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CHAPTER LE - LEGAL

SECTION 1 INTRODUCTION

LE-1.01-1 PURPOSE

It is the intent of the Kenosha County Board of Supervisors to create certain policies so as to insure that the legal rights of Kenosha County and its officials and employees are safeguarded and that exposure to adverse litigation is minimized. These policies are intended to assist officials and employees in being better able to anticipate and plan for legal problems they may encounter, to better inform them of their rights and obligations, and to enable them to develop a systematic approach to trial preparation. It is the further intent of the board to delegate certain responsibilities for defense and prosecution of cases involving Kenosha County, to provide for indemnification of county officials and employees and their legal defense, and to provide guidelines for situations where conflicts of interest exist.

LE-1.02-1 AUTHORITY

This policy is created pursuant, but not limited to, the provisions of Wisconsin Statutes sections 59.01, 59.07(5), and 59.07(44).

LE-1.03-1 APPLICATION

This policy is applicable to all county officials and employees. In the event of a conflict between the provisions of this section and any other section of this manual, the provisions contained herein shall apply provided that they are not in conflict with state law.

SECTION 2 LEGAL REPRESENTATION

LE-2.01-1 CORPORATION COUNSEL'S OFFICE

- (1) Corporation Counsel's Office. The duties of the Corporation Counsel shall be limited to civil matters and shall include representation of and giving legal counsel and opinions to the County Board, its committees and Supervisors, the county executive and to those Boards, Commissions, Departments, agencies and institutions established by County action, and shall further include the duty of interpreting the rights, powers and duties of the County Board and County officers and departments. The word "shall" in this sec-

tion is intended to be directory.

In addition to the foregoing general duties, the Corporation Counsel is charged with the following specific duties:

- (a) He shall provide the services of a parliamentarian to the Kenosha County Board of Supervisors at all county board meetings and shall attend any committee meetings at the request of any committee member or department head; he shall also provide such similar services to any Board, Commission or ad hoc committee established by County action. The Corporation Counsel shall act as a special advisor to the Kenosha County Board Policy and Rules Committee with respect to making recommendations as to changes or modifications in the Rules of Procedure and policies of the Kenosha County Board of Supervisors and with respect to interpreting current rules and policies.
- (b) He shall draft and/or review, as to form and content, all ordinances and policy resolutions proposed to the Kenosha County Board of Supervisors. In addition, he shall draft and/or review, as to form and content, any resolution or report presented to him and he shall draft and/or review all written county contracts involving more than \$25,000 and all architectural, construction, and labor contracts. He shall advise the County Board of any necessity for revising the Municipal Code of Kenosha County and the Kenosha County Policy Manual. In addition, he shall serve as legal advisor to the Kenosha County Legislative Committee and shall draft pertinent reports and recommendations for the Legislative Committee outlining current legal problems and proposed changes in federal and state statutes and rules. Furthermore, he may advise the county board to take remedial action to avert further potential liability.
- (c) He shall act as special counsel to the Kenosha County Clerk on any election day and he shall perform such other work of a civil nature, such as handling financial bond issues and other matters as may be assigned by the County Board including assisting in decennial reapportionments.

- (d) He shall advise the County Purchasing Agent of all purchasing and bidding requirements mandated by either Federal or State Law or County Ordinance and shall be present at all bid openings to insure compliance with all applicable Federal and State laws and County Ordinances.
- (e) He shall review all contested insurance claims involving the County's insurance programs as well as review all insurance policies purchased by the County. Furthermore, he shall advise the county board on those matters relating to risk management.
- (f) He shall investigate all cases and claims referred to the county board involving negligence on the part of the County and/or its employees. In addition, he shall confer with the appropriate committees with respect to all claims filed against the County and their possible settlement pursuant to provisions of the Municipal Code of Kenosha County and the Kenosha County Policy Manual. Furthermore, pursuant to the authority granted by section 59.07(3)(b) of the Wisconsin Statutes, the Corporation Counsel is delegated the power of the County Board in regard to settlement of any claim, demand or cause of action against the county not exceeding \$500.00. Prior to disbursement of any moneys, a report shall be filed with the Finance Committee and the County Executive for informational purposes.
- (g) He shall represent the County in all civil court proceedings in which the County has been named a party or in which the County has an interest; he shall, except as otherwise directed, collect claims and accounts due the county in civil matters and in addition, shall upon request, represent the county in all administrative hearings, including fair hearings before the Department of Social Services, Worker's Compensation Board, and Unemployment Compensation Board. He shall act as general counsel in all personal injury matters involving Kenosha County and may represent the Department of Social Services interests in all matters relating to subrogation claims involving welfare recipients involved in personal injury actions. In addition, he may pursue reimbursements due the county which are cost effective. He shall, furthermore, prosecute actions to

recover forfeitures only for violations of county ordinances, relating to zoning, subdivision control and sanitation. All other ordinance violations shall be prosecuted by the District Attorney. He shall not handle proceedings involving mental commitments or writs of habeas corpus involving criminal defendants or criminal bond or bail forfeitures. However, he shall handle those actions involving children which are brought pursuant to section 48.13 and pursuant to Subchapter VIII of Chapter 48 of the Wisconsin Statutes.

- (h) He shall represent the county in all appeals presented before the Appellate Courts of either the State of Wisconsin or the Federal Courts with the exception of criminal appeals and appeals involving the Municipal Code of Kenosha County in which the office has not previously represented the interests of the County.
- (i) He shall serve as counsel to all county department heads including elected department heads, the parks commissioner and the highway commissioner and shall furthermore provide legal services for the Kenosha County Department of Social Services, Brookside Care Facilities, the County Nurse, the Department on Aging, the Comprehensive Mental Health Board, the Kenosha County Sheriff's Department, the Director of Finance and Audit, the County Treasurer, the Register of Deeds, the Coroner and the Surveyor. He shall advise and assist the County Treasurer in instituting appropriate actions to foreclose tax liens.
- (j) He shall examine State special charges which are made against the County for persons in institutions outside of Kenosha County; such as the feebleminded, the insane, the tubercular, and Wisconsin General Hospital. He shall determine if such charges when made against the County are properly and legally chargeable against the County. He shall assist in collecting the commitment charges under the commitments made by the various courts of the County, and determine legal settlement in all cases in which legal settlement is disputed.
- (k) He shall serve as legal advisor to and represent the Office of Personnel and Labor Relations. The

Corporation Counsel and Personnel Director and such other appointee of the County Executive shall, when so requested, conduct labor negotiations on behalf of Kenosha County.

- (l) He shall prosecute zoning violations and shall, when requested by the Director of Planning and Zoning, represent the Kenosha County Office of Planning and Zoning Administration at hearings before the Kenosha County Planning and Zoning Committee or Kenosha County Board of Adjustments. He shall furthermore represent exclusively the Office of Planning and Zoning Administration on any appeals taken of decisions of the Board of Adjustments. Special counsel may be retained by the Board or Commission and paid for by the County. Furthermore, he shall serve as legal counsel to the Kenosha County Sanitarian.
- (m) He shall represent the Kenosha County Assessing Department and at the request of the County Assessor shall appear on behalf of the Assessing Department at hearings before the Board of Review. He shall furthermore represent the County Assessor exclusively on any appeals taken of decisions of the Board of Review. Special counsel may be retained by the Board or commission and paid for by the County.
- (n) In matters before the Kenosha County Civil Service Commission, he shall represent solely the interests of the Kenosha County Sheriff's Department. Special counsel may be retained by the Board or Commission and paid for by the County.
- (o) He shall not represent the county in any matter involving forfeiture of a criminal bond or any bond given in cases involving the Municipal Code of Kenosha County unless such case was prosecuted by the Corporation Counsel's Office.
- (p) He shall represent all county officials and employees named as defendants in lawsuits arising out of any alleged acts or omissions falling within the scope of their employment.
- (q) He shall, when so requested, represent the Kenosha City/County Joint Services Board, the County Housing Authority and agencies providing library services to County residents.

LE-2.02-1 REPRESENTATION OF COUNTY OFFICIALS AND EMPLOYEES

The corporation counsel's office shall represent all county officials or employees who are involved in litigation as either a party or witness where the official or employee has acted within the scope of their employment. In the event of a conflict between the position of the county and the employee or official involved in any litigation, the corporation counsel shall disqualify his office from such representation and the official or employee may retain counsel of his or her choosing in accordance with the provisions of Wisconsin Statutes sections 895.35 and 895.46(1)(a) and amendments thereto. The reasonable, usual and customary local attorney fees and costs of such outside counsel shall be paid in accordance with the aforementioned provision of the Wisconsin Statutes. The Kenosha County Executive and the Kenosha County Finance Committee shall be advised in writing by any employee retaining such outside counsel.

LE-2.03-1 RETENTION OF SPECIAL COUNSEL

- (1) Outside counsel shall not be retained for representation of the interests of Kenosha County or its officials or employees except through the office of the corporation counsel except in such cases as a conflict of interest occurs as set forth in section LE-2.02-1 of this manual. The County may from time to time contract with other attorneys or municipalities for the services of special counsel in the event such a conflict is certified by the Corporation Counsel's Office.
- (2) Notwithstanding any provision to the contrary, any board or commission may retain special counsel to be paid for by the County where the Corporation Counsel's Office appears before that board or commission on behalf of any county department. Special counsel in those instances where the Corporation Counsel has rendered an opinion contrary to the position of the county board or county executive may also be retained by the county board or the county executive. Requests for such special counsel, to be paid for by the County, shall be made to the Kenosha County Circuit Court pursuant to Wisconsin Statutes section 59.44.

SECTION 3 AUTHORITY

LE-3.01-1 COUNTY BOARD ACTION

The Kenosha County Board of Supervisors reserves the right to make all policy decisions affecting litigation involving Kenosha County and subject to its delegation of authority to its Finance Committee and the Corporation Counsel's Office as set forth in this manual, to approve or disapprove pursuant to board resolution any settlement of actual or threatened litigation.

Where Kenosha County has assumed the defense of an official or employee and payment of any potential judgment, Kenosha County reserves the right to make any and all settlements regarding such claim or litigation without the consent of the official or employee where such settlement is in the best interests of Kenosha County. Kenosha County further retains and claims any and all subrogation and indemnification rights to which it is or may be entitled to.

LE-3.02-1 AUTHORITY

The Corporation Counsel shall have the following authority:

- (1) To commence any legal or court action on behalf of Kenosha County or related to the enforcement of county ordinances without further county board approval.
- (2) To decline to commence any legal or court action at the request of department heads or employees where such action is deemed for cause to be improper or inappropriate.
- (3) To terminate any action commenced on behalf of department heads or employees upon receiving further information relevant to the propriety of that action.
- (4) To appeal any decision of a court of law, or administrative body, or administrative review board adverse to Kenosha County without further county board approval.
- (5) To take into his immediate possession the records of any department, agency, board, commission, official or employee where those records are deemed relevant to any action in which the county is involved.
- (6) To retain special co-counsel to be named by him.
- (7) To certify an inability to represent the interest of the county or any department, board, agency, commission, official or employee thereof where a conflict of interest exists.

- (8) To settle claims for \$500.00 or less pursuant to section LE-2.01-1 of this manual.
- (9) To establish criteria for prosecution, defense, settlement, collection or dismissal of claims.

LE-3.03-1 DISTRICT ATTORNEY RELIEVED OF DUTIES
Whenever any of the powers and duties conferred upon the Corporation Counsel are concurrent with similar powers or duties presently conferred by law upon the District Attorney, the District Attorney's powers or duties shall cease to the extent that they are so conferred upon the Corporation Counsel, and the District Attorney shall be relieved of the responsibility for performing such powers or duties. Opinions of the Corporation Counsel on all such matters shall have the same force and effect as opinions of the District Attorney.

SECTION 4 INSURANCE AND INDEMNIFICATION

LE-4.01-1 INDEMNIFICATION
Pursuant to the provisions of section 895.35 and 895.46 of the Wisconsin Statutes, the county shall indemnify elected and appointed officials and employees, including members of boards and commissions for judgments entered against them, including costs and expenses incurred for attorney fees, in any litigation where the official or employee is found by a court of competent jurisdiction to have acted within the scope of his or her employment.

SECTION 5 LEGAL PLANNING

LE-5.01-1 OPINION REQUESTS

- (1) In order to assist county officials and employees in their assigned duties, legal opinions may be requested of the corporation counsel's office.
- (2) Requests for legal opinions may be made by county board supervisors, the county executive or department heads. Requests from employees should be first authorized by their department head.
- (3) Opinions will be assigned by the Corporation Counsel.

- (4) Only opinions which have been assigned, reviewed and signed by the corporation counsel are official opinions of the office of corporation counsel.
- (5) The following procedure will be utilized in requesting and releasing opinions:
 - (a) Requests for corporation counsel opinions should specify whether a formal written opinion is requested, which will be made public, or whether an informal, oral opinion is being requested, which will not be binding on the office.
 - (b) Upon receipt of a request for an opinion, a letter acknowledging the request will be sent to the individual making the request and indicating therein the date upon which the person requesting the opinion can anticipate receiving it.
 - (c) The format of the opinion will be as stated in the office policy manual and should include a status of the current law, the proper index heading, and a statement that the opinion is subject to change upon revision in the state law or newly discovered research. Prior to researching any opinions, consideration should be given to whether prior opinions have been issued on the same matter by corporation counsel's office.
 - (d) One rough draft of the opinion will be circulated among attorneys in the office prior to release and each attorney will note comments regarding that draft and sign off on the draft. That draft will be kept on file.
 - (e) Copies of all formal written opinions will be sent to the county executive, the county board chairman, the administration committee as well as each member of the committee of the department which is requesting the opinion. Should either a department head, committee member or committee wish to have further clarification, the attorney writing the opinion will make himself available to discuss that opinion.
 - (f) The district attorney's office may be forwarded all opinions dealing with conflicts of interest on the part of employees or officials.
 - (g) No opinion will be released to the press or made

public until at least two days after the release of the opinion to the requesting party unless a formal request is made under the Wisconsin Public Records Law.

- (h) All requests for second opinions from the attorney general's office will be reviewed and a decision made by the office as to whether or not further clarification is needed from the attorney general in accordance with guidelines established by the attorney general's office.
- (i) Should the county executive or board member wish to challenge a position taken by the corporation counsel's office in an opinion issued by the office, a certification will be made to that individual that the corporation counsel's office is unable to represent that individual so that arrangements can be made to obtain private counsel to be paid for by county funds.

LE-5.02-1

INTER-DEPARTMENTAL ADVISORY LETTERS

The corporation counsel shall from time to time issue inter-departmental advisory letters or unsolicited opinions to officials, department heads and employees regarding matters called to the attention of the corporation counsel's office and which may affect the operation of a particular county department. All such letters and opinions shall be copied to the county executive, the county board chairman and the department's oversight committee.

Where appropriate, such letters and opinions shall be stamped "attorney-client privileged claimed".

Inter-departmental Advisory Letters shall be appropriately indexed for future reference by the corporation counsel's office.

LE-5.03-1

ORDINANCE, POLICY RESOLUTION, BID AND CONTRACT REVIEW

All policy resolutions and ordinances being proposed for consideration by the county board of supervisors shall be reviewed and initialed by the corporation counsel's office at least two weeks prior to presentation. The corporation counsel's office shall provide, when necessary, an appropriate legal note and comment with legally mandated and recommended clauses and changes.

Legal notes shall not be considered to be part of any resolution or ordinance passed by the board but shall be

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kept on file in the county clerk's office as part of the policy resolution or ordinance file.

All bids and contracts in excess of \$25,000 and all labor and construction contracts shall be forwarded to the corporation counsel's office for review and comment at least 30 days prior to signing. All contracts involving less than \$25,000 shall be reviewed by the appropriate department head to determine the suitability of utilizing Kenosha County standard contract clauses as set forth in this manual.

All such bidding and contract documents are to be filed and indexed for easy access by the corporation counsel's office and the department involved in contracting.

Review and comment by the corporation counsel's office shall include legally mandated and recommended clauses as well as the following disclaimer:

EXPLANATION OF CORPORATION COUNSEL APPROVAL

THIS CONTRACT IS APPROVED, SUBJECT TO THE FOLLOWING LIMITATIONS:

1. The Corporation Counsel's Office takes no responsibility for mathematical errors.
2. It is the responsibility of the department involved to ensure the authority of the representative or agent signing the contract on behalf of the party with whom Kenosha County is contracting as well as the authority of Kenosha County's agent to sign on behalf of Kenosha County. Authority for Kenosha County's agent to sign must exist in either the annual budget or in the minutes of the appropriate board or committee meeting.
3. By approving this contract, the Corporation Counsel's Office makes no representations with respect to the availability of funds.
4. If this contract was previously reviewed by the Corporation Counsel's Office and recommendations which were made for improving the contract terms or language were not made, subsequent approval of this contract does not constitute a withdrawal of those recommendations.
5. Where the contract requires the other party to provide the County with a certificate of insurance or other documentation, it is the responsibility of the department involved to obtain same.
6. It is the responsibility of the department to disclose any possible conflicts of interest affecting this contract.
7. The Corporation Counsel's Office assumes that adequate minutes of proceedings will substantiate that the Wisconsin Open Meetings Law has been fully complied with for all meetings held on this matter; please be aware that failure to comply with said law could invalidate this contract.
8. Where this contract or related documents must be recorded, it is the responsibility of the department involved to record same with the Register of Deeds Office.
9. The Corporation Counsel's Office takes no

responsibility for representations made, whether written or oral, by county officials or employees during the course of negotiations leading up to this contract; please be aware that such representations could be considered by a court of law to be a part of this contract.

10. The Corporation Counsel's Office takes no responsibility for monitoring execution of this contract for cost overruns or for adequacy of performance.
11. The terms of this contract will become a matter of public record.

LE-5.04-1

ACCIDENT REPORTS AND CORRECTIVE ACTION

In the event any official or employee is aware of any accident involving Kenosha County personnel or property, the following report form shall be filed with the office of the county clerk with copies to the corporation counsel's office and the county's safety director and insurance adjuster:

FORM LE-1

KENOSHA COUNTY ACCIDENT REPORT

DEPARTMENT _____
EMPLOYEE _____
COUNTY VEHICLE _____
DATE _____
TIME _____
LOCATION _____
ESTIMATED DAMAGE AND/OR DESCRIPTION OF INJURY, INCLUDING
NAMES AND ADDRESSES OF PERSONS INJURED _____

WITNESSES _____

DESCRIPTION OF EVENTS _____

Upon receipt of such accident form, the safety director shall determine if any safety rule or other policy of

Kenosha County has been violated and whether any corrective or remedial measure needs to be taken to insure that further accidents are prevented.

LE-5.05-1

CONTRACT AND MANUAL COMPLIANCE

All department heads are responsible for monitoring compliance with the provisions of this manual, the Municipal Code of Kenosha County and the terms of any contract which has been entered into which affects that department. Any employee who becomes aware of any noncompliance with the terms of any contract affecting Kenosha County or the provisions of this manual shall report such noncompliance to the appropriate department head or authority. Notice of noncompliance shall be sent to the affected party outlining the specific act of noncompliance and the remedy sought by the county. Such notice shall be properly documented. Notice to outside contractors shall be by registered mail, return receipt requested. Any noncompliance involving a union contract shall be reported to the personnel director.

LE-5.06-1

WISCONSIN OPEN MEETING AND PUBLIC RECORDS LAW

All employees are required to be familiar with the requirements of sections 19.81 through 19.98 of the Wisconsin Statutes, the Wisconsin Open Meeting Law, and sections 19.21 through 19.39 of the Wisconsin Statutes, the Public Records Law, and to act in accordance with the provisions of such laws.

GENERAL DUTIES OF PUBLIC OFFICIALS 19.81

regulate that conduct under the constitution or other laws.

History: 1979 c. 120; 1981 c. 149; 1981 c. 335 s. 26; 1983 a. 166 s. 16.

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; 1983 a. 192.

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

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

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.

Under (1) (b), written request for notice of meetings of governmental body should be filed with chief presiding officer or designee and separate written request should be filed with each specific governmental body. 65 Atty. Gen. 166.

Method of giving notice pursuant to (1) discussed. 65 Atty. Gen. 250.

Specificity of notice required by governmental body discussed. 66 Atty. Gen. 143, 195.

Requirements of notice given to newspapers under this section discussed. 66 Atty. Gen. 230.

A town board, but not an annual town meeting is a "governmental body" within the meaning of the open meetings law. 66 Atty. Gen. 237.

Newspaper is not obligated to print notice received under (1) (b), nor is governmental body obligated to pay for publication. *Martin v. Wray*, 473 F Supp. 1131 (1979).

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 concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body.

(b) Considering dismissal, demotion, licensing or discipline of any public employee 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 employee 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 employee or person licensed requests that an open session be held.

(c) Considering employment, promotion, compensation or performance evaluation data of any public employee 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 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.

(i) Considering any and all matters related to acts by businesses under s. 560.15 which, if

discussed in public, could adversely affect the business, its employees or former employees.

(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; 1977 c. 260; 1983 s. 34.

Boards of review cannot rely on exemptions in (1) to close any meeting in view of explicit requirements in 70.47 (2m). 65 Atty. Gen. 162.

University subunit may discuss promotions not relating to tenure, merit increases and property purchase recommendations in closed session. 66 Atty. Gen. 60.

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.

(4) Meetings of the senate or assembly committee on organization under s. 71.11 (44) (c) 3 or 77.61 (5) (b) 3 shall be closed to the public.

History: 1975 c. 426; 1977 c. 418.

Sub. (3) applied to closed meeting of Democrats on legislative committee to discuss budget bill. State ex rel. Lynch v. Conna, 71 W (2d) 662, 239 NW (2d) 313.

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 subch. II of ch. 19.

History: 1975 c. 426; 1981 c. 335 s. 26.

Under (1), common council may not vote to fill a vacancy on the common council by secret ballot. 65 Atty. Gen. 131.

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.

19.90 Use of equipment in open session. Whenever a governmental body holds a meeting in open session, the body shall make a reasonable effort to accommodate any person desiring to record, film or photograph the meeting. This section does not permit recording, filming or photographing such a meeting in a manner that interferes with the conduct of the meeting or the rights of the participants.

History: 1977 c. 322.

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.

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State need not prove specific intent to violate Open Meeting Law. *State v. Swanson*, 92 W (2d) 310, 284 NW (2d) 655 (1979).

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 mandamus, injunction or 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; 1981 c. 289.

Judicial Council Note, 1981: Reference in sub. (2) to a "writ" of mandamus has been removed because that remedy is now available in an ordinary action. See s. 781.01, stats., and the note thereto. [Bill 613-A]

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.

LE
(3/4/86)

For purposes of the Open Meeting Law, the county clerk is designated as the agent of the Kenosha County Board of Supervisors and its committees, boards and commissions. The clerk's office shall be responsible for maintaining the minutes and tapes of all board and committee meetings and for giving and receiving notices required by the Open Meeting Law. The following forms shall be used so as to insure compliance with the Open Meeting Law:

REQUEST FOR MEETING NOTICE AND AGENDA TO BE
PLACED ON THE WEEKLY MEETING SCHEDULE

Week beginning: Month _____ Monday _____ 19 _____

MUST BE FORWARDED TO THE COUNTY CLERK'S OFFICE (Attn: Lenore)
no later than 10:00 am the Friday before your scheduled meeting.

_____ Board, Committee or Commission

_____ Meeting Date and Time

_____ Meeting Place

Request prepared by _____

AGENDA

NOTE: Any requests for closed session must contain a cite as to statutory
and approximate time the session will be closed. Closed sessions
scheduled at the conclusion of the meeting when possible.

REQUEST FOR NOTICE OF EMERGENCY MEETING

Per section 2.06 (c) Municipal Ordinance

I hereby request that pursuant to section 2.06 (c) of the Municipal Code of Kenosha County, a notice of an emergency meeting or an emergency agenda change be forwarded to the press. Such meeting of the _____ Committee to be held with less than the ninety-six hours notice provided in Section 2.06 (b) (1) of the Municipal Code of Kenosha County.

_____ Committee Meeting Place _____
Meeting Date _____
Meeting Time _____

The agenda or agenda change for said meeting to be as follows:

Requested by _____
Notice authorized by Clerk _____

Press noticed by: Phone ☐ Mail ☐

_____ of Kenosha News noticed at _____ on _____ by _____
_____ of WLIP News noticed at _____ on _____ by _____
_____ of _____ noticed at _____ on _____ by _____
_____ of _____ noticed at _____ on _____ by _____

MAR 04 1996

Kenosha



County

BOARD OF SUPERVISORS

NOTICE OF MEETING

NOTE: UNDER THE KENOSHA COUNTY BOARD RULES OF PROCEDURE ANY REPORT, RESOLUTION, ORDINANCE OR MOTION APPEARING ON THIS AGENDA MAY BE AMENDED, WITHDRAWN, REMOVED FROM THE TABLE, RECONSIDERED OR RESCINDED IN WHOLE OR IN PART AT THIS OR AT FUTURE MEETINGS. NOTICE OF SUCH MOTIONS TO RECONSIDER OR RESCIND AT FUTURE MEETINGS SHALL BE GIVEN IN ACCORDANCE WITH SEC 2.1C(2) OF THE COUNTY BOARD RULES. FURTHERMORE, ANY MATTER DEEMED BY A MAJORITY OF THE BOARD TO BE GERMANE TO AN AGENDA ITEM MAY BE DISCUSSED AND ACTED UPON DURING THE COURSE OF THIS MEETING AND ANY NEW MATTER NOT GERMANE TO AN AGENDA ITEM MAY BE REFERRED TO THE PROPER COMMITTEE. ANY PERSON WHO DESIRES THE PRIVILEGE OF THE FLOOR PRIOR TO AN AGENDA ITEM BEING DISCUSSED SHOULD REQUEST A COUNTY BOARD SUPERVISOR TO CALL SUCH REQUEST TO THE ATTENTION OF THE BOARD CHAIRMAN.

Kenosha



County

BOARD OF SUPERVISORS

Weekly Meeting Schedule

LE
(3/4/86)

For purposes of compliance with the Public Records Law, each department head is delegated the responsibility of acting as legal custodian of the records within the possession of his or her department. The following notice shall be posted in all county departments:

(Name of Department, Committee, Commission, Etc.)

1. Under Wisconsin Statutes section 19.35(1), a copy of which may be obtained from the legal custodian, members of the public have certain rights to access to public records. These rights include the right to inspect any record as defined herein, to photocopy said record or obtain a legible or audible copy of any tape or video recording and the right to photograph a record, the form of which does not permit copying. A member of the public need not identify himself or herself or state the purpose of the request in order to inspect or copy a record.
2. Exceptions. The public's right to access to public records may be limited according to law in certain circumstances where the material is deemed confidential; where the material is not classified as such as a public record in accordance with section 3.64(4)(e) of this ordinance. In addition, the public's right to access is limited pursuant to the provision of section 19.36 of the Wisconsin Statutes, a copy of which law may be obtained from the legal custodian, which permits withholding information in certain circumstances relating to the application of other laws, law enforcement records, contractor's records, computer programs and data, and trade secrets.

Substantive common law principals construing the right to inspect or copy apply, i.e., upon certain findings of fact, it may be determined that the harm to the public interest resulting from disclosure would outweigh the public interest in full access to the requested record.

The provisions of the Wisconsin Public Records Law do not apply to a record which has been or will be promptly published with copies offered for sale or distribution. In addition, the county is not required to create a new record by means of extracting information from existing records and compiling the information in a new format.

3. This office has been designated by the Kenosha County Board of Supervisors as a county department and as such a depository for certain public records and is charged with responsibilities including, but not limited to, those set forth in section _____ of the Wisconsin Statutes, a copy of which may be obtained from the legal custodian.
4. The undersigned legal custodian is responsible for insuring compliance with sections 19.31 through 19.39 of the Wisconsin Statutes and sections 3.64 and 3.645 of the Municipal Code of Kenosha County so as to insure that the public may obtain information and access to records in his custody for purposes of inspection or copying. The legal custodian may make such reasonable rules not inconsistent with state statutes as deemed necessary to insure that records are not stolen, misplaced or damaged. The legal custodian for this office has established the following rules attached hereto and by reference incorporated as a part of this notice:
5. The legal custodian for this office is _____; his/her designee is _____
(position)
_____ and in the event of the absence of either the legal custodian or his/her designee,
(position)
the alternate legal custodian is _____.
(position)
6. Records for this office may be obtained in the following location:

- 7.* Records may be obtained in this office during normal office hours between 8:00 a.m. and 5:00 p.m., Monday through Friday, unless otherwise specifically authorized by law.
- 7.* Because this office does not maintain regular office hours at the location where records are kept, access is permitted to records upon at least 48 hours written or oral notice of intent to inspect or copy a record.
8. Facilities. The following facilities which are available to the employees of this department, committee or commission are available to the public to obtain information and access and to make requests for records or obtaining copies of records, inspecting such records and abstracting of records during office hours as established above. This department, committee or commission is not required to purchase or lease photocopying, duplicating, photographic, video, sound duplicating or other equipment or to provide a separate room for such inspection or copying of records.

Fee Schedule

9.

Unless otherwise specified by state statute, the following costs and fees shall be collected by the legal custodian and are imposed to cover the cost of searching for and the copying of records:

Search. Prior to searching for or locating any record, an estimate shall be given as to the actual, necessary and direct costs involved in locating the record being requested. No charge will be made for the first \$50 incurred in locating the record or records, exclusive of copying, being requested by an individual requester. Any charge over \$50 will result in first dollar liability. A search for a record shall be deemed to incur a minimum of five minutes time. The actual, necessary and direct costs for locating records is to be calculated on the basis of \$10.00 per hour, said costs taking into account all related personnel costs and equipment time.

Reproduction Costs. (actual, necessary and direct costs)

	<u>Personnel Cost</u>	<u>Equipment Cost</u>	<u>Material</u>	<u>Total</u>
Photocopying	\$.18/copy	Copy Machine \$.06	Paper \$.01/sheet	\$.25
Audio Tapes	\$10.00/hour	Recorder	Tape \$2.50/tape	_____
Video Tapes	Actual Outside Contract Costs		Tape \$15.00/tape	_____
Microfiche	\$10.00/hour		Card \$.12/card	_____
Photograph	\$10.00/hour	Camera and developer	Film + actual developing costs	_____
Computer Data	Actual Outside Contract Costs	Computer Time \$38.60/hr	Paper \$_____/print-out	_____
Maps & Aerial Photos	\$10.00/hour		Paper \$_____	_____

Certification. Certified copies of records may be obtained from the legal custodian at the cost of \$2.00 per certificate unless such other cost is specified by law.

Mailing and Shipping. Mailing or shipping costs shall be assessed to the requester at the rate of the actual, necessary and direct costs involved in mailing or shipping a copy or photograph.

Prepayment. All mailing and shipping costs and search or reproduction fee in excess of \$5.00 shall be paid in advance to the legal custodian and properly accounted for by said custodian. An itemized statement shall be presented to the requester of the actual, necessary and direct costs.

The legal custodian may deem, with the approval of the county board, that certain records be distributed free of charge to the general public. Pursuant to Wisconsin Statutes section 59.71(1), the books, records, papers and accounts of the county board shall be deposited with the county clerk and shall be open without any charge to the examination of all persons. Pursuant to section 19.25 of the Wisconsin Statutes, no fee shall be charged to state officers requiring a search or copy of any county record.

10. Denials and Appeals. In the event that you are denied access to records, in whole or in part, you are entitled to know the reason for the denial. If a request is made orally, the decision to deny access may be made orally unless a demand for the written statement of the reasons for the denial is made within five business days of the oral denial.

If the custodian denies a written request in whole or in part, he shall receive from the custodian a written statement of the reasons for denying the request. Every written denial of a request by a custodian shall inform the person making the request that if the request for the record was made in writing, then the denial is subject to review upon a petition for a writ of mandamus under section 19.37(1) of the Wisconsin Statutes or upon application to the attorney general or district attorney.

You may appeal the decision of the legal custodian to deny records pursuant to the provisions of this municipal code relating to administrative appeals. In the alternative, you may seek advice from the attorney general as to the applicability of the Wisconsin Public Records Law under any circumstance. The attorney general may be contacted by writing to: State Capitol, Madison, Wisconsin 53702. In addition, you may furthermore, in the event of a delay in obtaining records or in the event of denial of access to records after a written request for disclosure is made, have the following remedies for purposes of reviewing the action of the legal custodian and obtaining compliance:

(a) The requester may bring an action for mandamus asking a court to order release of the record. The court may permit the parties or their attorneys to have access to the requested record under restrictions or protective orders as the court deems appropriate, and/or

(b) The requester may, in writing, request the district attorney of the county where the record is found, or request the attorney general, to bring an action for mandamus asking a court to order release of the record to the requester. The district attorney or attorney general may bring such an action.

Costs, fees and damages may be awarded in accordance with Wisconsin Statutes sections 19.37(2), (3) and (4).

11. Stolen, Concealed, Misplaced, Damaged or Altered Records. In the event that any record inspected or copied, is taken without permission, intentionally concealed, damaged, or improperly altered by a member of the public, he or she may be guilty of a Class C Felony pursuant to section 943.38(1) or a Class D Felony pursuant to Wisconsin Statutes section 946.72(1). In the event that a member of the public negligently misplaces or damages such record, he may be held liable for all consequent damages including costs of replacement.

Legal Custodian

Designee

Alternate Legal Custodian

7*—strike one

DEPARTMENTAL RULES FOR ACCESS AND COPYING

The legal custodian has established for this office the following rules: (eg. specificity, public handling, use, time requirements, cost estimates, prepayment, removal, excess costs, non-payment on account, and reasonable limitations as to subject matter or length of time represented by the record):

Dated at Kenosha County, Wisconsin this _____ day of _____, 1983.

LEGAL CUSTODIAN

DENIAL OF REQUEST FOR ACCESS TO RECORDS

NAME OF REQUESTER: _____

ADDRESS OF REQUESTER: _____

DATE OF REQUEST: _____

DATE OF DENIAL: _____

You have made a request for specific records in the custody of this office. Your request has been denied for the following reason/reasons:

- ☐ The record sought is not a record available for inspection and/or copying under the definition contained in section 19.32(2), Wisconsin Statutes. Records do not include preliminary drafts or personal documents of the legal custodian or material to which access is limited by copyright, patent or bequest.
- ☐ State or Federal law specifically prohibits release of the requested record.
- ☐ The matter contained in the record sought is of such a nature that it may properly be considered in a closed session under the Wisconsin Open Meeting Law, Wisconsin Statutes section 19.35, and therefore is deemed confidential at this time.
- ☐ The record sought contains privileged information under Chapter 905 of the Wisconsin Statutes or under section _____ of the Wisconsin Statutes.
- ☐ Release of the requested records would constitute a violation of the common law right to privacy or the Wisconsin Privacy Act under section 895.50, Wisconsin Statutes.
- ☐ Material which you have sought is available for sale or available for inspection in the public library.
- ☐ The county is not required to create a new record by means of extracting information from existing records and compiling information in a new format.
- ☐ Substantive common law principals construing the right to inspect or copy apply, i.e., upon certain findings of fact, it may be determined that the harm to the public interest resulting from disclosure would outweigh the public interest in full access to the requested record.
- ☐ The public's right to access may be limited pursuant to the provisions of section 19.36 of the Wisconsin Statutes which permits withholding information in certain circumstances relating to the application of other law, law enforcement records, contractor's records, computer programs and data and trade secrets.
- ☐ You have not prepaid the required fees which amount to \$_____
- ☐ Other.
Explanation: _____

Where there has been a denial of access or delay in obtaining access to information, your rights are outlined in paragraph 10 of the Wisconsin Public Records Law Notice posted in this office, a copy of which is attached.

Legal Custodian

MAR 04 1988

Any questions regarding compliance with either of these laws shall be referred to the corporation counsel's office.

LE-5.07-1 CONFLICTS OF INTEREST

Any employee having a conflict of interest as defined in this manual or any employee having knowledge of a possible conflict of interest of any other official or employee is required to report such conflict or possible conflict to the corporation counsel's office in writing. Any such communication shall be reported to the county executive and kept confidential.

LE-5.08-1 CASE PREPARATION

All county officials and employees are required to cooperate with the corporation counsel's office in any actual or threatened litigation involving Kenosha County or its officials and employees.

LE-5.09-1 SERVICE OF PROCESS AND NOTIFICATION OF CLAIMS AND LITIGATION

Any employee served with a notice of claim, subpoena, summons, complaint or other legal process affecting the County shall file a copy of the document with the corporation counsel's office within 48 hours of the receipt thereof.

LE-5.10-1 PRESERVATION OF EVIDENCE

Any employee who is aware of actual or threatened litigation shall take all necessary steps to insure that all evidence is preserved.

The corporation counsel's office is authorized to take into its possession any and all such evidence or documents pertaining to such actual or threatened litigation. Department heads shall cooperate with any such request from the corporation counsel's office.

LE-5.11-1 RECORD KEEPING

All records, files, accounts, memorandum, maps and other miscellaneous documents of the various departments in county government shall be kept in accordance with the Wisconsin Public Records Law. Incoming documents shall be stamped received on the date received.

No county document shall be destroyed except in compliance with the Wisconsin Open Records Law and the destruction schedule set forth by the county board's records committee.

Documents shall not be copied or distributed outside the department without authorization of the record's custodian.

No document that is stamped "Attorney-Client Privilege

Claimed" shall be copied or distributed without authorization from the corporation counsel's office.

Files and documents shall be organized and kept in such a fashion that will facilitate retrieval of significant information in the event of trial or discovery proceedings.

No false statement or representation shall be placed in any file, document or report.

Minutes of board and committee proceedings shall be kept on file in the county clerk's office.

All current arrest warrant documents and any document required to be filed in the Court or in the Register of Deeds Office shall be timely filed.

LE-5.12-1

CONFIDENTIALITY AND ATTORNEY-CLIENT PRIVILEGE

Kenosha County reserves the right to claim an attorney-client privilege with respect to communications between attorneys employed by the county and any county official or employee. This privilege can only be waived by authorized representatives of Kenosha County.

Any document marked confidential or "attorney-client privilege claimed" shall not be released or copied without the authorization of the corporation counsel's office. All such documents shall be separately filed so as to facilitate retrieval.

LE-5.13-1

OUT-OF-COURT STATEMENT

Any employee involved in actual or threatened litigation involving Kenosha County or for which Kenosha County may be legally required to provide a defense shall refer any inquiries for written statements or interviews by any individual to the corporation counsel's office.

LE-5.14-1

WITNESS FEES

Any county official or employee who receives a witness fee from any source for attending a deposition, trial or hearing of any issue involving Kenosha County or for attending such proceedings in their capacity of a county employee shall refund such fee to Kenosha County where such attendance occurred during that employee's normal working hours.

LE-5.15-1

MANAGEMENT REPORTS

A report shall be filed with the county board of supervisors and the county executive on a monthly basis indicating the status of all claims and suits against the county and a summary of any significant legal developments affecting the

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(3/4/86)

county.