League of Women Voters of Minnesota Records

Copyright Notice:

Version 3
August 20, 2018

League of Women Voters of Minnesota, 555 Wabasha, St. Paul, Minnesota 55102 - November 1974

Testimony before Joint Governmental Operations Committee
by Ann Knutson, Chairman, Organization of State Government
League of Women Voters of Minnesota
November 21, 1974 - Room 83
State Office Building, St. Paul, Minnesota

Citizen participation in government is basic to the democratic process and is therefore the cornerstone of League's political purpose. The League acts in the public interest on governmental issues to open up the electoral and other governmental processes, to make facts on issues and the process more accessible to the public.

To ensure responsible decision-making, all governmental bodies must be accountable to the citizens to provide well-defined channels for citizen input and review.

The Minnesota Open Meeting Law now enforces this responsibility upon all units of government. It provides the channels for establishing public confidence. There is no better time than now for policy-making bodies and their staffs to evaluate their own operation in light of the law.

The League in no way believes that government should be stopped from carrying out the public's business, but citizen involvement is the basis for our democratic process.

There is no question that the law needs clarification such as definition of meeting or proceeding that are of a highly confidential nature or those that protect financial investment for the public's benefit.

555 WABASHA. ST. PAUL. MINNESOTA 55102 TEL (612) 224-5445

The League of Women Voters of Minnesota

OPEN MEETING LAW:
UPDATE

Memo to: Local Leagues

From: Ann Knutson, Organization of State Government Chairman

RE: MONITORING THE OPEN MEETING LAW

DATE: December 5, 1974

Background

The Minnesota Open Meeting Law was first passed in 1957. Action by the 1973 Legislature combined two laws: one applying to state agencies, and the other to all governmental bodies, except the Legislature (the Legislature is permitted by the Constitution to set its own rules). The act established for the first time civil penalties for violation of the law. (See attached copy of the law.)

Attorney General's Opinion

A recent Attorney General's opinion reviews the purpose of the law and declared that the law:

> Assures the public's right to be informed of what business is under consideration and the reasons for decisions which are made.
>
> Recognizes that decisions are best reached after free and open discussion, debate and clash of opinion.
>
> Prohibits the taking of action at secret meetings because the public would be unable to detect improper influence.*

Covered by this ruling are deliberations (meetings) which include an exchange of views and reports or statements from consultants, administrators, employees or citizens. Deliberations made by less than a quorum that could have the effect of determining a future decision must also be open as well as political caucuses. The ruling was made specifically to questions raised by two communities with five member councils, but the significance of the ruling is "we have no authority to recognize exceptions not provided by statute." Any change or clarification in the law is the responsibility of the Legislature, and it can be expected that they will try to answer some of the concerns in the next session.

Monitoring by the League

League members are in an excellent position to evaluate the operations of governmental bodies. To ensure responsible decision-making of public business, we endorse accountability, representativeness and effective performance with some guarantee that the public has access to how our elected officials and staff carry out the public business.

With the current concern as to how governing bodies may or may not act under the law, some questions might be raised:

> Do governmental bodies give proper notice to meetings and hearings? How is this handled? Are the meetings held at convenient locations?

*Attorney General's opinion released 10/29/74

Is the decision-making process clearly open? Have the issues been thoroughly discussed in the open prior to reaching a decision?

Do you see any areas that should not be open? Negotiation strategy, land transactions, personal decisions, etc.?

What changes have you observed as the governing bodies meet the requirements of the law?

You may wish to interview elected officials and staff to get their reaction to the law and their obligation to the citizens. If you have taken action, or do take action, let the state League office know. Action that may be taken by local Leagues is spelled out in the U. S. Congress position. Refer to Documents: Background on National League Program 1974-1976, pp. 20-21. Any action taken should have your members' knowledge and support.

League of Women Voters of Minnesota, 555 Wabasha, St. Paul, MN 55102 - December 1974

CH. 680 68th LEGISLATURE

MINNESOTA OPEN MEETING LAW

CHAPTER 680

S.F.No.1480

An Act relating to meetings of state agencies and of governing bodies open to public; providing a penalty; amending Minnesota Statutes 1971, Section 471.705; repealing Minnesota Statutes 1971, Section 10.41.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1971, Section 471-705, is amended to read:

471-705 Meetings of governing bodies; open to public;

Subdivision 1. Except as otherwise expressly provided by statute, all meetings, including executive sessions, of any state agency, board, commission or department when required or permitted by law to transact public business in a meeting, and the governing body of any school district however organized, unorganized territory, county, city, village, town, borough, or other public body, and of any committee, subcommittee, board, department or commission thereof, shall be open to the public, except meetings of the board of pardons, the adult corrections commission and the youth commission. The votes of the members of such state agency, board, commission or department or of such governing body, committee, subcommittee, board, department or commission on any action taken in a meeting herein required to be open to the public shall be recorded in a journal kept for that purpose, which journal shall be open to the public during all normal business hours where such records are kept. The vote of each member shall be recorded on each appropriation of money, except for payments of judgments, claims and amounts fixed by statute. This section shall not apply to any state agency, board, or commission when exercising quasi-judical functions involving disciplinary proceedings.

Subdivision 2. Any person who violates subdivision 1 shall be subject to personal liability in the form of a civil penalty in an amount not to exceed $100 for a single occurence. An action to enforce this penalty may be brought by any person in any court of competent jurisdiction where the administrative office of the governing body is located. Upon a third violation by the same person connected with the same governing body, such person shall forfeit any further right to serve on such governing body or in any other capacity with such public body for a period of time equal to the term of office such person was then serving. The court determining the merits of any action in connection with any alleged third violation shall receive competent, relevant evidence in connection therewith and, upon finding as to the occurrence of a separate third violation, unrelated to the previous violations issue its order declaring the position vacant and notify the appointing authority or clerk of the governing body. As soon as practicable thereafter the appointing authority or the governing body shall fill the position as in the case of any other vacancy.

Sec. 2. REPEAL. Minnesota Statutes 1971, Section 10.41, is repealed.

Sec. 3.

471-705

Subd. 3. This section may be cited as the "Minnesota Open Meeting Law".

Sec. 4. The effective date of this act is May 1, 1974.

Approved May 24, 1973.

League of Women Voters of Minnesota, 555 Wabasha, St. Paul, Minnesota 55102

Testimony presented to House Committee on Governmental Operations
by Mary Palmer, President, League of Women Voters of Marshall
Pipestone Vocational School, Pipestone, Minnesota at 1:30 P.M.,
August 1, 1975

The Marshall League of Women Voters supports the provisions of the Minnesota Open Meeting Law. In the public interest, maximum participation of the citizenry prior to decision-making is to be encouraged, along with continued interest and positive re-inforcement of careful planning instituted in a public forum.

The interests of the public and the private sectors are not mutually exclusive; these interests intersect, ideally to serve the common good. Trust-building can be facilitated only through interaction of the people. Openness minimizes elements of bias and undue influence, and provides opportunity for factual dialogue.

As citizens under democratic government, we are guaranteed both obligation and protection in the area of human rights. Therefore, it appears necessary that public bodies develop and implement specific guidelines for instruction of their members in the provisions of the Minnesota Open Meeting Law. In our support of this law, the League of Women Voters of Marshall reaffirms its belief in the possibility of achieving that level of government which is based on mutual understanding and respect.

555 WABASHA, ST. PAUL, MINNESOTA 55102 TEL (612) 224-5445

The League of Women Voters of Minnesota

OPEN MEETING LAW: MONITORING INFORMATION

To: Local Leagues
From: Ann Knutson, Organization of State Government

August, 1975

Our support for openness in government is derived from the criteria established in the US Congress position and the guiding principle "The League of Women Voters believes that democratic government depends upon the informed and active participation of its citizens and requires that government bodies protect the citizen's right to know by giving adequate notice of proposed actions, holding open meetings and making public records available."

References: Monitoring the Open Meeting Law: Update, LWVMN, December 1974
Documents: Background on National League Program 1974-76, p. 20-21, LWVUS Pub. 521.

The current Open Meeting Law passed by the 1973 Legislature was actually a combination of two statutes passed in 1957 with only the addition of civil penalties for violation effective May 1, 1974. Public bodies began to react as strict interpretations from the Attorney General's office were issued upon request.

The House Committee on Governmental Operations chaired by Representative Harry Sieben, Jr., is currently holding hearings throughout the state. Many municipalities are adopting resolutions supporting the League of Minnesota Municipalities (LMM) proposals for Open Meeting Law modification.

LMM amendments to the Open Meeting law have been introduced in the House by Rep. Howard Neisen as H.F. 1192. The amendments proposed would define meeting, public body and quorum. They also would permit a public body, by 2/3 vote, to go into closed or executive session for these specific items of discussion.

1) meeting with its representatives to discuss and plan negotiation strategy and meeting with the exclusive representatives of any employee group;

2) meeting with their attorney on matters involving actual or potential litigation;

3) discussion of feasibility of land acquisition for public purposes; and

4) meeting to discuss personnel--hiring and firing.

When a meeting is closed, a recording or a transcript must be made and deposited with the clerk of district court and may be made public by a resolution of the public body. In order for a citizen to obtain information from the tapes or transcripts, he must petition the court, and after a public hearing and determination of whether sufficient time has lapsed to prevent disruption or prejudice to the issues or persons involved, the records could be released.

The primary question is, what is in the best interest of the public? It is argued that these exemptions will protect the public.

(Over)

Opposition to adding exemptions to the law, in each instance, suggests openness can consolidate public opinion by open hearings and offer a better opportunity to generate a mood of support for official positions.

For example, (1) employee bargaining groups may meet in private by law; public body negotiations permit citizen involvement and could help gain support for official decisions. (2) Negotiations on land acquisition by federal and state law must be true market value based on current land sales. Land purchases should be part of a well-conceived plan. And (3) closing meetings on personnel matters does not necessarily guarantee that an individual's rights would be more secure.

Public interest is best served by open meetings. It dispels suspicions and uncertainty surrounding decision-making. Public scrutiny of difficult and complex decisions is and should be welcomed.

LWV is one of the few organizations that attend meetings at various levels of government regularly; thus we have the background to take meaningful and informed action on maintaining a strict open meeting law.

How has your League participated in the subject of open governmental procedures? Have you participated in meetings where the LMM amendments were discussed? Have you attended the hearings of the legislative committee in your area?

Interview your elected officials, appointed committee members and administrative staff; also talk to the news media for their observations.

Do you see more open deliberation in meetings over the past year? Less? Same?

Is there any evidence that public officials are placing more responsibilities upon staff with less time for deliberation?

Is the policy-making body at ease in discussing sensitive issues?

(Refer to additional questions in Update: Open Meeting Law, 12/74).

Contact your legislator; if your representative or senator is a member of the House or Senate Committee on Governmental Operations, contact them personally about the need to retain a strict open meeting law in Minnesota.

You may request to give testimony before the legislative committee meeting in your area; however, first you must clear your statement with the state office.

It is important to send your observations and interviews to the state office; your input throughout the state will strengthen lobby efforts when the session convenes in January, 1976.

League of Women Voters of Minnesota, 555 Wabasha, St. Paul, Minnesota 55102

Testimony presented to House Committee on Governmental Operations
by Mary Palmer, President, League of Women Voters of Marshall
Pipestone Vocational School, Pipestone, Minnesota at 1:30 P.M.,
August 1, 1975

The Marshall League of Women Voters supports the provisions of the Minnesota Open Meeting Law. In the public interest, maximum participation of the citizenry prior to decision-making is to be encouraged, along with continued interest and positive re-inforcement of careful planning instituted in a public forum.

The interests of the public and the private sectors are not mutually exclusive; these interests intersect, ideally to serve the common good. Trust-building can be facilitated only through interaction of the people. Openness minimizes elements of bias and undue influence, and provides opportunity for factual dialogue.

As citizens under democratic government, we are guaranteed both obligation and protection in the area of human rights. Therefore, it appears necessary that public bodies develop and implement specific guidelines for instruction of their members in the provisions of the Minnesota Open Meeting Law. In our support of this law, the League of Women Voters of Marshall reaffirms its belief in the possibility of achieving that level of government which is based on mutual understanding and respect.

LEAGUE OF WOMEN VOTERS OF MOORHEAD

Moorhead, Minnesota

August 15, 1975

The League of Women Voters of Moorhead supports the provisions of the Minnesota Open Meeting Law. In order to maintain the confidence of citizens in their government it is important that the business of government be conducted openly. The accountability of elected officials is not furthered through exceptions. We believe that it is in the best interest of the public that the law remain strong.

The League of Women Voters is an organization which promotes political responsibility through the informed and active participation of citizens in government. Our interest in monitoring open meetings in Moorhead began in 1974 when we appeared before the city council to urge the elimination of pre-council meetings which had the appearance of being closed, and which precluded discussion of issues during the regular council meetings. It is important that citizens know how decisions are reached.

We also found that when much of the discussion took place outside of the official meeting, the official meeting was merely a formality and citizens had little input into the decisions made because they had lost interest in attending.

We do not feel that weakening Minnesota's open meeting law would serve the public interest. We would prefer instead that it remain strong so that the goal of "mutual understanding and respect" between citizens and their government can be achieved.

Alice Johanson

Alice Johanson, President
League of Women Voters of Moorhead

LEAGUE OF WOMEN VOTERS OF MINNESOTA
555 WABASHA • ST. PAUL, MINNESOTA 55102
PHONE: (612) 224-5445

MEMO

TO: Borg and Lucas

FROM: Herb

SUBJECT: Open Meetings

DATE: December 17, 1976

Ann Knutson called yesterday, 12-16. She got a copy of Gleason's Report on Open Meetings and has offered to condense it for us to mail to local Leagues with the January mailing. I told her I thought that would be a fine addition, and we would sure appreciate it.

Borg - Lucas

LEAGUE OF WOMEN VOTERS OF MINNESOTA

555 WABASHA • ST. PAUL, MINNESOTA 55102 • TELEPHONE (612) 224-5445

December 17, 1976

League of Women Voters of the United States
League Action Department
1730 M Street Northwest
Washington, D.C. 20036

Ladies:

Our state Legislature has dealt with Open Meeting laws, and we've had no problem supporting and monitoring, but now a number of Open Records laws are coming in, and we are caught with no definition of public records. We state in our Principles that we support open and accessible public records, but the question of privacy, individual rights, etc., keeps us on a search for where are the lines drawn. What is public? What is non-public? What is confidential?

The Minnesota Newspaper Association wants public information defined as that having to do with public officials and public money. We opposed the Welfare/IRS efforts, we know. We're watching a piecemeal approach on public records with everyone coming in for exceptions.

If there is a guide to what we in LWV mean in our Principles on Public Records, we'd appreciate hearing from you.

Thanks.

Sincerely,

Jerry Jenkins, President
League of Women Voters of Minnesota

J:M
Copies: Ruth Clusen
Peggy Lampl

St. Paul Pioneer Press
The Voice of Minnesota

BERNARD H. RIDDER, 1883-1975
BERNARD H. RIDDER JR., President
THOMAS L. CARLIN, Publisher
WILLIAM G. SUMNER, Editor
JOHN R. FINNEGAN, Executive Editor
DONALD J. O'GRADY, Managing Editor

EDITORIAL PAGE

Thurs., Dec. 16, '76

Flaws in the registration law

Minnesota's Independent-Republicans are nervous about this state's election day registration law. The law was intended to make it as easy as possible for qualified voters to sign up and cast their ballots. The concern is that it might also make it as easy as possible for folks to vote in more than one precinct.

Thousands of voters—454,000—took advantage of the law to vote last month. To register, it is merely necessary to show up at a polling place with a specified type of identification or an already registered voter willing to vouch for you.

Since Republicans are something of a minority in Minnesota they get a little twitchy at the sight of masses of new voters (many very young) crowding sometimes confused polling places. They're making a study right now of how election day registration worked Nov. 2.

Republican interest has centered on Mankato and St. Paul. In Mankato, they're looking at a legislative district that includes the state university. About 25 per cent of the votes there were cast by people who registered on election day and Republicans have charged there were irregularities in registration.

As a cross-check on some Mankato college students, Republican party officials sought voter registration information in St. Paul. (They also are interested in some St. Paul races.) But the needed information was not available here. The St. Paul city attorney, Harriet Lansing, said it is "unclear" whether voter registration cards—which tell who actually voted and where — are public information.

Some Republicans have come down hard on Lansing, apparently sensing some sort of DFL conspiracy at work. This, we think, is a bum rap. Lansing was first approached by a St. Paul business firm that wanted to check on whether its employes who took time off for work to vote actually went and voted.

In checking the law, Lansing found that a provision that once clearly made such records public has vanished. Does this leave them "confidential" under the state privacy act? Lansing asked for a state attorney general's opinion and has not yet received an answer.

Clearly this information should be public; if it isn't the chances of uncovering abuse become virtually nil. If the attorney general does not "reclassify" the information, the next session of the legislature must.

No one has proved that any elections were illegally settled by registration fraud, but the Republican study has certainly demonstrated that there exists what Chairman Chuck Slocum calls "a great potential for mischief in the election day registration process."

There is no harm or damage to the concept in the next legislature taking a fresh look at the law, with the benefit of Republican findings.

Sen. Mel Hansen, IR, Minneapolis, has proposed a list of changes to close "loopholes" in the registration law. These changes would clear up vagueness on basic identification (name, date of birth, etc.), limit the number of new voters an individual can vouch for, and make registration records more complete — and open.

The Mankato case

Legislative District 29a (Mankato) offers clear evidence of the need for changes in the Minnesota election-day registration law, particularly for limiting the number of voters-to-be an individual "neighbor" can vouch for. (See accompanying editorial: "Flaws in the registration law.")

In the Mankato district, three apparently tireless Mankato State University students vouched for a total of 472 election-day registrants — and have now testified at hearings contesting the election results that they were not personally acquainted with all those folks. (In the election for state representative, the margin of victory was only 292 votes.)

Here is a glaring loophole in the law that virtually begs to be abused. There is, so far, no indication that any of the 472 so haphazardly "identified" in Mankato were not bona fide residents of the district, but the danger of fraud is self-evident; there is simply no limit under the present regulations to the number of "ringers" that might be registered at the polling places — especially in a district with a large fluid population, as in college towns such as Mankato.

Short of banning registration through identification by a neighbor altogether, there ought at least to be a limit imposed. Maybe "one per customer," so to speak.

Partially Scanned Material

Version 3
March 18, 2019

Borg

LEAGUE OF WOMEN VOTERS OF MINNESOTA

555 WABASHA • ST. PAUL, MINNESOTA 55102 • TELEPHONE (612) 224-5445

December 2, 1976

Ms. Dorothy K. Powers
League of Women Voters of New Jersey
460 Bloomfield Avenue
Montclair, New Jersey 07042

Dear Ms. Powers:

Because of our strong support for open meetings, the LWVMN has been asked to support legislation dealing with opening records to the public, press, private and public bodies.

We understand that your League may have had some experience in this area. We would appreciate receiving any information you may have on the subject and any insights that you could offer regarding problems and conflicts.

Sincerely,

Helene Borg
Action Chairperson

Sent also to LWVs of Maryland and Florida

B:M

MEMO

TO: ACTION COMMITTEE

FROM: Pat Lucas

SUBJECT MEETING - Oct. 5 - 9:30 DATE 10-1-76

LEAGUE OF WOMEN VOTERS OF MINNESOTA
555 WABASHA
ST. PAUL, MINNESOTA 55102
PHONE: 224-5445

The next action committee meeting Tuesday, October 5, 9:30 AM.

PLEASE BRING YOUR LEGISLATIVE QUESTIONS!!!!!!!

Ruth Ann Michnay is working on Open Records - She will be at the action committee meeting. Attached is her outline of the subject and also a memo from Ann Knutson on the subject.

Ruth Ann is also attending Mammenga's class.

Open Records - A. Knutson September 14, 1976

Is this an important issue? Yes, it is my opinion that pending legislation which effects citizen/individual rights is likely to discussed this session; while size/ salary/amending process/ reapp. etc. are not priority issues likely to be considered by the Legislature. Open meeting, sunset legislation, admin. rules and open records seem to be up for discussion. Open records is the most important to LWVMN at this time. It is better to be part of lobbying now rather than attempting to correct bad legislation in the future.

Open records LWVUS Government position is probably more complex than open meeting because it requires knowledge of more gov't. agencies, police, etc. and more thoughtful weighing of open vs privacy.

Again we deal with the LWVUS Government position. Disclosure is most important - if you don't have the knowledge of what's being concealed, then how does one know that the governmental process is being treated fair.

LWVUS has been lobbying on S1 - the rewriting of the criminal code.regarding the portions that deal with individual liberties. Very little has been sent to local or state Leagues on this issue. How did they arrive at their position of individual rights vs privacy? Their criteria could be helpful to LWVMN. - see R/H 2/76, National Board Report 1/76.

What currently exists in Minn. must be researched further. Privacy Study Commission has been meeting this summer. Two Statutesare important - M.S. 1517 - Public Privacy Law and (1975) Chapter 401 - Data Privacy Act. Other statutes are also listed in Phillips meeting held July 13, 14, 22. Dennis Bates - Ex Director of the Privacy Comm. would be the best resource at the State level.

Robert Shaw - manager Mn. Newspaper Assoc. - (335-8844) - very much concerned with good legislation being written. Considers current statutes a "jungle of contradiction" - referred to a 61p. study done by Herb Terry - formerly of U of M about 1974. May be worth reading.

Major concern is that current law is confusing and not enforceable. Each gov't unit makes its own rules. Of course, his major concern is freedom of the press. He believes 3 issues are at stake: 1) openness following public monies

2) openness to the public legal process - courts etc. through records and meetings

(He digresses so much that I didn't get the 3rd and he forgot it.)

He did express concern about reasonable access to hospital info. and education - is this a gov't. concern?

Talked about data bank information - says no one is expressing concern in what is collected or how used. Again privacy vs disclosure.

Suggested we talk to Bates, and Jack Finnegan - he said there was notone at the U of M School of Journalism involved in this. ST. PAUL

Common Cause is drafting legislation with some exemptions. with empires

It should be mentioned that privacy of welfare recipients is not of concern, only how governing bodies appropriate, redistribute money - not who and how much. Already covered by statutes. Other statutes are also written - need for Laurel (Criminal Justice) and Lois (H.R.) to offer guidelines, also.

Another source of information would be House and Senate Research staff - Try Nobels of the House and Triplett in the Senate.

Open Records - Ruth Ann Michnay

I Issue: Data Privacy vs Freedom of information

II Laws:

A. Federal - Freedom of information Act 2/9/75
- 9 Exemptions
- Limits fees charged
- Respond in 20 days
- Plaintiff successful - Govt. pays
- Judge use discretionary auyhority to review confidential material.

B. Minnesota
- Limit record keeping
- Provide security for the records against unauthorized use.
- Citizen right to see any records with 2 exceptions.
- Public knowledge why, what, and who uses record.

} newspaper article

Ch 283 - 1976
- Data must be expressed "not public" by law.
- Emergency classification will terminate 6/30/77.

III. Conflict/ Problems
- Definition of public
- Few laws for Private/Confidential Material
- What is individual privacy?
- Unenforceble
- How long to keep records?
- Should there by outside group monitoring the records?
- Criminal Records - what should be public?
- Employers need access to criminal records
- FBI requirements
- Current investigation material
- Fear of court suit if released information
- Problem is the number of files
- Hurt public confidence in police
- Hurt informal relationship between press and police
- What happens when emergency classification comes off.
- No conformity in record keeping
- Non personal data?
- What data should be collected

IV. Suggestions/Solutions
- Definitions Public? Privacy?
- Establish Standards
- Establish enforcement procedures/penalties
- Specify exemptions
- Police use discretion in disseminating information on current investigation
- Criminal data files private - operation ID
- Central repository for all offenses be established
- Flexible guidelines
- Public embarrassment on valid for private
- 1800 townships be dropped from coverage by law

V. Other States
A. Alabama - model
B. Connecticut - Commission
C. New York - Private then in 1975 all public
D. Texas

VI. Positions / LWV

1. Common Cause
   - all records .... public. Any exemptions to the law must be specifically stated in statute.
   - Public record defined by statute
   - Time limits on request for copies
   - Govt. agencies .... maintain a current index of public records ... used by layman.
   - Courts should have full judicial review power over request denied. Successful plaintiffs should be reimbursed for reasonable attorney's fees.

2. ILLINOIS: State LWV - Support of the individual's civil rights and liberties in respect to privacy and record keeping.

3. OHIO: State LWV - under their juvenile position

4. MINNESOTA: State LWV - under their juvenile position

Present Law	Privacy Study Commission	League of Minn Cities	M-PIRG	LWV Positions	Comments - Recommendations
1. Title: Officials Record Law		1.) MN "FAIR INFORMATION Practices" Act	1. "Open Records Act of 1977"	LWV Principles:	Federal Law (FOI 1975)
2. Purpose: Collection & dissemination of data		2.) Use & dissemination of data on individuals; Policy followed: Access to records, protect personal privacy, & Government agencies allowed to collect data for high quality service	2.) Relating to the freedom of information	a.) LWV believes in a representative gov't and in the individual liberties... constitution	-9 Exemptions -20day response period
				b.) LWV believes that democratic gov't upon the informed and active participation... citizens rights... holding open meetings & making public records accessible	Exemptions Of the state ~~Records~~ from Public Record -Medical Records -Criminal Investigat -Trade Secrets -Real Estate Appraw -Internal Personnel Records
3) Definitions: Individual - natural person	3. Individual defined as natural person, (under 18 - guardian or parent) Minor or Authority may request withholding information	3) Individual: including under 18 parent or guardian Bill on Data on Individuals only	3.) Person: individual, partnership, corporation association, ... legal representative Public Record	LWV of MN Positions	-Adoptions -Scholastic Record -Litigation (- As stated in State & Federal Law)
4.) Classification Public, Private, Confidential Emergency Classifications (3 guidelines)	4. Public, Private & Confidential (Dept of Administration should establish standards; Approve or Disapprove E.C.	4. Public, Private, and Confidential	4.) Certain material be dissolved under all circumstances (policy statements, voting records, inter-working's of an agency...)	a.) Corrections: - Constitutional protection & protection from invasion of privacy - Consideration of confidentiality	
5.) Responsibility of records No response deadline	5.) Collect and Store only what is necessary; Request data should be precise, demonstrate time limit	5.) Rt of Individual: Respond in 14days to Private & Confidential material Indiv must know purpose	5.) Same as Law - explains how public records are kept & passed on to successor Makes clear to the courts people have the right to review public records Response in 10days	- Court Records, the right of every juvenile & guardian to know it exists, to see unless detrimental, to correct, & to safeguard unwarranted disclosure	Recent Problems in MN. - Voting Registration cards - Juvenile Records - Present Law can not handle scope nor is the law working - School Records - MPIRG's Statemen - Welfare: Should records be kept of children of welfare parents
6.) (Public) Open Records: - Summary of private & confidential - ALL E.C. with no specific law becomes public - Arrest information name, age, address of arrested person; nature	6.)	6.) Arrest information with exceptions* - Wanted Persons data - Incident Data - Summary data on confidential & private	6.) All records in Public Records definition - Summary data from all agencies - Indexing system - Regulations & notices for FOI Act Implementation	b.) Election Laws - Public's right to comprehensive disclosure of all political campaign contributions & expenditures	

MATERIAL ON OPEN RECORDS - RUTH-Ann Michnay

Present Law	Privacy Study	Lof Mn Cities	M-PIRG	LWV	Comments - ②
time and place of arrest, carcerated or not.				c. Organization of State Government - Support of Legislative reform through improved procedures for providing information	LWV position related to Privacy Commission - Under Corrections, problem with definition of individual - Good recommendations but nothing concrete) - Medical Records are private - In education, individual has right to see data - Lacks CRPL goals
) Confidential - Stated in state & fed laws - Active investigation material - EC System	7. Periodical Review of all Confidential Records in Dept. of Welfare - Intelligence & Investigative Records	7. Health Records injurious to subject* - Data on sexual transmitted diseases - Investigative Data - Intelligence Data	7.) Exempt from Public Records - Trade secrets - Records on work product of an attorney on a litigation or claim... - Records that disclosure would give advantage to competitive / serve no public purpose		
.) Private	8.) Full & accurate Medical Records - Education - individuals right to see & collect data including recommendations	8. Criminal History Record Data - Crime Prevention Data - Correctional & Release Data - All health Records. - Personal Records with exceptions* - Real property assessment data - Library Record - Financial Status Records		d.) CMNL - City Gov't Act - Public access to the budget process where priorities & policies are set - Creation of a public information system - Full disclosure of public financing	
.Enforcement		9.) Penalties, Court Rules will prevail	9.) (Very detailed in Bill) - 10 day response period - Provision for Time extension - Requester may go to court - Charge not exceed cost to reproduce material - Penalties		LWV Positions related to Lof Mn Cities - Policy protects personal privacy - Library exemption questionable - What about election laws - Only deals with individual data - Defines enforcement
ther information: Problems No definition of public, private, confidential What is individuals privacy Unenforceable What time limit of Data Should an outside group meet for review	- Establish Joint Sub-committee & keep Commission - Have a Negative check-off option to prevent name on mailing list - In Education: Legislature must classify data; Dept. of Ed should develop unified Bill - Law Enforcement: Legislative auditor to examine records * Another Option: to ...				

Present Law	Privacy Study	Lof Mn Cities	M-PIRG	LWV	Comments (3)
What criminal Records are public -No conformity on files -No Emergency Classification -Conflict with federal Laws -No Laws for Private or confidential Material -Only deals with data on individuals	decide what data they can collect, store, & decide classification				LWV position related to MPIRG -Need more exemptions -LWV wants to protect privacy -Good procedure for enforcement Recommendations Final LWV of Mn Position:

Pam

LEAGUE OF WOMEN VOTERS OF MINNESOTA
555 WABASHA · ST. PAUL, MINNESOTA 55102
PHONE: (612) 224-5445

MEMO

TO: Pat and Helene

FROM: H.H.

SUBJECT: Open Meetings/Records

DATE: August 26, 1976

J.J. called in August 24, 1976, following a meeting the day before with Bob Shaw of STAR/TRIB. They discussed open meetings and open records. She'd like to know if our position calls for no changes in the law for certain. We know we've never really discussed public/private/confidential records, how "open" are open records, etc. She'd like you, Pat, to cull through our positions to see what, if anything, we've got pertaining to records. Helene, J.J. feels the public vs. privacy dichotomy might make for a good Lively Issue. (Seems to me a while back we had a national position on this and dropped it. LWVUS did publish RIGHT TO PRIVACY a while back too.) J.J. would like Action Committee to review open meetings/records, determine LWV vs. Common Cause positions, see if we can get a copy of & review Washington State's bill. After which, either you, Helene, or she (J.J.) should talk again with Bob Shaw, 335-8844.

Thank you.

Exec. Dir. of Newspaper Association

Pat: I came across this on my desk and offer some guidelines for local Leagues testifying before ~~in outstate~~ state legislative hearing outstate.
I found that this was very satisfactory and also unsatisfactory depending on the knowledge of the League.

background

In the case of the Open Meeting Law, League's outstate testimony was very useful. In one instatnce (Mankato) the president could not attend the meeting and turned the responsibility over to the board person. She was very familiar with the issue in Mankato, but could not answer the questions put to her by the author of the bill, Neisen--How did the LWV arrive at their position?? Shirley Hokanson answered the questions for her. I did have the opportunity to talk to her prior to the meeting and warned her of questions like that, but one cannot always anticipate. Also, in the case of Duluth where you sent a notice of a hearing on regional government at my request the observor did not understand why, in that case an agenda was not announced and most of the discussion pertained to land use in that region. It could have been an appropriate place for Duluth and other leagues to use our land use position.

Through the Phillips Service notification is made to the local League well in advance of the hearing date. If they want to just observe, a report of the meeting is useful. If they want to testify: the local League must clear testimony with state, the name of the appropriate state Board Program person should be included.

The office will provide the service of typing the testimony, providing enough copy for committee, press, and LWV and mail to the LWV testifying. To accomplish this, the local League should have the material in the state office one week in advance of the hearing.

In several cases the testimony was cleared by long distance call and in only 1 of the four statements made did the state office ~~send~~ prepare and send the testimony.

Included in the announcement of the meeting should be an observor's report and expense voucher.

From this can we work out some type of procedure? Or isn't it important?

Also, I instructed the League to state their experience with the issue rather than to repeat my statements; this has more clout.

ANN KNUTSON 4/3/76

c.c. to action committees

The League of Women Voters of the United States
1730 M Street, NW
Washington, DC 20036
(202) 296-1770

PRESIDENT
RUTH C. CLUSEN

EXECUTIVE DIRECTOR
Peggy Lampl

JAN 7 1977

January 5, 1977

Ms. Jerry Jenkins, President
League of Women Voters of Minnesota
555 Wabasha Street
St. Paul, Minnesota 55102

Dear Jerry:

I am responding to your letter of December 17, 1976, concerning guidelines on the specific meaning of "public records" in the League's Principles. Your letter draws attention to this very timely issue which raises two League concerns: the public's right to know and the protection of individual liberties (right of privacy). The balancing of these two interests often involves some hard thinking.

The national board has no specific guidelines about your concern of what should be exempted from disclosure in public records. However, the staff has examined a compilation of state laws on public records from the League of Women Voters Education Fund's Litigation Department and has put together a digest of exemption provisions for you (enclosed). Common sense would seem to dictate that certain materials which would constitute an invasion of privacy should be exempted from disclosure--such as personnel records, medical records, private citizens' financial records (including those of welfare recipients), and students' records. There are other areas which legislators in various states have been concerned about as well. I'll mention some briefly, but you can see for yourself from the attached digest from state statutes: records pertaining to criminal investigations, state negotiations concerning land appraisal and acquisition (the disclosure of which might invite speculation), bona fide trade secrets, test questions on state examinations, to name a few.

A recent (1976) working draft bill on public records tentatively approved (pending consideration of privacy legislation) by the Ethics and Elections Committee of the National Conference of State Legislators lists several categories as exempt from public disclosure (provisions enclosed). Also enclosed is a copy of a model state freedom of information statute prepared by the Freedom of Information Clearinghouse. See particularly Section 4 on "Exemptions."

The Minnesota League board can make its own determination on the basis of the legal and political contexts in Minnesota about which areas it feels should legitimately be exempted from public scrutiny. Some categories of exemption on the attached digest seem more reasonable than others. Please be in touch by phone or letter if you wish to discuss any aspect of this question further.

I shall bring your inquiry to the attention of the national board.

Sincerely,

Judith

Judith B. Heimann
Director
Government

Enclosures

January 1977

BRIEF DIGEST OF STATE LAWS ON CATEGORIES WHICH ARE EXEMPT FROM PUBLIC RECORDS REQUIREMENTS

(Based on Compilation Done in 1975)

Alaska

- Records of vital statistics and adoption proceedings
- Records pertaining to juveniles
- Medical and related public health records
- Records required to be kept confidential by federal or state law

Arkansas

- Medical records
- Scholastic records
- Adoption records
- Records required to be closed by state law

California

- Rough drafts, notes, inter- or intra-agency memos that are not retained by agency in normal course of business
- Records pertaining to pending litigation
- Personnel and medical records that would constitute an invasion of personal privacy
- Confidential market, crop, or geological reports
- Confidential criminal investigation records
- Text questions regarding state licensing examinations
- State real estate appraisals relative to acquisition of property
- Taxpayer information
- Certain library or museum materials for exhibit purposes
- Material exempt under federal or state law
- Governor's materials
- Material in custody of or maintained by Legislative Counsel
- Trade secrets

Connecticut

- Internal personnel records
- Trade secrets
- Medical files
- Law enforcement investigatory files

Illinois

- Materials that would constitute an invasion of personal privacy

Indiana

Records confidential by law
Records of executive sessions of administrative agencies

Iowa

Personal information regarding students
Hospital and medical records
Trade secrets
Materials relative to litigation
Investigatory material regarding crimes
Property appraisals related to acquisition of property by state
Iowa Development Commission reports on industrial prospects
Personnel matters

Kansas

Juvenile Court records closed by the court or by law
Adoption records
Records of birth of illegitimate children
Records closed by law

Maryland

Material classified confidential by the state
Material exempt under federal law
Law enforcement investigations
Questions and text material regarding license examinations
Research conducted by the state
Real estate appraisals for the state
Medical, psychological, or sociological date on individuals
Adoption records
Welfare records
Personnel files
Letters of reference
Trade secrets
Hospital records
School records on students
Library circulation records

Massachusetts

Personnel records
Medical files
Inter- or intra-agency memos on policies being developed by an agency (excluding factual reports)
Law enforcement investigation materials
Trade secrets
Contract bids, unless publicly opened
Real property appraisals unless at least three years old

New Hampshire

Grand and petit jury records
Parole and pardon records
Personal school records of pupils
Personnel, commercial, medical, welfare, and financial records if disclosure would invade personal privacy

New Mexico

Records pertaining to physical or mental examinations and medical treatment

Oklahoma

Tax returns
Material confidential by law

Oregon

Trade secrets
Records related to litigation
Investigatory information
Test question and examination data regarding licensing or employment by the state
Records from businesses provided to the state for determining fees and assessments
Real estate appraisals by or for the state
Employees' names who petition for decertification of an election
Advisory opinions preliminary to a final agency determination
Personal information such as medical records
Information given in confidence
Corrections Division records
Bank records

Pennsylvania

Investigatory records
Material excluded by state law or court decree
Material that would impair a person's reputation or security

South Carolina

Income tax returns
Medical records
Scholastic records
Adoption records
Records required by law to be confidential

Tennessee

Medical records
Investigations records regarding crimes

Texas

Information confidential by law
Personnel files
Medical files
Litigation records in criminal cases
Trade secrets
Information regarding acquisition of real or personal property by state and information about appraisals
Preliminary drafts and working papers on legislation
Law enforcement investigatory records
Correspondence and all records "of an office holder"

Washington

Personal information regarding students, patients, clients of public institutions, welfare recipients, prisoners, probationers or parolees
Personal information on any employees or official that would invade personal privacy
Information required taxpayers
Law enforcement investigatory information
Test questions regarding licensing or employment with state
Real estate appraisal for state
Preliminary notes and rough drafts of agencies prior to publicly stating a policy
Records of matters pending in the courts to which the state is a party

EXCERPTED FROM DRAFT BILL ON PUBLIC RECORDS TENTATIVELY APPROVED BY THE ETHICS AND ELECTIONS COMMITTEE OF THE NATIONAL CONFERENCE OF STATE LEGISLATORS, 1976.

Matters which should be exempted from public record requirements:

Records of law enforcement agencies of an investigatory nature
Preliminary drafts, notes, memoranda expressing opinions or formulating or recommending policies
Records which would constitute an invasion of personal privacy, unless the the public interest "by clear evidence" requires a particular disclosure
Records confidentially given to an agency regarding a commercial enterprise or regarding a license to do business, disclosure of which would give unfair advantage to competitors
Records pertaining to a prospective business or industry which might locate in the state (does no exclude applications for licenses, etc.)
Test questions, scoring keys, grades of individuals, and other examination data pertaining to licensing or employment in the state
Contents of real estate appraisals, engineering estimates, or feasibility studies made for a public agency regarding the acquisition of property
All records which are confidential under federal or state law

MODEL STATE FREEDOM OF INFORMATION STATUTE

Section 1. Public Policy

It is hereby declared to be the public policy of the State of _____ that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. To that end, the provisions of this statute shall be construed in every instance with the view toward complete public access.

It is important that the people and the courts be informed of the clear intent of the legislature concerning access to documents. This section insures that the provisions are to be construed so as to provide maximum public access. Federal courts have relied on similar language to interpret the exemptions from disclosure under federal law as narrowly as possible.

Section 2. Definitions. As used in this statute

(A) "Public body" includes: every state officer, agency, department, division, bureau, board, and body; every legislative committee, board, commission, committee and officer; every county and city governing body, council, school district, special district, municipal corporation, and any board, department, commission, council, or agency thereof; and any other body which is created by state or local authority or which is primarily funded by state or local authority.

(B) "Person" includes any individual, corporation, partnership, firm, organization, or association.

(C) "Public record" includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body.

This section establishes that the law is to apply to the legislative as well as to the executive branch and that it is to apply

to statewide as well as municipal, county, and local governments. Also, in this section "public record" is defined as any documentary record regardless of its physical form.

The common law right of access was generally limited to those documents which *by law* were required to be made or retained by a governmental body.* Many of the laws that have been enacted on a state level in recent years have unfortunately adopted this concept. The result, has been restricted access. An Indiana trial court, for example, said that since consumer complaints are not specifically required by law to be submitted to the Attorney General, the complaints did not have to be made public. This was true, even though the Attorney General by statute had authority to take action in connection with consumer complaints. Evaluations, lists of recipients of free football tickets, minutes of meetings, and other similar documents have been excluded from the coverage of state freedom of information laws, because they were not required by law to be kept. The federal law as well as some state laws, including that of Texas, recognized that the right of access should cover all documents in possession of a governmental body, not just those required by law to be maintained by the government. If certain types of material are not to be disclosed, then they should be dealt with by a specific exemption. The question whether some other law requires a document to be created ought not to be relevant. Working papers, staff evaluation, and consumer complaint letters should all be covered by the Act, even though all or part of a particular one may be exempt.

*Courier-Journal and Louisville Times Co. v. Curtis, 325 S.W. 2d 934, cert. denied, 364 U.S. 910 (1960).

Section 3. Access to Public Records from Public Bodies

(A) Any person has a right to inspect or copy any public record of a public body, except as otherwise expressly provided by Section 4 (exemptions) of this statute in accordance with reasonable rules concerning time and place of access.

(B) The public body may establish and collect fees not to exceed the actual cost of searching for or making copies of records. Documents may be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. But fees shall not be charged for examination and review to determine if such documents are subject to disclosure.

(C) Each public body, upon request for records made under this statute, shall within fifteen days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefor. Such a determination shall constitute the final opinion of the public body as to the public availability of the requested public record.

This is the central section of the statute. It creates the right of any person to any document in the possession of the government. However, it recognizes that public bodies must be given some flexibility in the physical handling of requests. Thus, they are given the authority to establish reasonable rules to control the time, place, and procedure under which requests should be made. On the federal level as well as on the state level, government officers have used delay and excessive fees to stymie public access to information. This section strikes a balance by allowing public bodies to charge for the actual costs of locating documents and of making photocopies. If a requester asks for a photocopy of every document in a particular government office, that person, not the taxpayers, should bear the cost of physically collecting and copying these documents. However, the government, not the requester, should bear the cost of reaching a policy decision whether or not the

documents are public. To do otherwise would be to allow government agencies to charge to determine if a document is public. That could be used to justify fees without limit, so the model prohibits it.

Similarly, the government should be allowed a certain amount of time to respond to requests for information. But this must be a finite period. Fifteen days is the time allowed governmental bodies in Texas to determine whether or not a requested document should be released. To allow a greater delay or to impose no limits would permit secrecy by default. Worse, the requesting party would have to guess at what point the agency had been sufficiently non-responsive to justify a law suit or other additional action. And even then a judge would have to subjectively determine whether or not the delay was unreasonable.

Section 4. Exemptions

(A) The following matters may be exempt from disclosure under the provisions of this statute:

(1) Trade secrets, which are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person and which are generally recognized as confidential.

(2) Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

(3) Records of law enforcement agencies not otherwise available by law that were compiled in the process of detecting and investigating crime if the disclosure of the information would harm the agency by:

a. disclosing identity of informants not otherwise known;

b. the premature release of information to be used in a prospective law enforcement action;

c. disclosing investigatory techniques not otherwise known outside the government.

(4) Specifically exempted from disclosure by statute.

(B) If any public record contains material which is not exempt under subsection (A) of this section, the public body shall separate the exempt and make the non-exempt material available for examination.

There are important reasons why certain information should not be public. This section recognizes those reasons, and documents should be withheld only if they fall within specifically enumerated reasons. Subsection (B) of this section makes it clear that if a document contains exempt and non-exempt documents, only that part of the document which is exempt may be withheld. If a document refers to an individual and the disclosure of the document would constitute a clearly unwarranted invasion of that person's privacy then that document should not be disclosed. However, if the name of the individual and other identifying details can be extracted, the document must be made available. Similarly, if a document contains a trade secret, the part containing the trade secret should be removed if possible, and the remainder of the document made available.

The specific reasons for non-disclosure are:

1. *Trade Secrets*. It is necessary for a governmental body to find out all relevant data from persons who are regulated by it. This may include business information which is considered a trade secret by the submittor. Trade secrets are of value to businesses and their value is lost if disclosed. The statute adopts the traditional

definition of trade secrets and protects such information from disclosure. This carefully balances the need for protecting certain business information with the public interest in maximum disclosure.

2. *Personal Privacy*. Co-equal with the public's right to know should be a right of privacy. To prohibit the disclosure of any information that might be labeled personal, would be far too broad. Much information, like the civil service grade level of state employees, the names of persons convicted of crimes, the names of licensed individuals, doctors, lawyers, etc., and similar information is all personal information. Nonetheless, few would argue that the disclosure of these matters would constitute an invasion of privacy. To resolve this problem, the statute, as does the federal law, provides that only where the disclosure of documents would constitute a clearly unwarranted invasion of personal privacy may they be withheld from public disclosure.

3. *Investigatory Records*. Law enforcement agencies should be protected from unwarranted disclosures which would hurt their efforts. The statute, modeled after recent changes in federal law, recognizes three situations in which law enforcement agencies have a legitimate interest in protecting their files: when public release would either disclose the identity of an informer or disclose investigatory techniques, or when premature release would interfere with a specific law enforcement action or might prejudice the interests of any person involved in an investigation as a suspect or witness.

4. Finally, where other statutes specifically require confidentiality, they remain fully in effect. An example would be a statute that requires the non-disclosure of tax returns. Tax returns if required to be kept confidential by the relevant tax statute would remain confidential under the Freedom of Information Act.

Section 5. Information Which Must be Public

Without limiting the meaning of other sections of this statute, the following categories of information are specifically made public information:

(1) the names, sex, ethnicity, salaries, title, and dates of employment of all employees and officers of public bodies;

(2) administrative staff manuals and instructions to staff that affect a member of the public;

(3) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(4) those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the public body;

(5) planning policies and goals, and interim and final planning decisions;

(6) correspondence, and materials referred to therein, by and with the public body relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, of any private party;

(7) information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of

public or other funds by public bodies;

(8) the minutes of all proceedings of all public bodies and all votes at such proceedings.

This section recognizes as a matter of public policy that certain information should be considered public, thereby not making it necessary for a person to go through the process of requesting documents and having to have that request reviewed. If a document falls within this category, it must be disclosed without question.

Section 6. Enforcement

**(A) Any person denied the right to inspect a public record of a public body may petition the Attorney General to review the public record to determine if it may be withheld from public inspection. If the Attorney General denies the petition, the person seeking disclosure may institute proceedings for injunctive or declaratory relief in the trial court of general jurisdiction. If the Attorney General declares the document to be a public record and the government body continues to withhold the record, the Attorney General shall bring suit in the name of the state in the trial court of general jurisdiction to enjoin the agency from withholding the records and to compel the production of documents for the person seeking disclosure.*

(B) In any suit filed under section 6(A) of this Act, the court has jurisdiction to enjoin the public body from withholding records and to order the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter de novo *and the burden is on the public body to sustain its action. The court may view the documents in controversy* in camera *before reaching a decision. Any noncompliance with the order of the court may be punished as contempt of court.*

**If this procedure is prohibited by state constitution, then this section should read that if an agency is going to deny access to documents, it must refer the matter to the Attorney General who shall have the authority to order the matter disclosed.*

(C) Except as to causes the court considers of greater importance, proceedings arising under Section 6(A) of this Act take precedence on the docket over all other causes and shall be assigned for hearing, trial or argument at the earliest practicable date and expedited in every way.

(D) If a person seeking the right to inspect or to receive a copy of a public record prevails in such suit, he/she shall be awarded reasonable attorney fees and other costs of litigation. If such person prevails in part, the court may in its discretion award him/her reasonable attorney fees or an appropriate portion thereof.

This section allows persons denied access to seek administrative review of that denial from the Attorney General. If the Attorney General agrees with the governmental body that the information should be withheld, requesters then must proceed to court if they still believe the document should be disclosed. If the Attorney General, however, declares that documents are public, then the Attorney General has the responsibility of making sure they are released. In order to do that, he or she is given the specific authority to go into court to force the governmental body to disclose the document in question. Where a state constitution prohibits an Attorney General from acting in this manner, the governmental body should be required to seek the advice of the Attorney General before finally denying access. In either case, no lawyer need be hired, no court expenses need be incurred, and the citizen has a practical means to seek vindication. If the Attorney General's action is not satisfactory, requesters may then seek judicial review.

Court review is expedited by the requirement that suits under the statute take precedence over other matters on the court's docket so that the value of eventual disclosure is not destroyed by

trial delays. The court is given authority to review the matter to determine whether or not the requested document should be public or confidential. *De novo* review assures that the court is not limited in any way by prior actions of the agency and can make its own decision independent of what happened on the administrative level.

Finally, if a citizen is forced to go to court, but is eventually successful, the government, not the citizen, should pay the expenses of litigation. Freedom of information rarely, if ever, results in financial gain to the person who sues. By providing the award of attorney fees, as is the case with the federal law, citizens are encouraged to seek the release of information wrongfully withheld. The potential award of attorney fees would also act to inhibit government bodies from forcing citizens to go to court except when they have legitimate reasons for non-disclosure. But the court has the discretion to refuse fees and expenses in an appropriate case.

Section 7. Penalties

Any official who shall violate the provisions of this Act shall be subject to suspension, removal, or impeachment.

This section establishes the personal accountability of persons responsible for implementing the statute.

Support of the individual's civil rights and liberties in respect to privacy and record keeping.

Positions: The League of Women Voters of Illinois has expressed a strong concern for the right of privacy of the individual in the collection, storage, and use of personal information about himself by governmental and private organizations.

While the League acknowledges that the keeping of records is necessary for both public and private organizations, it is essential that the records by accurate, current, purged at regular intervals and that only pertinent and objective information be recorded and used. It is also essential that individuals be aware of the existence of records about himself, the information contained therein, and his rights relative to them. The League believes that confidentiality of all records not legally required to be public is paramount, and that persons handling them must work under professional standards.

The League believes that the individual's civil rights and liberties include the right to know that such records exist, to examine and amend them and to be informed of their use. Further, before any information is released to a third party, the individual's authorization should be obtained. Only through subpoena power and specific court order should federal, state, and local government agencies have access to records of banks, credit bureaus, schools and other public and private organizations.

Although controls at the federal level would be the most effective, there should be control sources at state and local governments as well. In addition to legislative controls, the League beieeves that public opinion and professional ethics are important controls, although not sufficient in themselves. Policy guidelines at the state and local levels should be used in areas such as schools, welfare agencies, libraries, banks and law enforcement agencies. All of these control sources should delineate quality, quantity, accuracy, currency, objectivity, and relevance of record collections. They should also establish procedures for individual access, correction, and purging. They should provide penalties for the mishandling of records.

Similar controls should apply also to information in data pools, when records can be individually identified. There is the need to fix responsibility for the accuracy and use of pool data either with the contributing agency, the pool or both.

When considering the privacy of public officials and candidates for public office, the League approves disclosure of financial information relevant to possible conflicts of interest in accord with the Illinois Governmental Ethics Act of 1972.

CONSTITUTIONAL AMENDMENTS

Support Constitutional Amendments to achieve: Merit selection of judges, single member districts and reduction in the size of the Legislature; continued support of an appointed state Board of Education, an appointed Superintendant of Education and flexible annual legislative sessions.

HANDGUN CONTROL The League adopted at 1975 state convention, "A one year study of the need for handgun control in the State of Illinois and of pending and future legislation pertaining to such control."

A STUDY OF THE BUDGET OF THE STATE OF ILLINOIS BY A TASK FORCE.

Adopted by 1975 convention. A task force, made up of local League members is researching the state budget; how it's put together, its process through the legislature and the legal bases for budget making. A preliminary report will be ready for interim council, April 1976.

LEAGUE OF WOMEN VOTERS
OF MINNESOTA
PHONE (612) 224-5445
555 WABASHA • ST PAUL, MINNESOTA 55102

UPDATE ON OPEN MEETING LAW

To: Local Leagues

From: Ann Knutson, Organization of State Government

January 15, 1977

This past summer local Leagues participated in the University of Minnesota School of Public Affairs survey on the effects of the Minnesota Open Meeting Law on local governments. The report was released December 14, 1976.

In summary, the results of the survey showed:

1) significant openness of executive sessions, committees, boards and commission meetings;
2) an increase in openness to discuss (a) labor negotiations strategy, (b) land acquisition strategy, (c) personnel and (4) pending litigation;
3) No change in elected and appointed officials' private discussions;
4) some indication that policy-making responsibility was shifted to appointed officials.

An inconclusive percentage of respondents indicated that the Minnesota Open Meeting Law has had some effects on the nature and conduct of the meetings. They are as follows:

1) more time is spent in meetings;
2) there is an increase in the length of agenda and also the type of issues placed on the agenda;
3) jurisdictions have complied with the notice provision of meetings, though few have changed the way they keep records of meetings.
4) there has been little change in attendance at meetings by the public or the media; and
5) many jurisdictions reported that elected officials were more reluctant to speak out on issues at meetings.

There was some indication that cost of policy decisions has increased the cost of government. Most reporting indicated higher salary settlements but little evidence of an increase in the cost of land acquisition.

It is evident that changes will be introduced in the 1977-78 legislative session. LWVMN should be ever alert to support the concept of openness in government when lobbying proposals before the state Legislature which affect local governments; Leagues should also continue active monitoring of all local jurisdictions.

Included in this update is a paper on the significant attorney general rulings and court rulings on the interpretation of the Minnesota Open Meeting Law.

References: Open Meeting Law: Update 12/5/74, and Monitoring Information, 8/75, LWVMN

Effects of the Minnesota Open Meeting Law on Local Governments, School of Public Affairs, University of Minnesota, 12/76

APPENDIX A: MINNESOTA'S OPEN MEETING LAW
May 1974
Revised August 1976

Prepared by:

PETERSON, POPOVICH, KNUTSON & FLYNN-COUNSEL
MINNESOTA SCHOOL BOARDS ASSOCIATION

Reprinted from School Law Bulletin for School Board Members and Administrators with permission of the Minnesota School Boards Association.

I. INTRODUCTION: (M.S. 471.705), the forerunner of Minnesota's Open Meeting Law was C. 773, Laws of 1957. Applicable to public bodies below the state level, it was amended in 1967 (C.462) relating to recording of votes and in 1973 (C.680) to provide for civil penalties and removal from office.

M.S. 10.41 was the parallel statute applying to state agencies and departments. Enacted by C.679, Laws of 1957, it was amended by C.263, Laws of 1959, to substitute the adult corrections commission for the Parole Board, repealed by C.680, Laws of 1973 and merged into M.S. 471.705 effective May 1, 1974.

During the same period of time a number of other states have enacted open meeting laws of various degrees of applicability. Minnesota now joins Florida, Washington and Oregon as states with the broadest and toughest public body open meeting laws.

While the basic statute was enacted in 1957, no penalty section existed. A growing clamor that the public has a right to know, a dis-enchantment of the public with political shenanigans, plus the commitments of legislative leaders to "openness in government" led to strengthening of the law.

II. THE 1973 LAW (C.680): In order to visualize the 1973 changes, the entire law follows. Changes or additions are indicated by the underlined materials and deletions by the ~~strikeouts~~:

"Section 1. Minnesota Statutes 1971, Section 471.705, is amended to read:

471.705 MINNESOTA OPEN MEETING LAW: MEETINGS OF GOVERNING BODIES: OPEN TO PUBLIC. Subdivision 1. Except as otherwise expressly provided by ~~law~~ statute, all meetings, including executive sessions, of any state agency, board, commission or

department when required or permitted by law to transact public business in a meeting, ~~of~~ and the governing body of any school district however organized, unorganized territory, county, city, village, town ~~or~~, borough, or other public body, and of any committee, subcommittee, board, department or commission thereof, shall be open to the public, except meetings of the board of pardons, the adult corrections commission and the youth commission. The votes of the members of such state agency, board, commission or department or of such governing body, committee, subcommittee, board, department or commission on any action taken in a meeting herein required to be open to the public shall be recorded in a journal kept for that purpose, which journal shall be open to the public during all normal business hours where such records are kept. The vote of each member shall be recorded on each appropriation of money, except for payments of judgments, claims and amounts fixed by statute. This section shall not apply to any state agency, board, or commission when exercising quasi-judicial functions involving disciplinary proceedings.

Subd. 2. Any person who violates subdivision 1 shall be subject to personal liability in the form of a civil penalty in an amount not to exceed $100 for a single occurrence. An action to enforce this penalty may be brought by any person in any court of competent jurisdiction where the administrative office of the governing body is located. Upon a third violation by the same person connected with the same governing body, such person shall forfeit any further right to serve on such governing body or in any other capacity with such public body for a period of time equal to the term of office such person was then serving. The court determining the merits of any action in connection with any alleged third violation shall receive competent, relevant evidence in connection therewith and, upon finding as to the occurrence of a separate third violation, unrelated to the previous violations issue its order declaring the position vacant and notify the appointing authority or clerk of the governing body. As soon as practicable thereafter the appointing authority or the governing body shall fill the position as in the case of any other vacancy.

Sec. 2. REPEAL. Minnesota Statutes 1971, Section 10.41, is repealed.

Sec. 3. [471.705] Subd. 3. This act may be cited as the 'Minnesota Open Meeting Law.'

Sec. 4. The effective date of this act is May 1, 1974.

Approved May 24, 1973."

III. INTERPRETATIONS BY THE ATTORNEY GENERAL, 1957-76: Since the original 1957 law the Attorney General has issued a number of interpretive opinions

and public bodies should have been aware of the law's scope:

1. Executive Sessions: Practice of the Austin City Council whereby the council declared itself to be in executive session, required spectators to leave the room, discussed matter informally, and then, when discussion was finished, invited the public to come back into the room, constituted a violation of this section, though no actual business was transacted at session which was closed to the public. Op. Atty. Gen., 63-A-5, June 13, 1957.

2. Preboard Meeting: Subject to the provision that all special meetings or regular meetings of the Minneapolis school board should be meetings of record, preboard meetings of the school board are not prohibited under the provisions of Laws 1957, ch. 773. The provisions of Laws 1957, c. 773, require that all meetings of the school board of Minneapolis be public and of record. Op. Atty. Gen. 161-A-16(b), Nov. 20, 1957.

3. Balloting: (a) The provisions of this section relating to the manner of casting of ballots by members of governing bodies, boards, departments or commissions is mandatory, and unless a secret ballot could be taken in such a manner as to enable the council to comply with and to serve the purposes of this provision, the council could not vote by secret ballot. Op. Atty. Gen., 471e, Aug. 20, 1962.

(b) While the charter provisions of a city authorized a vote by ballot, the provisions of this section would require that the vote by ballot be such as to indicate the vote of each member on any appointment made, unless the vote be unanimous. Op. Atty. Gen. 471e, Sept. 18, 1962.

4. Place of Meeting: While a village council cannot hold regular meetings in a place outside the village limits, it could on a temporary basis use a convenient site located outside the village limits, providing that there were no convenient and adequate facilities inside the boundaries. Op. Atty. Gen. 471-e, Nov. 2, 1965.

5. Notice: (a) Where general public had no notice of meeting of the county board held in a location in the county other than the county seat and called without the notice provisions of section 375.07, salary resolution adopted raising the salaries of commissioners was invalid. Op. Atty. Gen. 125-a-14, Sept. 8, 1970.

(b) Where matters acted upon by city council were never raised at a prior public meeting or hearing, the council was required to give advance notice to the public of the time and place of a special meeting dealing with such matters. Op. Atty. Gen. 63a-5, Jan. 11, 1972.

6. Taping of Meetings: The public may tape record proceedings of meetings where such transcription will not have a significantly adverse effect on the order of the proceedings or impinge on constitutionally protected rights and neither the public body nor any member thereof may prohibit dissemination or broadcast of the tapes. Op. Atty. Gen. 63a-5, Dec. 4, 1972.

7. Special Meetings: Advance notice to the public of special meetings of the city council of Faribault is required where matters acted on by the council were never raised at a prior public meeting or hearing. Op. Atty. Gen. 63a-5, Jan. 11, 1972.

8. What Constitutes a Meeting: Replying to a request from the Bloomington School District the Attorney General said:

> "In your letter of August 16 to Attorney General Warren Spannus, you state that Minn. Stat. Section 471.705 (1971), the open meeting law, requires all meetings of the school board to be open to the public but that an exception for hearings on teacher dismissal is provided by Minn. Stat. Section 125.12 (1971). You also state that your district is adopting rules that provide for an appeal to the school board in all student disciplinary matters. You ask whether such a hearing before the board is required to be open to the public.
>
> Minn. Stat. Section 471.705 (1971) provides that 'except as otherwise expressly provided by law, all meetings, including executive sessions' of such governing bodies as school boards must be open to the public. Since the statute does not define the term 'meeting', it must be given its common and ordinary meeting. Minn. Stat. Section 645.08(1) (1971). 'Meeting' is defined as 'a coming together of persons;' 'an assembly; gathering of people, especially to discuss or decide on matters.' Webster's New World Dictionary (College Ed. 1964).
>
> Thus, a hearing before the school board such as you describe falls within the definition of 'meeting'. Since no law expressly establishes an exception in the instant case, your question must be answered in the affirmative."
> Op. Thomas G. Mattson, Asst. Atty. Gen., August 29, 1973.

9. Informal Meetings of A Quorum or Majority of A Quorum: The Attorney General held that each of the following situations constitutes 'deliberations' subject to the open meeting law:

a) A quorum of a governing body gathers informally and without notice before a regular meeting or at lunch to discuss but not vote on appointments to advisory boards which are on the agenda for a forthcoming noticed meeting.

b) Under the same circumstances as in a) above, the city manager provides background information on city government, including some topics which will and others which may be on a future agenda. The council members express ideas and opinions, but no consensus is sought or action taken. It is understood that the same background information will be presented if the matter arises at a formal meeting.

c) A quorum holds an impromptu social gathering at a private home or public restaurant but a conversation occurs on a city matter which may or may not arise at a future council meeting.

d) The circumstances are the same as a), b) or c) but the discussion involves whether certain items should be placed on the agenda of a future meeting.

The question was then raised whether the presence of just two members of a five-member council (a majority of a quorum) would alter the result in the foreoging four situations. The Attorney General said no:

"To consider a deliberation involving two members of the five number council as significantly different from deliberation of a quorum would be to establish an artificial distinction. For example, since a quorum can usually conduct business, less than a quorum could adopt or defeat certain proposals. Similarly, less than a quorum could defeat proposals which require a two-thirds vote of the council.

In any event, the purposes of the law could be as effectively subverted by a gathering of two members as by a gathering of three, four or five of the members. For example, if two members privately deliberate on a municipal matter, the public might not have an opportunity to know their reasons for favoring rejection, selection or refinement of a course of action, and decisions might ultimately be reached without free, full and open discussion. In City of Miami Beach v. Berns, 245 So. 2d 38 (Fla. 1971), the court stated that 'an informal conference or caucus of any two or more members permits crystallization of secret decisions to a point just short of ceremonial acceptance.'

While determining whether a gathering of less than a quorum constitutes a meeting is a more difficult question than that where a quorum is involved, *******we are compelled to conclude that each of the gatherings between two of the five members as described constitutes a meeting. These gatherings, as many others where less than a quorum of a public body meets, might well subvert the law's purposes just as effectively as a deliberation between a quorum or more, and there is no combination of factors which in our opinion would remove the gatherings from the mandate of the law." Op. Atty. Gen., 63-a-5, October 28, 1974, Footnote omitted.

10. Consultant's Reports and Political Caucuses: Presentation of consultant's reports to a governing body and a political caucus of all members of the body must be noticed meetings. Op. Atty. Gen., 471-e, October 28, 1974.

11. Training Sessions: The Attorney General held that the mayor and entire council of a city may participate in a private 20-hour training session conducted by the League of Municipalities for the purpose of

strengthening communications between and among the public and public officials, but that specific municipal matters such as "policy on the granting of liquor licenses" or the approach to take in making sidewalk assessments" may not be discussed. Op. Atty. Gen., 471-e, February 5, 1975.

12. Recorded Votes: The vote recording provisions of Minn. Stat. §471.705 (1974) require that the individual votes of public officials on "any action" be recorded in a journal except for votes on "payment of judgments, claims and amounts fixed by statutes."

13. Advisory Committees: Meetings of Staff Appointed Advisory Committees of the State Arts Council made up entirely of non-members of the governing body, but which makes recommendations on the funding of art projects which are followed about 80% of the time by the council, are subject to the open meeting law. Op. Atty. Gen., 10b, July 3, 1975. The Attorney General stated:

> "Although the governing board discusses and acts upon the proposals for funding at an open meeting, its deliberations and decisions are inevitably affected by the advisory panels' recommendations. Certain matters might not be discussed by the governing board since they may have already been given extensive consideration by the advisory panel. Indeed, one of the major purposes behind creating such 'advisory' bodies is to free the parent body from the necessity of examining each proposal in full detail. Therefore, the purposes of the open meeting law can only be fulfilled if the meetings of these advisory panels are subject to the same public scrutiny as the meetings of the governing board itself."

On February 1, 1973, Attorney General Warren Spannaus wrote a four page guideline discussing meetings, notice, places meetings may be held and consequences if open meetings were not held. The guideline was an excellent review of the law as it then existed, but needs to be updated in view of the 1973 law and subsequent court cases.

IV. MINNESOTA COURT CASES: A number of Minnesota Supreme Court and District Court cases have evolved over the years.

1. Notice: In Re Petition of Minneapolis Area Development Corp.(1964), 269 Minn. 157:

> "8. Appellants contend that after the public hearing held in the court room in the courthouse at Shakopee on November 15, 1960, the county board returned to its chambers where it adopted its orders granting the petitions of the intervenors and that this constituted a private meeting of the board contrary to the provisions of Minn. St. 471.705. The trial court found that the hearing and the meeting of the county

board was open to the public. After the public hearing has been concluded, the board went to the commissioners' room in the courthouse to go over the matter, but the record shows that the doors to the room were open and that it has places for the public to sit. While the record indicates that the public was not expressly invited to attend, no one was told that he could not. Any interested person must have known that the commissioners were meeting in the commissioners' room, their usual meeting place. Appellants apparently contend that the commissioners must not only give notice of the hearing but must also give notice of and an invitation to attend the board's deliberations. That is not required. The Minnesota public meeting statute, unlike such laws in certain other states, does not itself provide for notice to the public of all scheduled meetings. Section 122.21, subd. 3, provides that notice of the hearing must be posted and published, but subd. 4 merely provides:

> 'Within six months of the time when the petition was filed, the county board shall issue its order either granting or denying the petition***.'

In our view, the record is clearly sufficient to support the finding of the trial court."

(Note: In a subsequent 1974 case the Supreme Court holds notice is required.)

2. Meeting Place: Lindahl v. Independent School District No. 306, (1965) 270 Minn. 167, Judge Rogosheske speaking for the Supreme Court said:

"1. Appellant's specific objection to the March 25 board meeting is that it was not 'open to the public' as required by Minn. St. 471.705 because the board moved from the gymnasium to the superintendent's office without inviting the public. The purpose of this statute is to prohibit actions being taken at a secret meeting where it is impossible for the interested public to become fully informed concerning board decisions or to detect improper influences. But, while the statute orders that the public be given an opportunity to observe, it does not compel a board to conduct business in a place most advantageously suited for public viewing. Matters of school government should be decided in the relative calm of the school board meeting room, not under the glare of gymnasium lights amid the distractions of departing electors. The record makes it clear that the board moved to its meeting room to seek quiet rather than to furtively conceal its deliberations from the public. While the failure to invite the public might be an important consideration in another instance, it is relatively unimportant here since the electors had already had ample opportunity to express their views. Since there is insufficient evidence to establish any attempt to prohibit spectators, to conceal deliberations, or to make the meeting room inaccessible to the electorate, this meeting

was open to the public within the meaning of Sec. 471.705."

3. Meeting Outside a School District: Quast v. Knutson (1967), 276 Minn. 340, the Court held:

a) "A meeting of the members of the school board of a common school district held in a private office 20 miles distant from its territorial boundaries was not 'open to the public' within the meaning of Minn. St. 471.705, requiring that all meetings of the governing body of any school district shall be open to the public."

b) "An attempted consolidation involving a part of a common school district is held to have been fatally defective where the initiating resolution of the school board which specified the part of the common school district to be consolidated with an adjoining district was adopted at a meeting which was not open to the public."

4. Teacher Hearing: In Head v. Special School District No. 1, (1973), 208 N.W. 2d 294, Judge Otis said:

"The status of the teachers who had been accorded hearings was determined without making the grounds therefor a matter of public record. Intervenors cite section 471.705 as requiring that the meetings of the board should have been public, while the trial court found the board's procedure invalid because the court construed section 125.17, subd. 8, to require that the board render decisions in writing, state the grounds therefore, and announce the decisions publicly. However, we are of the opinion and hold that it was quite clearly the intention of the legislature that the hearings before the school board were to be private if the teachers so elected and that the board's deliberations in reaching their decisions were to remain confidential."

5. Various Exceptions: In Channel 10 vs. Independent School District No. 709, 2/15/74, Justice Kelley in a long opinion held that 8 exceptions to the open meeting law created by the trial court in Duluth were unwarranted, inappropriate or unnecessary.

"We generally concur with the trial court's decision to enjoin the board from holding secret or closed meetings but are troubled by the exceptions and will discuss them separately.

A. Committee meetings of the board where less than a quorum of the board is present.

* * *

We agree that if this item was not litigated in the court below it should not be made an exception with an implication that closed meetings of such committees were permitted under the law. For the same reason closed meetings of such committees should not have been prohibited by injunctive relief.

* * *

The trial court could and should state that the question of the validity of such closed committee meetings was not litigated and that they are neither prohibited nor permitted.

B. Hearings for the discharge, suspension, or termination of employment of tenured teachers, if so requested by the teacher pursuant to Minn. St. 125.17, Subd. 7.

* * *

The court below should, as with Exception A, point out that because this issue was not litigated, such closed meetings are neither prohibited nor permitted by the court's order and no decision is made as to whether they are or are not prohibited by the open meeting law.

C. Meetings involving the personnel evaluation of individual employees of the school district or the consideration of charges against them.

* * *

We think that this exception is overboard and agree that the issues relating to it should be determined in a trial where they are litigated by the parties in interest or at least are contained in the factual setting. Consequently, we hold this exception to be inappropriate.

D. Meetings for the purpose of interviewing prospective employees for administrative or other sensitive positions.

No law for this exception has been cited. This exception is apparently based entirely on the theory that it is in the public interest that such meetings be closed. The legislature not having made such meetings an exception, we must conclude that it has decided that it is in the public interest that such meetings be open and that this was not an appropriate exception.

E. Meetings with the board's attorney or attorneys to discuss pending litigation by reason of the confidentiality thereof.

The only factual information that the trial court had concerning this exception was that the present lawsuit was discussed at a closed meeting of seven or eight members. Under the circumstances we hesitate to make a precedent-setting decision adopting either the rule, adopted by a majority of the courts, favoring recognition of this exception or the minority rule refusing to recognize it, or possibly some modification of either.

* * *

The real client in this case is not the school board but rather the public. In some instances, the best protection for the public might be a full public disclosure of any conference between a school board and its attorney.

* * *

Open meeting laws and their exceptions are a developing field of law and at this stage we are inclined to employ judicial restraint. We think this exception is too broad and that if any exceptions are to be made because of any attorney-client relationship, it should be done on a case-by-case basis or at least in a case with a more detailed factual setting than is presented by this record.

F. Meetings of the board with its labor negotiators to discuss proposals relating to terms and conditions of employment and instructions to its negotiators as to their authority. This, does not extend to any meeting involving the approval of and final negotiated agreement.

At the time of the trial court's decision in this case there was no express statutory exception of labor negotiations from the open meeting law. We conclude that this was not an exception and is contrary to the policy of the open meeting law.

G. Meetings at which communications are considered made to the board in official confidence by other public agencies or the school districts staff where the disclosure of such information to the public is forbidden by law.

* * *

One of plaintiffs' objections to this exception is that it was not presented in the evidence nor litigated. We concur in this view as we would prefer to pass upon this exception in some case in which there is some claimed communication made in official confidence and the public's interest in non-disclosure is ventilated.

H. Social gatherings at which no school board business is conducted.

* * *

On the other hand, a 'strict social get-together' at which there is no discussion or consideration of 'any matter proper to a public meeting' is so obviously not the kind of meeting that is to be prohibited by the open meeting law that it need not have been set forth as an exception."

The Court then concluded its holding by stating:

> "Now that we have determined that the eight trial court exceptions are not appropriate, should we affirm the remaining parts of the injunctions? We think not because fundamental fairness, if not due process, requires that the injunction be tailored that the defendant knows with some reasonable degree of certainty what it is restrained from doing. We have set out in substance the subject matter of a number of closed meetings.
>
> * * *
>
> The trial court should make findings as to all of the closed meetings held in violation of the open meeting law and as to the subject matters thereof and enjoin the defendants from holding such meetings in secret."

6. Negotiation Strategy Meetings. In Northwestern Publications, Inc. v. School District No. 621, Mounds View, 2/27/74, Ramsey County, Judge Schultz said:

> "The Court having carefully reviewed all of the material previously cited and after having given careful thought to the problem has concluded that there is no alternative but to issue a temporary injunction in this matter.
>
> It should be pointed out that the facts in the Mounds View case are nowhere as blatant as those found in the case arising in St. Louis County. The Court has observed that based on the affidavit of James Nagel there was only one meeting; namely, the meeting of November 26, 1973, where Mr. Nagel was not allowed to attend. Also members of the public were barred from that meeting.
>
> The rationale behind the barring of the public and newspaper was that the Board would be discussing the strategy with its labor negotiator of the negotiations with the demands of the principals of the school district for the forthcoming school year. The defendant makes no pretense of desiring to have closed or secret meetings. The defendant, based on the remarks of the Chairman of the School Board and of the Superintendent of Schools, states that all meetings, including negotiations, are being conducted and are open to the public. However, implicit in the defendant's position is the claim that the School Board ought to be allowed to have private or closed meetings or sessions with its labor negotiator when they discuss strategy of negotiations and salary problems with principals, teachers, and other employees. Also implicit in the position of the plaintiff, and based on the affidavit of James Nagel, is the contention that further closed meetings will be held by the defendant when matters of strategy, negotiations, and salary discussions will be had.

It is obvious that the statute in question, M.S. 471.705, does not allow any kind of closed meeting or executive session of the School Board. The statute does not provide any exceptions. It is clear and unambiguous. It is such an elemental precept that meetings of public bodies such as these should be open to the public that it hardly merits any considerable amount of discussion.

7. Notice of Meetings: On April 19, 1974, the Minnesota Supreme Court in Sullivan vs. Credit River Township in an opinion written by Justice MacLaughlin held:

"The critical question is what constitutes a meeting open to the public, as required by the statute. It is the judgment of this court that a meeting of which the public is unaware is not such a meeting. To constitute a public meeting, there must be adequate, timely notice to the public of the time and place of the meeting. The statute itself does not expressly require such advance notice to the public. However, the general rule of statutory construction is that every statute is understood to contain by implication, if not by its express terms, all provisions necessary to effectuate its object and purpose. 17B Dunnell, Dig. (3 ed.) section 8949; 82 C.J.S., Statutes, section 327. The language of the statute directing that meetings be open to the public is meaningless if the public has no knowledge that the meeting is to take place. Therefore, we believe that the statute, by implication, requires adequate notice of the time and place of the meeting. The mere fact that the meeting-room door is unlocked is not sufficient compliance with the directive of the statute.

In reaching this decision, we do not hold that such notice must be given for regularly scheduled meetings of public bodies if the times, dates, and locations of such regular meetings are available to the public upon reasonable inquiry. Nor would we require additional notice for any meetings which is adjourned to a specific time and place. We do hold that public notice is required to be given for all special meetings, including the type involved in this case, except, as noted below, those called for emergency purposes where the giving of such notice is impractical or impossible.

The timeliness and mode of giving public notice may be left to the reasonable discretion of the governing body. Notice in a newspaper is not essential; it may consist of a posted notice at certain predesignated locations, such as the public hall or other locations determined by the governing body, so long as the public has a reasonable opportunity to be aware of the places in which such notices will regularly be posted.

> In all cases, notice of the meeting may be dispensed with-in a situation which requires immediate emergency action. In determining what constitutes such an emergency, the governing body should be guided by considerations of whether the situation calls for immediate action involving the protection of the public peace, health, or safety. See 56 Am. Jur. 2d, Municipal Corporations, sections 353, 354."

8. Exception for Litigation Strategy Meetings with Attorneys: On September 17, 1976 in Minneapolis Star and Tribune Company, et al v. The Housing and Redevelopment Authority in and for the City of Minneapolis, et al, the Minnesota Supreme Court in an opinion by Justice Scott held that meetings of public bodies with legal counsel to discuss litigation strategy need not be open to the public.

The facts of that case were that prior to a regularly scheduled public meeting of the HRA, the HRA members met with their attorneys in a closed meeting to discuss strategy in connection with litigation challenging the HRA environmental impact statement of a controversial HRA housing project. A reporter, present to cover the public meeting, sought admission to the closed meeting but was denied admission on the recommendation of the HRA attorney. The HRA attorney by affidavit indicated that the closed meeting "related solely to Cedar-Riverside environmental litigation strategy."

The attorney further testified by affidavit that because of doubt over the open meeting law he recommended that a proposed settlement of the litigation be dropped from a subsequent agenda rather than discuss it in front of the opposition at a public meeting, or challenge the open meeting law further.

The opinion for the Court cited two statutes which acknowledge the attorney-client privilege and thus "generally indicate a legislative intent to preserve attorney-client confidences."

The opinion than went on to cite state constitutional and statutory authority and court cases, which establish the principle of separation of powers in government among the judicial, legislative and executive branches, and which provide that the judiciary has the inherent power to regulate the practice of law. Pursuant to this authority, the court has adopted a code of professional responsibility which includes Canon 4:

"A lawyer should preserve the confidences and secrets of a client."

The opinion of the court recognized the two conflicting public policies involved and after balancing the interests of each, sides with the view of a majority of jurisdictions that have considered the question, namely, strategy conferences with legal counsel in the face of threatened or pending litigation need not be open to the public.

The opinion of the court concluded with the following cautionary words:

> "In this area requiring a delicate balancing of public interests, our conclusion was reached only after a thorough consideration of the record, which discloses that the members of HRA were involved in active and immediate litigation in their capacity as members of a public agency and also, in one case, as an individual. The advisory meetings with the attorney were necessary to perhaps attain a settlement ultimately beneficial to the agency, the individual, and the general public.
>
> The attorney-client exception is therefore operable in this matter to fully implement the confidentiality of the relationship. A basic understanding of the adversary system indicates that certain phases of litigation strategy may be impaired if every discussion is available for the benefit of opposing parties who may have as a purpose a private gain in contravention to the public need as construed by the agency.
>
> The record discloses that tort cases against the HRA are handled by Lawyers retained by insurance companies. Certainly, in this respect, if the board were required to meet with the insurance company's lawyer on a specific case, that consultation should not be subject to public scrutiny as an 'open meeting' contemplated by the statute. The attorney-client exception discussed herein would almost never extend to the mere request for general legal advise or opinion by a public body in its capacity as a public agency. We cannot emphasize too strongly that should this exception be applied as a barrier against public access to public affairs, it will not be tolerated, for this court has consistently emphasized that respect for and adherence to the First Amendment is absolutely essential to the continuation of our democratic form of government. It will be upheld, however, if the balancing of these conflicting public policies dictates the need for absolute confidentiality. The exception is therefore available to satisfy the concerns expressed herein but is to be employed or invoked cautiously and seldom in situations other than in relation to threatened or pending litigation." (emphasis added)

V. PERMISSIBLE EXCEPTIONS TO THE OPEN MEETING LAW: These are limited in number as follows:

1. County welfare board meetings which pertain to grants or services to specific individuals. Op. 125-2-64, 12/4/72.

2. Teacher termination if a private hearing is requested by the teacher. M.S. 125.12 and 125.17.

3. Pupil expulsion or exclusion hearings shall be closed unless requested to be open by the pupil. M.S. 127.21, Subd. 1.

4. All negotiations, mediation sessions and hearings between public employers and public employees or their respective representatives shall be public meetings except when otherwise provided by the director of mediations. M.S. 179.69, Subd. 2.

5. A public officer shall not be allowed to disclose communications made to him in official confidence when the public interest would suffer by the disclosure. M.S. 595.02(5).

6. Board of Pardons, adult corrections commission and the youth commission meetings are exempt. (Subd. 1, 471.705).

7. The quasi judicial functions involving disciplinary proceedings of a state agency, board or commission. (Subd. 1, 471.705)

8. Strategy meetings with attorneys involving threatened or pending litigation (See pages a-13 and a-14).

Unless a statute somewhere provides exemption from the open meeting law, all meetings are open to the public.

VI. PENALITIES:

1. The new law provides personal liability in the form of a civil penalty not to exceed $100.00 per occurrence. Any person may bring such action in the county where the administrative offices are located.

2. Upon a third violation by the same person with the same governing body, forfeiture to serve on such public body exists.

3. In addition to the penalties provided in M.S. 471.705, injunctive relief is always an appropriate remedy.

4. M.S. 645.241 makes it a misdemeanor to perform any act prohibited by statute where no penalty for that violation is imposed in any statute. The 1973 law provides no criminal penalty, but rather a civil penalty of $100.00. Whether this provision provides the peanlty contemplated by M.S. 645.241 will depend on future interpretations.

League of Women Voters of Florida
League of Women Voters of Florida Education Fund

255 University Drive, Room 203
Coral Gables, Florida 33134
(305) 442-4093

February 6, 1977

Ms. Helene Borg
Action Chairperson
League of Women Voters of Minnesota
555 Wabasha
St. Paul, Minnesota 55102

Dear Ms. Borg:

In response to your request for information regarding open meetings and open records I am enclosing herewith a copy of "Florida Government in the Sunshine: A Citizen's Guide."

All meetings of public bodies are required to be open to the public in Florida except those specifically exempted in the Constitution, which is to say meetings of the grand jury and meetings of the judicial nominating commissions. Through their own rule-making authority the Florida Elections Commission and the Florida Ethics Commission both now meet in executive session but this may be changed by legislation in the coming session.

As for public records, all are required to be open to the public except those specifically exempted by legislation, those being discussed in the enclosed pamphlet.

As you may have noticed, both of our U.S. Senators, Sen. Richard Stone and Sen. Lawton Chiles, have worked to get similar legislation at the national level.

Good luck to you and your efforts in Minnesota.

Sincerely,

Charlotte Hubbard

Charlotte Hubbard
Director, Constitutional Revision

cc: Dr. Elizabeth L. Metcalf
President

Mrs. Mary Anne Sherman
Vice President, Action

Enclosure

Public Records: A Resource For Your Information Needs

Florida's Open Records Law provides that all state, county, and municipal records be open for inspection by any person, whether a Florida resident or not. Furthermore, any person willing to pay copying costs is entitled to duplicates of any public records. A public official who violates the Open Records Law is subject to suspension, removal, impeachment, and/or criminal penalties (misdemeanor). An agency which wrongfully refuses a request for public records may be required to pay the attorney's fees incurred by the citizen in enforcing his rights in court. These enforcement provisions are intended to make public officials less likely to refuse proper requests for information by members of the public.

TWO EXCEPTIONS

There are two exceptions to the rule that all public records in Florida remain open. The first exception provides that estate tax evaluations, tax returns on tangible property, bank examiners' reports, insurance examinations, insurance claim filings, and adoption records shall *not* be open for public inspection. The second exception states that certain records may be viewed only by the person to whom the records pertain. This category includes medical and social welfare records, juvenile records in and out of court, alcohol and drug rehabilitation records, and the file of retarded, blind, and vocationally handicapped individuals.

Beyond these exceptions, however, "public records" are defined in broad terms by the statute. Records to which the public is given access include "all documents, papers, letters, books, tapes, photographs, film, recordings and other materials" gathered in connection with the conduct of the public's business.

Some examples of what constitutes a "public record" which a citizen is entitled to see or have reproduced will illustrate the law's potential usefulness to persons within Florida. There are three major categories of such information:

Those Dealing With Human Problems, Like:

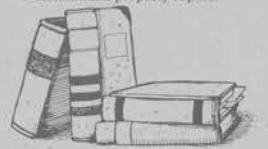
- Inspection reports on jail or prison conditions
- Inspection reports of nursing homes
- Investigation results of a collapsed school roof
- Reports of the State Fire Marshal
- Restaurant health inspection reports
- Complaints made by private citizens to health officials

Those Dealing With Business Matters, Like:

- Expenditure records of a city-owned utility company
- Operating budget for state university athletic department
- Salary schedules of public employees
- Pari-mutuel wagering reports
- Vote sheets, final orders, and memoranda of the Public Service Commission
- Correspondence from a state senator to division head of the Department of Revenue

Those Dealing With Land Use, Like:

- Engineering plans submitted to Flood Control District by developer
- Appraisal reports of a city's proposed land acquisitions
- Tentative site plan proposals
- Abandoned property reports



CITIZEN, STAND YOUR GROUND

An agency staff member may be reluctant to cooperate with a person seeking access to public records because of the time and effort required for a records search. Providing people with public information is part of the day-to-day conduct of the public's business and the Legislature has imposed an affirmative duty on record custodians to make whatever arrangements are necessary to insure free exercise of the right of access to public records.

An individual seeking information from a public agency should not be deterred from exercising his right of access to records because he is not a citizen or resident of Florida, or because he is simply curious about a public matter and does not have a special interest in the subject. Neither should one be deterred from exercising his right because the information sought is alleged to be a "work product", a preliminary or tentative report, or the work of an independent contractor rather than that of the agency itself. In each of these circumstances, for whatever reasons, public records were required to be shown to an inquirer.

A RIGHT WAY TO EXERCISE YOUR RIGHTS

It is important that a person seeking information from a Florida agency first identify the correct agency, then make his request for information as specific as possible. While the agency staff member may not require that the inquirer specify a particular book or record before complying with a request for information, it is advisable to make the request in writing as specifically and succinctly as possible. While verbal requests can be made at the agency, the sample letter which follows provides a guide. First, it shows the staff member that you are aware of your right of access to the information. Second, the written request in the suggested form can be used in court if it is necessary to employ a lawyer to vindicate the citizen's right. Unlike the open meetings law, the statute provides that, if the inquirer uses a lawyer and his claim is correct, the agency must pay the lawyer's fee. Third, the suggested written request shows the inquirer's reasonableness since the agency has been given 20 days to respond to the request.

FEDERAL LAWS

Florida's open meetings and open records laws do not apply to the United States Congress nor to federal agencies. Congress is considering legislation similar to Florida's sunshine law. Open records policies at the federal agencies are governed by the Freedom of Information Act, 5 U.S.C. §552. This law contains nine exemptions for certain types of records. Thus, some types of information which the state of Florida requires to be disclosed are not made available to the public by federal agencies.

Your address
Date

Name
Address of Agency
City

Dear _____:

Pursuant to Fla. Stat. 119.07, I hereby request a copy of (or access to) *(here describe the information you want as specifically as possible including subject matter, location, date, agency in charge, and name of case or other specific identification of file)*.

If the actual costs of duplication exceed $5.00 in connection with this request, please inform me of all such charges before running copies. If I do not receive a substantive reply within 20 days from the date of this letter, I will consider your failure to respond a denial of my request.

Thank you for your assistance in this matter.

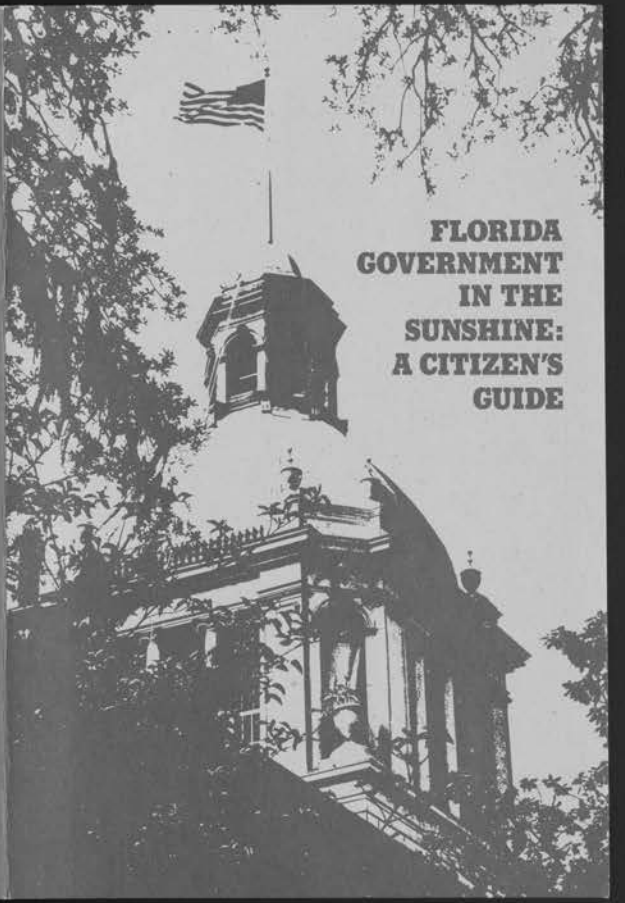
Very truly yours,

_____

This pamphlet was prepared by the Center for Governmental Responsibility at the University of Florida College of Law. Information is based on research for the Center regarding open meetings and open records laws at the state and federal levels. It is intended to increase the public's knowledge of Florida's open government policy and is in no way a substitute for individual legal consultation.

It is our hope that increasing public knowledge of open government laws will promote a more accountable government in the State of Florida. If you have questions concerning open meetings or open records, feel free to contact the Center.

This public document was promulgated at a cost of $2,034.00 or $.20 per copy to inform the public about open government laws.



FLORIDA GOVERNMENT IN THE SUNSHINE: A CITIZEN'S GUIDE

The Sunshine Law is based upon the simple premise—fundamental to our democratic system—that the public has the right to know when, how and why its business is being conducted.

Secrecy in government has become synonymous in the public's mind with deception by government. I feel that now we are all well aware of the need for openness as a means of restoring the people's faith in their government.

Open government is the greatest protection that a Democratic society has against corruption and tyranny. I would hope that the federal government and the Governors of the 49 other states would follow Florida's example and welcome all our citizens into open participatory democracy.

How The Sunshine Law Works For You

Events of the past few years have caused a deterioration in the public's respect for and confidence in government at all levels. Distrust and suspicion are particularly noticeable when government officials operate in secrecy.

A recent study has shown that the scope of the public's right to witness the actual deliberations of the government and to review government records is not well understood in Florida. The purpose of this pamphlet is to make the public more aware of its rights under the Sunshine and Open Records laws.

The State Legislature passed the Florida Sunshine Law as a means to promote confidence in political and governmental institutions. The law declares that all meetings of government bodies at which official action is considered are public meetings and therefore must be open to the public. The purpose of the law is to permit the public to observe first-hand the full decision-making process of government at all levels, from early deliberation through final vote.

The Sunshine Law applies to a wide variety of governmental bodies, including every board, commission, or political subdivision over which the Legislature has control, municipal as well as state and county, appointed as well as elected bodies, and even to private advisory bodies which make recommendations to public agencies. The following are a few examples of bodies to which the Sunshine law applies:

- civil service boards
- district school boards
- police complaint review boards
- Board of Regents
- boards of directors of municipal country clubs.

The law also applies to a broad range of "meetings." A "meeting" under the law is not limited to gatherings where a final vote is taken. If that were true, officials who did not want public scrutiny could deliberate in secret, and reach "tentative" decisions which would merely be formalized at a later public meeting. Such practices are now forbidden by the Sunshine Law. Today, the following types of gatherings must be held in the open, preceded by public notice:

- workshop meetings of planning and zoning commissions
- conciliation conferences of Human Relations boards
- fact-finding conferences between city council committees and planning firms
- discussions regarding pre-audit reports
- work sessions of city council
- luncheon meetings held prior to formal meetings to discuss upcoming public business
- meetings of two or more legislators to discover future "mutual voting patterns"

These meetings must be open to the public even though no formal vote is taken, as long as those present discuss matter on which forseeable action will later be taken by the formal decision-making body. All phases of that kind of decision-making process must be open to public scrutiny.

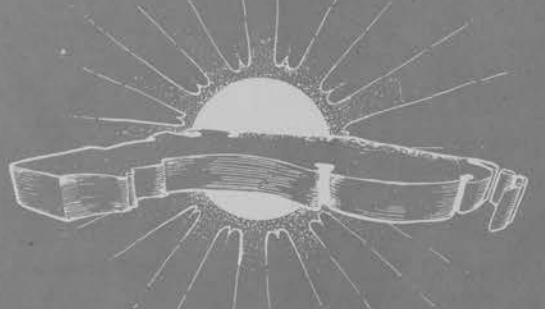
Government In The Sunshine: Why?

"Florida has not always conducted its government in the sunshine. While there has been an open meeting law in the state for decades, its enforcement was severely restricted by Florida courts. Beginning in 1961, bills were repeatedly introduced in the Legislature to combat secrecy and they were repeatedly buried in committee.

"The fate of early sunshine bills wasn't surprising, given the close ties that existed between the large special interests and a malapportioned Legislature. Nor could the Legislature see any wisdom in encouraging at other levels of government the kind of openness that would contrast with the coziness of Tallahassee."[1]

Times have changed. The Florida Legislature has declared that citizens are entitled to know the details about how they are being governed. It has done this by passing two laws: First, the Florida Sunshine Law which requires that all meetings at which decisions about public business are made be open to the public. Second, the Florida Open Records Law which requires that the files of all public agencies be open for public inspection.

In passing these laws in 1967, the Florida Legislature recognized a principle basic to democratic government: an informed electorate is a necessary step toward honest, competent, and responsive government.



[1]Testimony of Governor Reubin Askew before the Subcommittee on Reorganization, Research, and International Organizations of the United States Senate Committee on Government Operations, 92nd Congress, Second Session, Wednesday, May 22, 1974, p. 1.

Exceptions To The Sunshine Law

Although the Sunshine statute does not expressly describe meetings which are exempt, there are certain areas where it has been determined that the Legislature has no power to require open meetings or where the public interest would not be served by such meetings. Four general categories of meetings may be held in secret:

- grand jury meetings
- judicial nominating commission meetings
- collective bargaining negotiation sessions
- meetings of organizations which receive a mixture of state and federal funds

WHAT TO DO ABOUT A CLOSED MEETING

The Sunshine Law would be of little value if it could not be enforced by the people. Thus, the Legislature has provided three ways to encourage compliance with the law. First, a decision made at an illegal closed meeting will not be binding. Second, a circuit court can order that meetings be opened to the public. Finally, it is a criminal act for a member of a public body to knowingly violate the Sunshine Law.

Before the Meeting is Held

It is possible for you to stop a meeting which you know will be improperly held in secret. First, you should notify the chairman of the meeting that you believe he or she will be violating the Sunshine Law if the person conducts a closed meeting. If time permits, this notification should be in writing, dated, and sent by certified mail, return receipt requested, because criminal penalties can be applied later only on the basis of proof that an individual knowingly violated the law.

If the members themselves refuse to open their meeting after receiving your request, you may take the matter to court. The circuit courts are empowered to issue injunctions to stop a closed meeting which should be open. It is often advisable to contact the state attorney's office in your circuit and request that he file for an injunction on your behalf. You may, of course, employ a private attorney for the same purpose. However, the Sunshine Law does *not* provide for payment of attorney's fees even if you are successful in your suit.

After the Meeting is Held

The Sunshine Law provides that no resolution, rule, regulation, or any formal action can be considered binding unless it is adopted at a public meeting. The courts can enforce this provision by declaring the actions taken at a closed meeting to be null and void, as though the matter had never been voted on. If you find that formal action has been taken, it is preferable to take your complaint to the state attorney in your circuit.

Also, past meetings held in violation of the Sunshine Law can provide the basis for an injunction ordering all future meetings open to the public.

League of Women Voters of Minnesota

RUTH ANN'S OUTLINE THAT SHE USED AT THE BOARD MEETING OF FEBRUARY 8, 1977

1. Officials Record Law is not effective due to lack of definition, lack of enforceability, and lack of emergency classification.

2. The LWV believes in making public records accessible, but an individual must have protection from invasion of privacy.

   A distinction between personal and non-personal data must be made.

   Principles of Privacy and Public Information (Bob Shaw - The Newspapers Association) should be established to handle the public, private, confidential classification.

   The "MN Fair Information Practices Act" (League of MN Cities) is a step in the right direction. It includes definition but lacks a good enforcement policy. (Some of the exemptions in the private classification may not be necessary (Library) - many areas are not covered, i.e., Welfare.)

   The "Open Records Act of 1977" (MPIRG) conflicts with the LWV-MN Principles. The bill does include an indepth enforcement policy.

   Areas of Support
   - Title: Fair Information Practices
   - Classification System - Public, Private, Confidential
   - Individual must know purpose for supplying private or confidential material. Employer may not see private file unless the prospective employee in the last 5 finalists for the job gives his consent.
   - Summary data on Private and Confidential records is public information.
   - Agree with League of MN Cities Confidential Classification.
   - Private classifications of the League of MN Cities are reasonable (we will discuss a few of the areas with the League of MN Cities).
   - Collect and store only what is necessary, data request should be precise, and there should be time limits on retaining data.

3. Areas LWV are concerned about not covered in bills:
   - Welfare Records
   - Election Laws - Voter Registration
   - Non-personal data
   - Disclosure of the budget process and public financing

Examples of multimember boards and commissions covered by 1976 sunshine legislation*

Board for International Broadcasting
Civil Aeronautics Board
Commodity Credit Corporation (Board of Directors)
Commodity Futures Trading Commission
Consumer Product Safety Commission
Equal Employment Opportunity Commission
Export-Import Bank of the United States (Board of Directors)
Federal Communications Commission
Federal Election Commission
Federal Deposit Insurance Corporation (Board of Directors)
Federal Farm Credit Board within the Farm Credit Administration
Federal Home Loan Bank Board
Federal Maritime Commission
Federal Power Commission
Federal Reserve Board
Federal Trade Commission
Harry S. Truman Scholarship Foundation (Board of Trustees)
Indian Claims Commission
Inter-American Foundation (Board of Directors)
Interstate Commerce Commission
Legal Services Corporation (Board of Directors)
Mississippi River Commission
National Commission on Libraries and Information Science
National Council on Educational Research
National Council on Quality in Education
National Credit Union Board
National Homeownership Foundation (Board of Directors)
National Labor Relations Board
National Library of Medicine (Board of Regents)
National Mediation Board
National Science Board of the National Science Foundation
National Transportation Safety Board
Nuclear Regulatory Commission
Occupational Safety and Health Review Commission
Overseas Private Investment Corporation (Board of Directors)
Parole Commission
Railroad Retirement Board
Renegotiation Board
Securities and Exchange Commission
Tennessee Valley Authority (Board of Directors)
Uniformed Services University of the Health Sciences (Board of Regents)
U. S. Civil Service Commission
U. S. Commission on Civil Rights
U. S. Foreign Claims Settlement Commission
U. S. International Trade Commission
U. S. Postal Service (Board of Governors)
U. S. Railway Association

*United States Senate Committee on Government Operations, Report No. 94-354 (Washington, D. C.: U. S. Government Printing Office, 1975).

A separate act requires meetings and records of all federal advisory committees to be open to the public; exemptions from open requirements are those listed in the Freedom of Information Act. See Federal Advisory Committee Act, as amended in 1976, Section 10.

the act (such as the Federal Reserve Board) are permitted to develop their own simplified guidelines for closing meetings.

☐ An agency may vote to close a meeting at the request of an individual who may be affected by its deliberations under exemption provision numbers 3, 4 or 5.

☐ Agencies must keep and make public verbatim transcripts of most closed meetings, the sensitive areas being deleted from public record. If exemptions 7, 8 and 9 are under consideration, agencies may use minutes instead of verbatim transcripts.

☐ The federal district courts are responsible for enforcing and reviewing the act. In case of a dispute involving the legality of a closed meeting, the burden of proof is on the agency. If the agency is found to be in violation of the law, it may be held responsible for the plaintiff's attorney's fees and court costs. On the other hand, the court may charge the plaintiff if it is felt the suit was "frivolous or dilatory."

☐ Federal courts are also authorized to investigate a sunshine law violation while considering a nonsunshine agency matter, if a party involved in the proceedings requests it.

☐ Each agency must submit to Congress annually the numbers of open and closed meetings, explanations of any closed meetings, and a description of any resulting litigation.

☐ Private or *ex parte* communications—whether written or spoken—between agency officials and outsiders who may be affected by pending agency business are strictly forbidden. Any official involved in such a contact must make it a matter of public record. Such communications are considered grounds for an agency to rule against any party so involved.

Assessment of the law

A comprehensive evaluation of the law's effect cannot be made so soon; however, some preliminary observations are in order. Predictably, agency reactions ranged from huffy and reluctant compliance to enthusiastic support. But, enthusiastic or not, federal agencies have taken the law quite seriously. As the effective date in March 1977 approached, the *Federal Register* contained daily listings of agency compliance procedures as agencies informed the public of their guidelines and prepared to open their doors.

The use of the law varies, as do agency procedures under it. Some agency rules let observers tape-record meetings; others forbid it. Observers have had to become used to "bureaucratese," the arcane jargon known heretofore only to agency personnel. On the whole, there have been few observers in attendance at most agency sessions.

Some critics of the law fear that its effect will be the very opposite of its intent—that the decision-making process will be driven further underground and that "open meetings" will become mere formalities for announcing decisions that have already been made. Also, the effectiveness of the prohibition against *ex parte* communications remains to be seen.

At any rate, government-watchers will be monitoring closely to gauge the effect of the new law. At the very least, the daily listings in the *Federal Register* of open meetings of covered agencies are a boon. The annual reports each agency must submit on its sunshine procedures will also provide significant data on the extent to which the law has opened governmental processes.

This publication was researched and written by Mary Stone, Carol Rich and Joellen Fritsche, staff specialists, LWVEF Government/Voters Service Dept.

This is the first in a series of occasional publications on government issues funded by a grant from Mary and Charles Holt.

Order from League of Women Voters of the United States, 1730 M St. , N.W., Washington, D. C. 20036. Pub. No. 223, 30¢

UPDATE on government

Letting the Sunshine In: Freedom of Information and Open Meetings

"Government secrecy," "executive session," "executive privilege," "conducting business behind closed doors," "classified documents"—these and other phrases have aroused increasing citizen concern in the past decade about the tendency of government to make decisions in closed sessions. Although the tendency is as old as time, the level of concern is new—the public's tolerance for closed-door policy making has become very short-fused. In matters ranging from the Vietnam war to protection of the environment, the public has felt thwarted of its right to know—to be present at government sessions where policy is made, or to have access to documents about those policies. The glaring publicity that finally revealed the Nixon administration's secret maneuvers in the Watergate episode helped crystallize public sentiment against secrecy in government.

Members of the public and citizen organizations were not the only ones concerned about government secrecy. Some members of Congress also wanted more openness in government and thus more accountability. The signing in September 1976 of the "Government in the Sunshine Act" was the capstone on a mounting reform movement marked by passage and later amendment of the Freedom of Information Act, as well as adoption by Congress of rules opening to public scrutiny most of its own hearings, markup sessions and even conference committees.

Freedom of information procedures give the public the right (with certain exceptions) to examine the written word—public documents of governmental agencies—to ascertain what the government has done. The **Government in the Sunshine** law lets the public observe meetings of government agencies to see and hear what is *currently* underway or planned.

Freedom of information

In 1966 Congress passed the Freedom of Information Act as an amendment to the Administrative Procedures Act of 1946, which had not proved very helpful to citizens in getting the government to disclose information. The 1966 statute (which went into effect in June 1967) tightened the law in two important ways. It specified that "any person" may have access to identifiable records of any federal agency without having to state a reason for wanting the information. Further, the burden of proof for the need to withhold information rested with the agency if a citizen had to sue an agency to get information.

The Freedom of Information Act directed executive agencies to make available public information, agency rules, opinions, records and proceedings. Agencies were to publish implementation guidelines in the *Federal Register,* as well as descriptions of agency organization and procedures. Agency indexes of materials and certain records had to be available for "public inspection and copying." Agencies could set fees for copying documents.

The Freedom of Information Act was hailed as landmark legislation that reversed previous government policy about information. In a memo to executive agencies on implementing the new law, former Attorney General Ramsey Clark stated: "Never was it more important than in our times of mass society, when government affects each individual in so many ways, that the right of the people to know the actions of their government be secure."

Problems

Soon after the FOI act passed, it became obvious that there were shortcomings in its effectiveness. Among the most frequently cited problems were these:

☐ bureaucratic delay in responding to individual requests for information;

☐ excessive and variable search and copying fees set by some agencies;

☐ high costs of legal recourse if agencies refused information;

☐ ambiguities surrounding the term "identifiable record," which individuals were supposed to request;

☐ excessive and unjustified classification of materials under the national security exemption;

☐ lack of uniform agency responsiveness;

☐ slow release of information to reporters working within a deadline;

☐ insufficient training or briefing of agency public information officers.

In 1973, a Supreme Court decision underlined another problem with the act. When former Rep. Patsy Mink (D-HI) and other House members sought information from the Environmental Protection Agency (EPA) about the environmental effect of proposed U. S. underground nuclear tests on Amchitka Island off the coast of Alaska, the agency stated that the documents were classified for security reasons. Rep. Mink sought to have the materials scrutinized *in camera* (privately) by a federal court to determine whether or not they were properly classified. In *EPA* v. *Mink,* the Supreme Court ruled that the documents could *not* be inspected *in camera* by a federal court for such a determination, that the act prohibited anything other than a judicial finding that they were or were not classified, and that Congress had not provided authority for court review of documents to determine whether they were properly classified. However, the Court opinion suggested that Congress could have provided standards regarding court review of classified material.

1974 Freedom of Information Act Amendments

The stage was thus set for a revision of the act to deal with its various shortcomings. After House and Senate hearings in 1972 and 1973, a bill emerged that had bipartisan support

League of Women Voters Education Fund

Exempt categories under the Freedom of Information Act

Under the Freedom of Information Act, nine categories of information are exempt from public disclosure. These relate to matters that are:

1. specifically authorized under criteria established by an executive order to be kept secret in the interest of the national defense or foreign policy and are in fact properly classified under such executive order;

2. related solely to the internal personnel rules and practices of an agency;

3. specifically exempted from disclosure by statute, provided that such statute requires that the matter be withheld from the public in such a manner as to leave no discretion on the issue or establishes particular criteria for withholding or refers to particular types of material to be withheld;

4. trade secrets and commercial or financial information obtained from a person and privileged or confidential;

5. interagency or intraagency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency;

6. personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

7. investigatory files compiled for law enforcement purposes, but only to the extent that files would interfere with enforcement proceedings, prejudice the right to a fair trial, invade privacy, disclose a confidential source, disclose investigative techniques, or endanger the life or safety of a law enforcement employee;

8. contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

9. geological and geophysical information and data, including maps, concerning wells.

Congress stated that the above exemptions do not constitute authority to withhold information from Congress.

(although the Justice Department was concerned that it would authorize too few exemptions).

When the bill went to President Ford in late October 1974, he vetoed it, citing his major objections: he asserted that allowing federal courts to review documents for possible declassification could damage national security or diplomatic relations; he objected to disclosure of investigatory law enforcement files; and he considered the ten-day response period for agencies "unrealistic." The veto was overridden by an overwhelming majority in the House (371 voted to override) and by a closer vote (65-27) in the Senate.

The 1974 amendments:

☐ responded to the dilemma posed by *EPA* v. *Mink* by allowing federal courts, in the case of a court challenge, to examine classified materials *in camera* and determine if the materials are properly exempt from disclosure under one of the nine categories;

☐ permitted courts to award attorneys' fees and court costs to parties successfully suing for disclosure;

☐ directed agencies to respond in court within 30 days to a challenge;

☐ modified the broad exemption for law enforcement investigatory files (they must now meet one of six specific exemption grounds to remain secret);

☐ shortened the time for receipt by the citizen of the requested information to ten working days (a ten-day extension is possible in unusual circumstances);

☐ allowed 20 days for reply to an appeal on an initial denial of documents;

☐ provided for levying of administrative sanctions under Civil Service, to prevent bureaucrats from "arbitrary or capricious" withholding of information;

☐ required agencies to make selected documents available to the public on a regular basis;

☐ stipulated that uniform fees had to be set for reproducing documents.

In the event that a citizen's request for information is denied by an agency, citizen frustration is lessened by the new requirements that the responsible bureaucrat must tell the citizen where to appeal this denial within his or her department. If, in the appeal process, the citizen is once again denied access, he or she can sue the agency in the federal district court either in the state where the person lives or in the District of Columbia.

How citizens can use the Freedom of Information Act

Anyone who desires information from one of the federal agencies covered by the law should be guided by these basic suggestions:*

- Citizens should decide what they want and be able to "reasonably describe" to the appropriate government agency what they want. The description should be sufficient to enable a professional employee of the agency, familiar with the subject, to locate in its files the desired information.
- It is not necessary for the citizen to specify a public document by name, nor is it necessary for a citizen to give a reason for the request.
- Request may be by letter or by phone. A letter requesting information should state that the information is being sought under the Freedom of Information Act.
- Agencies cannot refuse citizen requests except under the nine exempted categories (see box).
- Fees may be waved by an agency if it determines that such a waiver (or reduction) is "in the public interest" in that the information would primarily benefit the general public. Citizens should request a waiver if resources are slim. Stating a limit on the amount one can spend for copying and search fees is helpful. A citizen can often save on copying fees if he/she can arrange to examine documents in person.
- A citizen may appeal an initial denial from an agency by letter to the head of the agency, giving details of the request and denial. The letter should clearly state that it is an appeal. (Some experts suggest that at this stage a letter from an attorney is helpful in producing results, if it can be arranged. Citizens can check with law schools or law firms about attorneys willing to undertake a *pro bono* effort.)
- If the appeal is denied, citizens may sue either in the U. S. District Court of their residence or in the District Court in Washington, D. C. If the government cannot prove that the documents should be exempt from disclosure, courts are likely to order that the information be released. Court decisions may also award attorneys' fees to the person suing.

Assessment of the law

Citizens *are* using the FOI law in large numbers. The agencies that get the largest volume of requests under the law are, not surprisingly, the FBI, the CIA and the IRS. Public interest groups, such as Ralph Nader's Freedom of Information Clearinghouse, also make considerable use of the act and assist citizens in filing information requests. Reporters have been pleased by the ten-day limit on the providing of information.

One category of users has encountered a problem under the FOI act. Businesses and corporations have found that sometimes trade secrets are easily ferreted out by their competitors, despite the disclosure exemption for this type of information. The *Wall Street Journal* reported (May 9, 1977) that a company learned only at the last minute that, under the act, its designs for a large inflatable liferaft for commercial aircraft were about to be released to a competitor by the Federal Aviation Administration. Though the company managed to block the disclosure by going to federal court, the court decision did permit release of enough information to enable the competitor to shortcut an extensive testing procedure for its own design. The competitor eventually won a large contract from a European company, which the original company had also sought. The *Wall Street Journal* analysis suggested that government agencies sometimes err on the side of disclosure of such trade secrets because they take FOI requests quite seriously.

On the other hand, disclosure of information in government files about commercial plans can benefit citizen organizations—environmental groups seeking information about proposed land development or coal extraction, for example.

One thing is certain—the law, like the subsequent sunshine act, represents a significant advance in opening government processes to the public. Congress can further tighten any ambiguities in the law after a period of evaluation. Also, court decisions will help flesh out administrative procedures.

Government in the sunshine

Even after the Freedom of Information Act gave citizens the authority to obtain written records heretofore held tightly in the government's grip, citizen access to government meetings where one could *see* and *hear* what was going on when decisions were being made was often still stymied. After considerable testimony in Congress and after pioneering legislation in states—led by Florida—Congress passed a law in 1976 that opened the proceedings of almost 50 government agencies to the public. Cosponsored by Senators Lawton Chiles (D-FL) and William Roth (R-DE), the "Government in the Sunshine Act" (PL94-409) was signed by the President in September 1976 and took effect in March 1977.

Proponents overwhelmingly cited public distrust in government as the major reason for supporting the sunshine act. They stressed that the government's business is the people's business. Public access to documents and meetings was seen as a way to restore confidence in government and ensure that no special interests were being served.

Senator Abraham Ribicoff (D-CT), a supporter of the bill, predicted on the Senate floor that the act would assure the public of the honesty and integrity of public officials and thereby rebuild trust in government. This takes on added importance in the post-Watergate era when secrecy of any sort is often suspect.

Senator Lawton Chiles, author of the legislation, felt that the act would help to curb the "cozy" relationships that sometimes develop between governmental agencies and the industries they were intended to regulate. Some observers felt that open meetings would also help insure accurate reporting of agency proceedings. Selected leaks about such meetings were sometimes slanted to reflect the viewpoint of the informant.

During congressional hearings on the sunshine bill, Arthur F. Burns, chairman of the Federal Reserve Board, expressed strong concerns that affected the final wording of the bill as it was hammered out by Congress. He warned that agency members might strive to impress the public rather than conduct business responsibly. More specifically concerning the Federal Reserve Board, he feared that preannounced topics for closed meetings would encourage market speculation, and that verbatim transcripts of closed meetings would inhibit the "free and frank" exchange of information since the transcripts could be subject to subsequent disclosure as a result of citizen challenge. Burns also expressed concern that, since the Federal Reserve Board often relies on information received in confidence, the possibility of disclosure would dry up the agency's sources. He feared that open meetings or transcripts—with or without summarized deletions—could lead to market speculation or runs on banks.

The "Government in the Sunshine Act" as passed, however, received Burns's approval. Provisions that tightened the legal definition of a "meeting" as well as the dropping of the verbatim transcript requirement from the bill for agencies such as his seemed to allay Burns's fears. The FRB's sensitive deliberations can now be summarized in minutes.

Major provisions of the new law are as follows:

☐ All government agencies headed by two or more persons must hold meetings open to public observation. (Notably excluded are the eleven Cabinet-level departments, since they are headed by single individuals. See box for examples.)

☐ The legal definition of a "meeting" is limited to deliberations, by a quorum of agency members, that will "determine or result in" the disposition of agency business.

☐ Agencies must give a week's advance notice of the date, place and subject of an upcoming meeting, and state whether the meeting will be open or closed.

☐ A majority record vote of all members is required to close a meeting. The agency must make public the vote to close a meeting within one day, provide a written explanation for the closing, and give a list of persons expected to attend.

☐ The chief legal officer or general counsel of the agency is required to certify that each closed meeting was legal according to the exemptions in the act.

☐ A series of meetings to be held on the same topic within a 30-day period may be closed by a single majority vote of the body. Agencies that regularly discuss topics exempted under

Exempt categories under Government in the Sunshine Act

Under government in the sunshine procedures, ten subject areas can legally be discussed in private or closed sessions:

1. matters classified by the Executive to be kept secret in the interests of national defense or foreign policy;

2. agency personnel rules and practices;

3. personal information that would be a "clearly unwarranted invasion of personal privacy" if disclosed;

4. accusation of a crime or formal censure against a person;

5. certain types of law-enforcement investigatory records that would interfere with enforcement, prejudice an individual's right to a fair trial, damage confidentiality of sources of information, and so on;

6. trade secrets or financial or commercial information that was obtained in confidentiality or where disclosure would damage a competitive position;

7. information dealing with real property purchases by an agency, or currency, securities or commodities, the disclosure of which would trigger speculation or frustrate proposed agency action;

8. bank-examination records and similar financial surveys;

9. an agency's participation in court proceedings;

10. information required to be kept confidential by other laws.

*For further information, refer to *Litigation under the Amended Federal Freedom of Information Act*, edited by Christine M. Marwick (Washington, D. C., Project on National Security and Civil Liberties, 1976), 2nd ed.; or contact the Freedom of Information Clearinghouse (a project of Ralph Nader's Center for Study of Responsive Law), P.O. Box 19367, Washington, D. C. 20036.

LEAGUE OF WOMEN VOTERS
OF MINNESOTA
PHONE (612) 224-5445
555 WABASHA • ST PAUL, MINNESOTA 55102

OPEN MEETING LAW UPDATE

To: Local Leagues Presidents and Government Chairs
From: Erica Buffington, Government Co-Chair
Date: February 19, 1979

Minnesota has the reputation of having one of the most open and competent state governments in the country. A large part of this reputation is due to this state's open meeting law.

The Minnesota Open Meeting Law was first passed in 1957. There were, at that time, separate open meeting laws that applied to state and local public bodies. These two laws were merged in 1973. Important amendments were also adopted in 1973 that added committees and subcommittees of public bodies to coverage under the laws. Penalties were added for violations.

The actual law itself is relatively short, thus leaving its application open to Attorney General opinions and decisions of state courts. The Minnesota Open Meeting Law (Minn. Stat. 471-705) reads as follows:

> 471.705 MEETINGS OF GOVERNING BODIES: OPEN TO PUBLIC. Subdivision 1. Except as otherwise expressly provided by statute, all meetings, including executive sessions, of any state agency, board, commission or department when required or permitted by law to transact public business in a meeting, and the governing body of any school district however organized, unorganized territory, county, city, town, or other public body, and of any committee, subcommittee, board, department or commission thereof, shall be open to the public, except meetings of the board of pardons and the corrections board. The votes of the members of such state agency, board, commission or department or of such governing body, committee, subcommittee, board, department or commission on any action taken in a meeting herein required to be open to the public shall be recorded in a journal kept for that purpose, which journal shall be open to the public during all normal business hours where such records are kept. The vote of each member shall be recorded on each appropriation of money, except for payments of judgments, claims and amounts fixed by statute. This section shall not apply to any state agency, board, or commission when exercising quasi-judical functions involving disciplinary proceedings.
>
> Subdivision 2. Any person who violates subdivision 1 shall be subject to personal liability in the form of a civil penalty in an amount not to exceed $100 for a single occurrence. An action to enforce this penalty may be brought by any person in any court of competent jurisdiction where the administrative office of the governing body is located. Upon a third violation by the same person connected with the same governing body, such person shall forfeit any further right to serve on such governing body or in any other capacity with such public body for a period of time equal to the term of office such person was then serving. The court determining the merits of any action in connection

with any alleged third violation shall receive competent, relevant evidence in connection therewith and, upon finding as to the occurrence of a separate third violation, unrelated to the previous violations issue its order declaring the position vacant and notify the appointing authority or clerk of the governing body. As soon as practicable thereafter, the appointing authority or the governing body shall fill the position as in the case of any other vacancy.

Subdivision 3. This section may be cited as the "Minnesota Open Meeting Law." (1957 c 773 s 1; 1967 c 462 s 1; 1973 c 123 art 5 s 7; 1973 c 654 s 15; 1973 c 680 s 1, 3)

It is the Attorney General opinions and court decisions that will be updated here. The Open Meeting Law has certainly become one of the more visible law in recent years. Basically, this visibility and in some instances, controversy, all began with two Attorney General opinions that were given in 1974. These opinions dealt with meetings that were required by the law to be open.

OPEN MEETING LAW: MUNICIPAL COUNCIL: Gathering of municipal council where consultants present reports and opinions on matters within council's official duties or powers, or where council members study and discuss such matters, constitutes a meeting which must be open under Minn. Stat. § 471.705 (1973 Supp.).

Adequate and timely public notice must be given of municipal council meetings. Sullivan v. Credit River Township, ___ Minn. ___, 217 N.W. 2d 502 (1974).

Where all council members are of the same political party, a "political caucus" gathering of council members to discuss municipal matters is a meeting which must be open.*

Op. Atty. Gen. 471-e, October 28, 1974

OPEN MEETING LAW: MUNICIPAL COUNCIL: Minn. Stat. § 471.705 (1973 Supp.) covers council session where there is deliberation or action on matter within council's official duties or powers. "Deliberation" includes discussion and includes the collective acquisition of reports or statements of fact or opinion. Such session is covered by law even if it is not intended as official meeting and even if subject discussed does not appear, at the time, to call for formal council action. Gathering of less than quorum is often considered the same as gathering of quorum or more.

Gatherings of two or more members of five member council help to constitute meeting where: (1) Members review and discuss applications for city positions. (2) City manager presents background information on municipal matters and members exchange views on such matters. (3) Members gather socially at restaurant or home and at some point discuss municipal matter such as whether council should place more emphasis on the development of part and recreation facilities. (4) Members discuss

*All material that is quoted in reference to Attorney General opinions is quoted from the headnotes of the opinions and is not the full text.

whether certain items should be placed on agenda of future council meeting.

Op. Atty. Gen. 63-a-5, October 28, 1974

Briefly, the types of meetings covered by these opinions and required to be open include: (1) gatherings of a quorum prior to a scheduled meeting in order to discuss agenda items; (2) impromptu or social gatherings of a quorum at which matters of city interest happen to be discussed; (3) gathering of fewer than a quorum at which possible future agenda items are discussed; and (4) political caucus meetings to discuss municipal matters.

On April 19, 1974, the State Supreme Court ruled in Sullivan vs. Credit River Township that "adequate and timely notice" must be provided to the public of the time and place of public meetings. This decision does not require specific notice to be given of regularly scheduled meetings, or of meetings which were adjourned-to from a regularly shceduled meeting. Notice must also be provided for special meetings, except in emergency situations requiring immediate action.

A February 5, 1975, Attorney-General opinion dealt with municipal training programs.

OPEN MEETING LAW: MUNICIPAL COUNCIL TRAINING PROGRAMS: Municipal council's participation in non-public training program is not inconsistent with open meeting law where program is devoted to developing skills in communication, planning, delegation of responsibilities, and decision-making, and to gaining a better understanding of council members' responsibilities. Discussion of matters within the council's official duties or powers is, however, prohibited by open meeting law. Minn. Stat. § 471-705 (1973 Supp.).

Op. Atty. Gen. 63-a-5, February 5, 1975

In an opinion dated February 28, 1975, the Attorney General dealt with the recording of the votes of individual public officials on any action except for votes on appropriations specifically exempted by statute. This opinion reenforces the basic purpose of the law, which is "to assure the public right to be informed." Channel 10, Inc. V. Ind. School Dist. No. 709, ___ Minn. ___ 215 N.W. Znd (1974).

OPEN MEETING LAW: VOTES ON ACTIONS TAKEN: INDIVIDUAL RECORDING: Each member's vote on all actions taken in a meeting must be recorded in a journal except for "payment of judgments, claims and amounts fixed by statute." Minn. Stat. § 471.705 (1974).

Op. Atty. Gen. 125-2-14, February 28, 1975

A July, 1975, Attorney General's opinion dealt with advisory bodies, specifically with staff-appointed advisory panels that review and make recommendations to the State Arts Board. The meetings of these panels must be open.

OPEN MEETING LAW: STATE ARTS COUNCIL: ADVISORY PANELS: Advisory panels of State Arts Council constitute "committees" of Council's governing board and the panel meetings are therefore subject to Minn. Stat. § 471.705 (174), the open meeting law.

Op. Atty. Gen. 10-b, July 3, 1975

On May 23, 1978, the Attorney General ruled that a private discussion between a member of one governmental body and one member of another governmental body would not be prohibited by the open meeting law.

OPEN MEETING LAW: MUNICIPAL COUNCIL: HOUSING AND REDEVELOPMENT AUTHORITY: Private discussion between one council member and one member of housing and redevelopment authority is not proscribed by Open Meeting Law. Minn. Stat. § 471.705 (1976).

Op. Atty. Gen. 471-e, May 23, 1978

The Open Meeting Law covers virtually all meetings of members of the same public body. The only exceptions are either allowed by the law itself or by State Supreme Count decisions. Opinions given by the Attorney General do not create exemptions but rather are an effort to interpret the requirements of the statute in certain situations. These exceptions are:

- The law specifically exempts from the requirements of the law "any state agency, board or commission when exercising quasi-judicial functions involving disciplinary proceedings" and the board of pardons and the corrections board.
- A 1974 State Supreme Court decision has exempted from requirements of the law "strictly social get-togethers" where public business is not being discussed.
- A 1976 State Supreme Court decision recognized a limited exception to the requirements of the law for meetings between a public body and its attorney to discuss threatened or pending litigation. This exemption would not ordinarily apply to normal consultation between a public body and its attorney on matters other than litigation.
- An Attorney General's opinion (February 5, 1975) has exempted from the requirements of the law training sessions of local elected officials where public business is not being discussed by members of the same public body with each other.
- The law itself specifically exempts from its requirements exceptions which are allowed by other statutes. For example:
  . Collective bargaining negotiation sessions which have been closed by the state Director of Mediation Services.
  . Teacher termination and student expulsion hearings unless they are requested to be open by the teacher or student involved.

Minnesota's Open Meeting Law has been in effect in some form for 21 years. It has, however, been significantly strengthened in the 1970's by the actions of the State Legislature and the State Attorney General. How is this law working? Are local governmental bodies complying with the law? Are there weaknesses in the law? Ambiguities?

Numerous local Leagues have been monitoring this particular law from the beginning. League members are in an excellent position to evaluate the effectiveness of this law.

Monitoring legislation is an important part of action. If you have taken action or do take action regarding non-compliance of the Open Meeting Law, let the state League office know.* Any action taken should have your members' knowledge and support. Included with this Update is an evaluation form and a checklist for monitoring the Open Meeting Law. We are interested in any information regarding compliance or non-compliance you can give us, as well as sections of the law you think need to be strengthened or changed. Please return the evaluation form the LWVMN State Office by June 1, 1979.

*Action could consist of: (1) statement to public body making the alleged violation; (2) article in local newspaper; (3) letters to the editor; (4) request that the city ask for Attorney General opinion; (4) court action.

League of Women Voters of Minnesota
555 Wabasha
St. Paul, MN 55102

CHECKLIST FOR MONITORING THE OPEN MEETING LAW

Name of Public Body Date

1. Are meeting notices property posted?
   Are notices made in additional ways?
   Are notices available upon written request?
   What is the charge, if any?

2. Are notices for special meetings posted?
   How much advance notice is usually given?
   What problems does this cause, if any?
   How often are special meetings held?

3. How frequently are closed meetings held?
   For what purpose(s)?

4. Are minutes (journal) available for review and copying?
   Do minutes (journal) include those things required by the Open Meeting Law?
   How complete are the minutes?

5. Has there been any case(s) of noncompliance?
   If yes, who challenged it?
   How was it resolved?

6. Are deliberations made at a public meeting?
   Are all decisions made at a public meeting?

League of Women Voters of Minnesota
555 Wabasha
St. Paul, MN 55102

PLEASE RETURN BY JUNE 1, 1979

LWV of _____

1. Overall, how is the law working? Fine____ O.K. ____ Badly____
   Describe any problem you have encountered.

2. Are there sections of the law that need changing or strengthening?
   Yes____ No____ Don't know____
   If yes, please describe

3. Did you interview any members of public bodies? Yes____ No____
   If yes, please summarize their comments.

4. Has your LWV been involved in action to force compliance? Describe.

5. Additional comments.

PLEASE RETURN TO THE STATE LEAGUE OFFICE

St. Paul Center
Metro Square Bldg.
Saint Paul MN 55101
612/296-3875

Two very special meetings are being sponsored by Metropolitan State University which we think you will want to share with staff and friends.

PRIVACY, BUREAUCRACY, AND OPEN GOVERNMENT — Dr. G. Theodore Mitau

How private are your personnel files? What questions are "taboo"? Can you have both open government and privacy? How does one protect one's privacy?

Thursday, March 30 — 12:00 noon — Bring a bag lunch.
Conference Room, Metropolitan State University
121 Metro Square Building, 7th and Robert Streets, St. Paul, Minnesota

Dr. G. Theodore Mitau is the former Chancellor of the State University System, now Distinguished Service Professor of Political Science in the State University System. His special interest is constitutional law and public administration. Dr. Mitau will be conducting a spring quarter class, THE RIGHT TO PRIVACY - PUBLIC BUREAUCRACY AND CONSTITUTIONAL CONSTRAINTS, sponsored by Metropolitan State University.

CIVIL SERVICE IN TRANSITION — Mr. Nicholas Oganovic

Is Civil Service a success or a failure? Why is there interest in Civil Service now? How can one prepare for Civil Service jobs? What are job opportunities in the Civil Service? Which Metro State U offerings help prepare for employment in the public and the private sector?

Friday, April 7 — 12:00 noon — Bring a bag lunch.
Room 564 — Federal Building — Fort Snelling

Nicholas Oganovic has a M.A. degree from the University of Minnesota, and thirty years of progressively responsible administrative positions in the Federal service. Mr. Oganovic's last assignment was Executive Director of the Federal Civil Service System. In the past seven years, Mr. Oganovic has been affiliated with Metropolitan State University, and will be teaching a spring quarter class called HISTORY OF EQUAL EMPLOYMENT OPPORTUNITY IN THE PUBLIC SECTOR.

3/78

founded 1971
a member of the
State University
System.

LEAGUE OF WOMEN VOTERS OF MINNESOTA

555 WABASHA, ST. PAUL, MINNESOTA 55102

March 1, 1978

The Honorable John Rose
388 State Office Building
St. Paul, Minnesota 55155

Dear Mr. Rose:

The League of Women Voters of Minnesota cannot support HF 850 as it is presently written. The League is opposed to prohibiting the publication of individual salaries of county employees. While publication of names of all county employees could be considered an invasion of privacy, the public record should reflect the amount of salary paid to each position at the county level and not just the total amount dispersed for salaries.

Based on League of Women Voters of the U. S. principles we believe that democratic government depends upon the informed and active participation of its citizens and includes holding open meetings and making public records accessible. Openness and accountability in government are primary League concerns. The League of Women Voters of Minnesota is hopeful that this provision prohibiting the publication of individual salaries will be amended to read: "The County Board shall not publish the names of persons employed by the county but shall publish salary ranges for each position at the county level."

Sincerely,

Erica Buffington

Copy: Buffington, Berkwitz, Borg, Office

TELEPHONE 224-5445

LEAGUE OF WOMEN VOTERS OF MINNESOTA
555 WABASHA • ST. PAUL, MINNESOTA 55102 • TELEPHONE (612) 224-5445

June 8, 1978

Dear Nancy, - Buffalo - Monticello

Whoever talked with Representative Bob McEachern regarding the LWV position on the Open Meeting Law must not have been clear on our position.

In the LWVMN Program for Action 1977-79, our position is quite clear. The position as stated in the LWVUS Principles, 1974, is:

> "Government bodies (should) protect the citizens right to know by giving adequate notice of promised actions, holding open meetings and making public records accessible."

Support for open meetings was made explicit in the LWVUS 1972 U.S. Congress position. In 1973 local Leagues were empowered to apply this position at the state and local levels.

The 1974 Minnesota Open Meeting Law requires that all meetings of governmental bodies be open to the public with three exceptions (Board of Pardons, Corrections Board and the Legislature, which sets its own rules) and that these bodies maintain records on their actions which are accessible to the public.

The LWVMN testified for this law and members continue to monitor compliance at the state and local levels of government. We are opposed to any amending of this law that would weaken it.

Since the Open Meeting Law was enacted, there have been numerous State Attorney-General opinions handed down at the specific request of local municipalities. In most instances these opinions have strengthened the law.

Over the past year I have had numerous requests from local Leagues asking for clarification of the law and of the Attorney-General opinions and whether or not they apply to their particular circumstances.

In part due to these requests as well as due to the numerous Attorney-General opinions, there will be an Update on the Open Meeting Law, due to be published in February, 1979.

While there is no study as such planned, the Open Meeting Law Update could be reviewed in a unit meeting in the spring. Local Leagues have been encouraged to monitor adherence to the Open Meeting Law on an on-going basis. I would consider the monitoring of the Open Meeting Law a priority item. It is often the case that the League acts as a "watchdog" and sees to it that the Open Meeting Law is adhered to by local governmental bodies.

I am unclear as to exactly what Representative McEachern wants. However, if he wants to know if the LWV supports the present Open Meeting Law and will testify to that effect, the answer is a resounding yes!

My regret is that I was not told of Representative McEachern's request and that the response he received was not accurate.

If I can be of further help, please feel free to contact me, either by phone (612) 929-8168, or by letter.

Sincerely,

Erica Buffington, Gov't. Co-Chair
3845 Lynn Avenue South
St. Louis Park, MN 55416

State of Minnesota

OFFICE OF THE SECRETARY OF STATE

St. Paul 55155

JOAN ANDERSON GROWE
Secretary of State

MARK WINKLER
Deputy Secretary of State

180 STATE OFFICE BUILDING
Corporation Division: 612/296-2803
UCC Division: 612/296-2434
Election Division: 612/296-2805
Office of the Secretary: 612/296-3266
Office of Deputy Secy.: 612/296-2309

June 26, 1978

Dear business/community organization:

This year the legislature passed a very unique law: The Open Appointments law.

Here is a brochure explaining the process. I urge you to inform your members in two ways:

1. Order more brochures by writing or calling (612) 296-3266.

2. Request to be put on our mailing list. We would notify you of current openings and this information could be passed along to your memebers in newsletters, or at scheduled meetings.

This information is truly "grassroots information" that should reach all Minnesotans interested in State government.

Sincerely,

Joan Anderson Growe

Joan Anderson Growe
Secretary of State

JAG:kmw

Enclosure

JUN 29 1978

ordering 100

OPEN APPOINTMENTS PROCESS IN MINNESOTA

citizen information

compiled by the Office of the Minnesota Secretary of State

JOAN ANDERSON GROWE
Secretary of State
180 State Office Building
St. Paul, MN 55155

Place Postage Stamp Here

Ms. Helene Borg, Pres
League of Women Voters(M
555 Wabasha
St. Paul, MN 55102

VOTE

INFORM YOURSELF – REGISTER – VOTE

ENCOURAGING CITIZEN PARTICIPATION IN GOVERNMENT

What is the open appointments process?

It is the process by which the public is informed of openings on multi-member state agencies (boards, commissions, councils, committees, authorities, task forces or other similar multi-membered agencies) created by statute and having statewide jurisdiction. The Secretary of State will administer the process and refer applications to the governor, commissioner or other appropriate appointing authority. The Open Appointment law was passed by the 1978 legislature. (Minnesota Statutes 15.0597)

What is the purpose of the law?

The purpose of the law is to simplify and open up the process by which citizens are appointed to state agency positions so that all citizens have equal opportunity to be considered.

Do members, once they are appointed, receive a salary?

No, however most members of state agencies are paid a per diem of $35.00 and expenses. Advisory task force members receive expense costs only.

How many state agencies are involved?

At least 150 state agencies are involved in the open appointments process.

How many openings are there per year?

There are approximately 500 openings per year, depending upon expiration of agency terms, resignations, creation of a new position on an existing agency, or creation of a new agency.

What are the qualifications to serve on an agency?

Qualifications to serve on an agency vary and are defined in the law from which the agency was created. The Secretary of State will mail you specific information along with an application blank.

How do I find out about openings?

There will be wide dissemination of information about openings through statewide public service announcements (radio, print media, t.v.).

In addition, the Secretary of State lists a notice of agency openings in the State Register.

The State Register can be viewed at a public library in your county seat. As a citizen interested in governmental affairs, you may wish to include the State Register on your reading list.

The State Register is the official publication of the State of Minnesota. Published weekly, it contains all executive orders, rules, and notices.

The Secretary of State will list in the State Register:

(1) name of the agency;
(2) number of openings;
(3) date term begins; and
(4) application deadline.

The Secretary of State will also mail a list of openings to requesting persons.

Is my candidacy public information?

Your application is public information. In addition, some state agencies require that their members file with the Ethical Practices Board.

When do I apply?

The Secretary of State will accept applications after public notice of an agency opening.

How do I apply?

Application forms are available only from the Secretary of State's office. Write to:

Secretary of State
Joan Anderson Growe
180 State Office Bldg.
St. Paul, MN 55155

For further information, please contact the Secretary of State's office (612) 296-3266.