the validity of the action taken." Wis. Stat. §

19.97(3) (1975). And to protect its constitutional prerogative, the Legislature created a safe harbor that permits it to adopt rules of procedure that conflict with the requirements of the Open Meetings Law and thereby avoid executive and judicial intervention. Wis. Stat. § 19.87(2) (1975).[2]

Notwithstanding the Legislature's commitment to adhere to the requirements of the Open Meetings Law, and to be subject to an enforcement action by the Attorney General or District Attorney in the event of a violation, the Secretary of State argues that the trial court is powerless to prevent the publication of legislation enacted in the wake of clear violations of the Open Meetings Law. The Secretary of State relies exclusively on *Goodland v. Zimmerman*, 243 Wis. 459, 10 N.W.2d 180 (1943), for the proposition that no court has jurisdiction to enjoin publication of an Act passed despite these violations. This reliance is misplaced for several distinct reasons.

First, *Goodland* involved a claim by the Governor that the legislation in question was unconstitutional. The *Goodland* court, 240 Wis. at 466, held that there is no such thing as an unconstitutional bill. Rather, only after a bill first becomes law may someone, who has been deprived of a constitutional right by its operation, sue. At bottom, *Goodland* found that the Governor's constitutional challenge was premature and that there was no basis for enjoining the Secretary of State from publishing the bill.

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[2]A copy of Wis. Stat. §§ 19.81, *et seq.* is attached to this Response.

Here, the District Attorney does not claim that the substance of 2011 Wisconsin Act 10 is unconstitutional. Rather, he alleges (Pet-Ap. 105-09, ¶¶ 15-44), and the trial court found, that 2011 Wisconsin Act 10 was the product of a violation of the Open Meetings Law (Pet-Ap. 225-29). Unlike *Goodland*, the District Attorney here does not seek to block publication simply to prevent an allegedly unconstitutional bill from becoming law. Rather, he seeks to redress past violations of the rights of the public to sufficient prior notice of and meaningful access to the March 9, 2011, Joint Committee of Conference meeting, where action was taken to consider and approve a substantially revised version of 2011 Special Session Assembly Bill 11, the so-called Budget Repair Bill. Accordingly publication of 2011 Wisconsin Act 10 is not necessary before the District Attorney may seek a remedy under the Open Meetings Law to vindicate the interests of the public.

Second, the Open Meetings Law expressly grants authority to the District Attorney to enforce its requirements against the Houses of the Legislature and any of its committees, subject to certain exceptions that the District Attorney maintains (Pet-Ap. 107, ¶ 32), and the trial court held, do not apply here (Pet-Ap. 226-27). *See* Wis. Stat. § 19.87(2). This legislative grant of authority also distinguishes this case from *Goodland* and *State ex rel. Martin v. Zimmerman*, 233 Wis. 16, 288 N.W. 454 (1939), on which *Goodland* relied. *See Goodland*, 243 Wis. at 468. *Martin* held that the Secretary of State himself lacks constitutional or statutory authority to condition publication of legislation on his review of compliance with

substantive constitutional provisions or with procedural requirements. *Id.*, 233 Wis. at 20. Unlike the Secretary of State in *Martin*, here the District Attorney has express statutory authority to challenge whether the Legislature has fully complied with the requirements of the Open Meetings Law in enacting 2011 Act 10.

Nothing in the Open Meetings Law limits the authority of a court, in the appropriate case, to enjoin publication of legislation that results from a violation of the Open Meetings Law, so long as the balancing of public interests supports that outcome. Indeed, the temporary injunctive relief obtained here is simply a specific application under the Open Meetings Law of a remedy generally available under Wis. Stat. § 813.02.

Thus, preliminary injunctive relief under the Open Meetings Law must be available at any stage of the legislative process in order to obtain full relief. Yet, the Secretary of State maintains that no court could invalidate 2011 Wisconsin Act 10 even after it becomes law following publication, notwithstanding an Open Meetings Law violation. But his argument goes too far. On the Secretary of State's reasoning, a court would be powerless to overturn a law even where it is undisputed that both Houses of the Legislature violated every requirement of the Open Meetings Law. This result flies in the face of § 19.97(3)'s grant of power to a court to void the action of a governmental body that occurs at a meeting held in violation of the Law.

Moreover, the Secretary of State's position must mean that § 19.97(3), as applied to the Legislature, is a nullity, for there is no circumstance under which a

district attorney or the Attorney General could obtain an order voiding the legislation. This essentially immunizes from judicial review any action by the Legislature in violation of the Open Meetings Law, despite all of the pronouncements and commitments made by the Legislature there.

The Secretary of State's construction of the Open Meetings Law is contrary to basic rules of statutory interpretation. Where possible, the statutory language must be read to give effect to every word, in order to avoid surplusage. *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶ 46, 271 Wis. 2d 633, 681 N.W.2d 110. When construing a statute, the court may not disregard its plain words. *Id.*, *quoting from State v. Pratt*, 36 Wis. 2d 312, 317, 153 N.W.2d 18 (1967). Furthermore, a court must consider any explicit statements of the statute's purpose and scope in applying the plain-meaning rule of construction and "cannot contravene a textually or contextually manifest statutory purpose." *Kalal*, 271 Wis. 2d 633, ¶ 49.

Here, these rules of construction support the District Attorney's position, as embraced by the trial court (Pet-Ap. 231-34)[3], that the purpose, scope and effect of the Open Meetings Law, as expressed throughout the statute, contemplates that, in certain circumstances, in order to preserve the *status quo* and ensure continued availability of the full measure of relief to which the District Attorney may eventually be entitled, it is within the power and authority of a court to enjoin the Secretary of State from publishing an Act that flows from a clear violation of the

[3]There is no appendix page Pet-Ap. 233.

Open Meetings Law by a governmental body within the Legislature. It must be concluded that the Legislature, in recreating the Open Meetings Law in 1975, and despite the general statements in *Martin* and *Goodland*, contemplated the very relief the District Attorney sought and obtained in the trial court. Otherwise, the Legislature would have explicitly exempted itself from the possibility that its actions would be voided. It did not, and the Secretary of State cites no case supporting that proposition.

A complete remedy under the Open Meetings Law is not possible unless what is voidable includes not only the actions taken by the offending committee and its members, but also subsequent actions taken in reliance on the voidable action. In other words, if the action taken is in fact voided (that is, a court finds that the public interest in sustaining the action is outweighed by the public interest in enforcement of the Open Meetings Law), then it is a nullity, as if it never happened. And if the voidable action never happened, then the subsequent actions of the parent bodies, here the Senate and the Assembly, in full reliance on the voided action of the Joint Committee of Conference, could not and would not have occurred. If it is held otherwise, then the District Attorney, as enforcer of the Open Meetings Law, could never obtain full relief under these circumstances, for the unlawful actions by a committee at any level of government would be disregarded by a court where the parent body approves the same action despite the violation. The District Attorney's power to enforce the Open Meetings Law

would be largely eviscerated in this situation, for he could never achieve full relief by seeking to enjoin the by-product of the Open Meetings Law violation.

The temporary remedy to enjoin the publication of 2011 Wisconsin Act 10 by the Secretary of State under these circumstances is not open-ended. First, the authority to seek it is limited to violations of the Open Meetings Law. Wis. Stat. § 19.97(2). Second, the court must determine as a preliminary matter that the public interest in enforcement outweighs any interests in sustaining the challenged action. Wis. Stat. § 19.97(3). Thus, the authority granted to a court under the Open Meetings Law is narrowly circumscribed, and includes the standard by which the court is to determine whether the challenged action is voidable. A court's authority to grant relief "as may be appropriate under the circumstances" must include the power to prevent the product of the challenged action from becoming law, pending final disposition.

Two other points made by the Secretary of State require a response. First, he infers that the lack of jurisdiction in the trial court rests, at least in part, on the characterization of his duty to publish as ministerial. This is wrong. Before and after Goodland, courts have jurisdiction to enjoin ministerial acts of the Secretary of State. *See, e.g., State ex rel. Sundby v. Adamany*, 71 Wis. 2d 118, 124-25, 237 N.W.2d 910 (1976) (holding that Secretary of State proper party in suit challenging legality of Governor's vetoes); *State ex rel. Reynolds v. Zimmerman*, 22 Wis. 2d 544, 572, 126 N.W.2d 551 (1964) (enjoining Secretary of State from performing ministerial duty to call legislative elections); *Democrat Printing Co. v.*

Zimmerman, 245 Wis. 406, 408, 415, 14 N.W.2d 428 (1944) (affirming injunction against Secretary of State enjoining ministerial duty of approving vouchers); *State ex rel. Attorney General v. Cunningham*, 81 Wis. 440, 481, 486, 51 N.W. 724 (1892) (injunction issued to enjoin Secretary of State from ministerial duty of issuing notices of election).

Second, the Secretary of State challenges the District Attorney's authority to invoke constitutional provisions in support of his Open Meetings Law action, citing Wis. Stat. § 978.05 and *State v. City of Oak Creek*, 2000 WI 9, 232 Wis. 2d 612, 605 N.W.2d 526. The statutory citation describes the general duties of district attorneys. Despite a general statement of the duty to prosecute forfeitures, Wis. Stat. § 978.05(2), no specific mention is made there of the District Attorney's authority under the Open Meetings Law, including the additional authority to seek declaratory and injunctive relief and to request that actions of a governmental body taken at a meeting in violation of the Open Meetings Law be voided. Surely the Secretary of State does not claim that the absence of a cross-reference to the Open Meetings Law in Wis. Stat. § 978.05 deprives the District Attorney of this authority under the Open Meetings Law.

Oak Creek held that the Attorney General lacked authority to challenge the constitutionality of a published statute. However, *Oak Creek* says nothing which limits the District Attorney's authority to enforce the Open Meetings Law, including requesting declaratory and injunctive relief and seeking to void legislative action in violation of the Open Meetings Law. Moreover, the

Legislature's own cross-reference to article IV, § 10, in the Open Meetings Law, Wis. Stat. § 19.81(3), acknowledges that its compliance with the Open Meetings Law is a constitutional command and not a mere requirement of statute. A court may regulate the legislature's conduct if its rule of procedure is a codification of its constitutional obligations. *See Milwaukee Journal Sentinel v. Wisconsin Dept. of Admin.*, 2009 WI 79, ¶¶ 18-20, 319 Wis. 2d 439, 768 N.W.2d 700; *State ex rel. La Follette v. Stitt*, 114 Wis. 2d 358, 364, 338 N.W.2d 684 (1983); *Outagamie County v. Smith*, 38 Wis. 2d 24, 155 N.W.2d 639 (1968). Accordingly, the District Attorney's reliance on the constitutional provision does no more than provide the jurisdictional basis for the trial court to examine the Legislature's compliance with the Open Meetings Law.

Finally, and although obvious, it must be stated that the Legislature has a ready remedy, which is available to it at any time—namely, to start over and re-enact the substance of 2011 Wisconsin Act 10, by following the public notice, public access and other requirements of the Open Meetings Law. Unless and until the Legislature chooses to invoke that option, however, the trial court had authority to entertain the District Attorney's request to preserve the full measure of relief available under the Open Meetings Law by maintaining the *status quo* and enjoining the Secretary of State from publishing as law legislation that is the product of serious violations of the Open Meetings Law.

CONCLUSION

For the foregoing reasons, as supported by the cited authorities, the State urges this Court, in the event it exercises its discretion to grant leave to consider this appeal, to hold that the Open Meetings Law is a legislative grant of authority for the District Attorney to seek, and power for a court to issue, a temporary restraining order enjoining the Secretary of State from publishing an Act that is the product of violations of the Open Meetings Law.

Dated at Madison, Wisconsin, this 22nd day of March, 2011.

Ismael R. Ozanne
Dane County District Attorney
State Bar # 1031954

Attorney for Plaintiff-Respondent State ex rel. Ismael R. Ozanne

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CERTIFICATION

I hereby certify that this Partial Response was produced with a proportional serif font and conforms to the rules contained in Wis. Stat. § 809.50(2) for a petition produced with a proportional serif font. This partial response contains 2,600 words.

Dated at Madison, Wisconsin, this 22nd day of March, 2011.

Ismael R. Ozanne
Dane County District Attorney
State Bar # 1031954

WISCONSIN STATUTES

1975

(33rd Edition)

Embracing all general statutes enacted by the 1975 General Session prior to its adjournment on March 26, 1976 and the December 1975, May 1976 and June 1976 Special Sessions and the June 1976 Veto Review Session. Also included are changes made by the Supreme Court in the rules of pleading, practice and procedure, covering through the order dated October 6, 1976, effective January 1, 1977.

EDITED BY

ORLAN L. PRESTEGARD
REVISOR

DOLORES TOPP THIMKE
ASSISTANT REVISOR

PUBLISHED BY THE STATE OF WISCONSIN UNDER AUTHORITY OF SECTION 35.18

(b) If the board finds probable cause for misconduct, it shall authorize the release to the district attorney, the attorney general or other official of any information, records, complaints, documents, reports and transcripts in its possession if such release is material to any matter being investigated or prosecuted by the district attorney or the attorney general. The accused state public official or state public employe cited by the declaration of probable cause may request the board to withhold any information, records, documents, reports and transcripts that were placed before the board on behalf of the accused or as a part of his defense. The board shall grant such a request.

(c) No member or employe of the board, no state employe designated to assist the board and no prosecuting officer or employe may divulge any matter deemed confidential by this subsection.

(d) This subsection shall not prohibit the exchange of confidential information between the attorney general and district attorney's office.

History: 1973 c. 90, 333; 1973 c. 334 ss. 33, 57; 1975 c. 41.

19.49 Public discussion of legislative issues; expenses. (1) Nothing in this subchapter shall be interpreted as prohibiting the acceptance by a legislator of reimbursement for his actual and necessary expenses, the accepting of reasonable fees or honorariums for participating in public meetings or speaking engagements, or from accepting compensation for published works.

(2) In order to achieve the broadest possible public discussion and understanding of state government, the legislative process and the specific policy issues and proposals pending before the legislature, every member of the legislature is encouraged to address, or to meet with, clubs, conventions, special interest groups, political groups, schools and other gatherings, and to interpret these topics for, or discuss them with, interested persons and organizations. When addressing any such club, gathering or organization within his district or within this state, no member of the legislature may receive any compensation other than reimbursement for actual and necessary expenses and reasonable fees and honorariums.

(3) The board shall issue guidelines determining what amounts of fees or honorariums, if received by legislators under sub. (1), shall be reasonable.

(4) Any legislator who, under sub. (2), receives reimbursement for actual and necessary expenses in connection with any such engagement in excess of $10 shall, within 60 days of its receipt, report the amount of the expense reimbursement received to the chief clerk of his house together with a brief statement describing the purpose for which the expense reimbursement was received.

History: 1973 c. 90; 1973 c. 334 ss. 33, 57.

19.50 Penalties. (1) Any person who violates this subchapter or a code of ethics adopted or established under s. 19.45 (11) (a) or (b) shall be fined not less than $100 nor more than $5,000 or imprisoned not more than one year in the county jail or both.

(2) The penalty under sub. (1) does not limit the power of either house of the legislature to discipline its own members or to impeach a public official, or limit the power of a department to discipline its state public officials or state public employes.

(3) No prosecution for a violation of this subchapter may be commenced more than 3 years after the date of the complaint under s. 19.48 (3) (a).

History: 1973 c. 90; 1973 c. 334 ss. 33, 57, 58; 1975 c. 200.

SUBCHAPTER IV

OPEN MEETINGS OF GOVERNMENTAL BODIES

19.81 Declaration of policy. (1) In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.

(2) To implement and ensure the public policy herein expressed, all meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times unless otherwise expressly provided by law.

(3) In conformance with article IV, section 10 of the constitution, which states that the doors of each house shall remain open, except when the public welfare requires secrecy, it is declared to be the intent of the legislature to comply to the fullest extent with this subchapter.

(4) This subchapter shall be liberally construed to achieve the purposes set forth in this section, and the rule that penal statutes must be strictly construed shall be limited to the enforcement of forfeitures and shall not otherwise apply to actions brought under this subchapter or to interpretations thereof.

History: 1975 c. 426.

Revisor's Note, 1975: The following annotations relate to 66.77, repealed by Chapter 426, laws of 1975.

A regular open meeting, held subsequent to a closed meeting on another subject, does not constitute a reconvened open meeting where there was no prior open meeting on that day. 58 Atty. Gen. 41.

Consideration of a resolution is formal action of an administrative or minor governing body and when taken in proper closed session, the resolution and result of vote must be made available for public inspection, pursuant to 19.21, absent specific showing that the public interest would be adversely affected. 60 Atty. Gen. 9.

Subsequent to the presentation of evidence by the taxpayer, board of review consideration of testimony by the village assessor at an executive session was contrary to the open meeting law, 66.77, since although it was permissible for the board to convene a closed session for the purpose of deliberating after a quasi-judicial hearing, the proceedings did not constitute mere deliberations but were a continuation of the quasi-judicial hearing without the presence of or notice to the objecting taxpayer. Dolphin v. Board of Review, 70 W (2d) 403, 234 NW (2d) 277.

A regular open meeting, held subsequent to a closed meeting on another subject, does not constitute a reconvened open meeting where there was no prior open meeting on that day. 58 Atty. Gen. 41.

Consideration of a resolution is formal action of an administrative or minor governing body and when taken in proper closed session, the resolution and result of vote must be made available for public inspection, pursuant to 19.21, absent specific showing that the public interest would be adversely affected. 60 Atty. Gen. 9.

Joint apprenticeship committees, appointed pursuant to 4 Wis. Adm. Code, sec. Ind 85.02, are governmental bodies within the meaning of 66.77 (2) (c) and subject to the requirements of the open meeting law. 63 Atty. Gen. 363.

Voting procedures employed by workmen's compensation and unemployment advisory councils which utilize adjournment of public meeting for purposes of having members representing employers and members representing employes or workers to separately meet in closed caucuses and to vote as a block on reconvening are contrary to 66.77 and 15.09 (4), (5). 63 Atty. Gen. 414.

Governmental body can call closed sessions for proper purpose without giving notice to members of news media who have filed written request under 66.77 (2) (e). 63 Atty. Gen. 470.

Meaning of communication in 66.77 (2) (e) discussed with reference to giving the public and news media members adequate notice. 63 Atty. Gen. 509.

Posting in Governor's office of agenda of future investment board meetings is not sufficient communication under 66.77 (2) (e) to the public or the news media who have filed a written request for notice. 63 Atty. Gen. 549.

Under 66.77 (6), a county board may not utilize unidentified paper ballot in voting to appoint county highway commissioner, but may vote by ayes and nays or show of hands at open session if some member does not require vote to be taken in such manner that the vote of each member may be ascertained and recorded. 63 Atty. Gen. 569.

See note to 19.21, citing 63 Atty. Gen. 573.

19.82 Definitions. As used in this subchapter:

(1) "Governmental body" means a state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order; a governmental or quasi-governmental corporation; or a formally constituted subunit of any of the foregoing, but excludes any such body or committee or subunit of such body which is formed for or meeting for the purpose of collective bargaining under subch. IV or V of ch. 111.

(2) "Meeting" means the convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. If one-half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. The term does not include any social or chance gathering or conference which is not intended to avoid this subchapter.

(3) "Open session" means a meeting which is held in a place reasonably accessible to members of the public and open to all citizens at all times.

History: 1975 c. 426.

19.83 Meetings of governmental bodies. Every meeting of a governmental body shall be preceded by public notice as provided in s. 19.84, and shall be held in open session. At any meeting of a governmental body, all discussion shall be held and all action of any kind, formal or informal, shall be initiated, deliberated upon and acted upon only in open session except as provided in s. 19.85.

History: 1975 c. 426.

19.84 Public notice. (1) Public notice of all meetings of a governmental body shall be given in the following manner:

(a) As required by any other statutes; and

(b) By communication from the chief presiding officer of a governmental body or such person's designee to the public, to those news media who have filed a written request for such notice, and to the official newspaper designated under ss. 985.04, 985.05 and 985.06 or, if none exists, to a news medium likely to give notice in the area.

(2) Every public notice of a meeting of a governmental body shall set forth the time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session, in such form as is reasonably likely to apprise members of the public and the news media thereof.

(3) Public notice of every meeting of a governmental body shall be given at least 24 hours prior to the commencement of such meeting unless for good cause such notice is impossible or impractical, in which case shorter notice may be given, but in no case may the notice be provided less than 2 hours in advance of the meeting.

(4) Separate public notice shall be given for each meeting of a governmental body at a time and date reasonably proximate to the time and date of the meeting.

(5) Departments and their subunits in any university of Wisconsin system institution or campus are exempt from the requirements of subs. (1) to (4) but shall provide meeting notice which is reasonably likely to apprise interested

persons, and news media who have filed written requests for such notice.

(6) Notwithstanding the requirements of s. 19.83 and the requirements of this section, a governmental body which is a formally constituted subunit of a parent governmental body may conduct a meeting without public notice as required by this section during a lawful meeting of the parent governmental body, during a recess in such meeting or immediately after such meeting for the purpose of discussing or acting upon a matter which was the subject of that meeting of the parent governmental body. The presiding officer of the parent governmental body shall publicly announce the time, place and subject matter of the meeting of the subunit in advance at the meeting of the parent body.

History: 1975 c. 426.

19.85 Exemptions. (1) Any meeting of a governmental body, upon motion duly made and carried, may be convened in closed session under one or more of the exemptions provided in this section. The motion shall be carried by a majority vote in such manner that the vote of each member is ascertained and recorded in the minutes. No motion to convene in closed session may be adopted unless the chief presiding officer announces to those present at the meeting at which such motion is made, the nature of the business to be considered at such closed session, and the specific exemption or exemptions under this subsection by which such closed session is claimed to be authorized. Such announcement shall become part of the record of the meeting. No business may be taken up at any closed session except that which relates to matters contained in the chief presiding officer's announcement of the closed session. A closed session may be held for any of the following purposes:

(a) Deliberating after any judicial or quasi-judicial trial or hearing.

(b) Considering dismissal, demotion, licensing or discipline of any public employe or person licensed by a board or commission or the investigation of charges against such person, or considering the grant or denial of tenure for a university faculty member, and the taking of formal action on any such matter; provided that the faculty member or other public employe or person licensed is given actual notice of any evidentiary hearing which may be held prior to final action being taken and of any meeting at which final action may be taken. The notice shall contain a statement that the person has the right to demand that the evidentiary hearing or meeting be held in open session. This paragraph and par. (f) do not apply to any such evidentiary hearing or meeting where the employe or person licensed requests that an open session be held.

(c) Considering employment, promotion, compensation or performance evaluation data of any public employe over which the governmental body has jurisdiction or exercises responsibility.

(d) Considering specific applications of probation or parole, or considering strategy for crime detection or prevention.

(e) Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session.

(f) Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons except where par. (b) applies which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations.

(g) Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.

(h) Consideration of requests for confidential written advice from the ethics board under s. 19.46 (2), or from any local government ethics board.

(2) No governmental body may commence a meeting, subsequently convene in closed session and thereafter reconvene again in open session within 12 hours after completion of the closed session, unless public notice of such subsequent open session was given at the same time and in the same manner as the public notice of the meeting convened prior to the closed session.

(3) Nothing in this subchapter shall be construed to authorize a governmental body to consider at a meeting in closed session the final ratification or approval of a collective bargaining agreement under subch. IV or V of ch. 111 which has been negotiated by such body or on its behalf.

History: 1975 c. 426.

19.86 Notice of collective bargaining negotiations. Notwithstanding s. 19.82 (1), where notice has been given by either party to a collective bargaining agreement under subch. IV or V of ch. 111 to reopen such agreement at its expiration date, the employer shall give notice of such contract reopening as provided in s. 19.84 (1) (b). If the employer is not a governmental body, notice shall be given by the employer's chief officer or such person's designee.

History: 1975 c. 426.

19.87 Legislative meetings. This subchapter shall apply to all meetings of the senate and assembly and the committees, subcommittees and other subunits thereof, except that:

(1) Section 19.84 shall not apply to any meeting of the legislature or a subunit thereof called solely for the purpose of scheduling business before the legislative body; or adopting resolutions of which the sole purpose is scheduling business before the senate or the assembly.

(2) No provision of this subchapter which conflicts with a rule of the senate or assembly or joint rule of the legislature shall apply to a meeting conducted in compliance with such rule.

(3) No provision of this subchapter shall apply to any partisan caucus of the senate or any partisan caucus of the assembly, except as provided by legislative rule.

History: 1975 c. 426.

19.88 Ballots, votes and records. (1) Unless otherwise specifically provided by statute, no secret ballot may be utilized to determine any election or other decision of a governmental body except the election of the officers of such body in any meeting.

(2) Except as provided in sub. (1) in the case of officers, any member of a governmental body may require that a vote be taken at any meeting in such manner that the vote of each member is ascertained and recorded.

(3) The motions and roll call votes of each meeting of a governmental body shall be recorded, preserved and open to public inspection to the extent prescribed in s. 19.21.

History: 1975 c. 426.

19.89 Exclusion of members. No duly elected or appointed member of a governmental body may be excluded from any meeting of such body. Unless the rules of a governmental body provide to the contrary, no member of the body may be excluded from any meeting of a subunit of that governmental body.

History: 1975 c. 426.

19.96 Penalty. Any member of a governmental body who knowingly attends a meeting of such body held in violation of this subchapter, or who, in his or her official capacity, otherwise violates this subchapter by some act or omission shall forfeit without reimbursement not less than $25 nor more than $300 for each such violation. No member of a governmental body is liable under this subchapter on account of his or her attendance at a meeting held in violation of this subchapter if he or she makes or votes in favor of a motion to prevent the violation from occurring, or if, before the violation occurs, his or her votes on all relevant motions were inconsistent with all those circumstances which cause the violation.

History: 1975 c. 426.

19.97 Enforcement. (1) This subchapter shall be enforced in the name and on behalf of the state by the attorney general or, upon the verified complaint of any person, by the district attorney of any county wherein a violation may occur. In actions brought by the attorney general, the court shall award any forfeiture recovered together with reasonable costs to the state; and in actions brought by the district attorney, the court shall award any forfeiture recovered together with reasonable costs to the county.

(2) In addition and supplementary to the remedy provided in s. 19.96, the attorney general or the district attorney may commence an action, separately or in conjunction with an action brought under s. 19.96, to obtain such other legal or equitable relief, including but not limited to a writ of mandamus, an injunction or a declaratory judgment, as may be appropriate under the circumstances.

(3) Any action taken at a meeting of a governmental body held in violation of this subchapter is voidable, upon action brought by the attorney general or the district attorney of the county wherein the violation occurred. However, any judgment declaring such action void shall not be entered unless the court finds, under the facts of the particular case, that the public interest in the enforcement of this subchapter outweighs any public interest which there may be in sustaining the validity of the action taken.

(4) If the district attorney refuses or otherwise fails to commence an action to enforce this subchapter within 20 days after receiving a verified complaint, the person making such complaint may bring an action under subs. (1) to (3) on his or her relation in the name, and on behalf, of the state. In such actions, the court may award actual and necessary costs of prosecution, including reasonable attorney fees to the relator if he or she prevails, but any forfeiture recovered shall be paid to the state.

History: 1975 c. 426.

19.98 Interpretation by attorney general. Any person may request advice from the attorney general as to the applicability of this subchapter under any circumstances.

History: 1975 c. 426.