

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.

225 East Mason Street, Suite # 300
Milwaukee, WI 53203-0301

Thomas C. Kamenick
Associate Counsel
tom@will-law.org
414-727-WILL
414-727-6368 (Direct)
FAX: 414-637-6385

Eric Johnson
District Attorney, St. Croix County
Second Floor Room 2301
Government Center
1101 Carmichael Road
Hudson WI 54016

J.B. Van Hollen
Attorney General, State of Wisconsin
Wisconsin Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

January 20, 2012

VERIFIED COMPLAINT UNDER WIS. STAT. § 19.97(1)

Complainant Leanne Rice, by her attorneys Wisconsin Institute for Law & Liberty, Inc., hereby makes this verified complaint under Wis. Stat. § 19.97(1) against the members of the Baldwin-Woodville Area School District Board of Education (“Board”) – Russell Helland, Jeff Campbell, Todd Graf, Jody Lindquist, Dustin Klanderman, Deb Rasmussen, Ann Hilmanowske, and Brian Bedford – alleging as follows:

1. This complaint alleges that the above-named Board members violated the open meeting laws when they impermissibly convened in closed session, without proper notice and for

an improper purpose, in order to discuss and vote upon a measure granting over 200 Baldwin-Woodville full-time and part-time employees a \$500 Christmas bonus.

2. That this complaint is made to the District Attorney for St. Croix County, Wisconsin and to the Attorney General for the State of Wisconsin, to timely institute an action against the members of the afore-mentioned Board to recover the forfeiture provided in Wis. Stat. § 19.96, together with reasonable costs and disbursements as provided by law and any other appropriate relief under § 19.97.
3. Complainant Leanne Rice, a member of Citizens for Responsible Government St. Croix County, owns property within and pays taxes to the Baldwin-Woodville Area School District. She is an adult resident of Wisconsin with an address of 845 Broadway, Hammond, WI 54015.
4. The Board is a “governmental body” as that term is defined in Wis. Stat. § 19.82(1).
5. Russell Helland is the duly elected Superintendent of the Baldwin-Woodville Area School District and member of the Board. He maintains a business address of 550 Highway 12, Baldwin, WI 54002, and is named in his official capacity.
6. Jeff Campbell is a duly elected member and President of the Board. He maintains a business address of 550 Highway 12, Baldwin, WI 54002, and is named in his official capacity.
7. Todd Graf is a duly elected member and Vice Presidents of the Board. He maintains a business address of 550 Highway 12, Baldwin, WI 54002, and is named in his official capacity.

8. Jody Lindquist is a duly elected member and Treasurer of the Board. She maintains a business address of 550 Highway 12, Baldwin, WI 54002, and is named in her official capacity.
9. Dustin Klanderman is a duly elected member and Clerk of the Board. He maintains a business address of 550 Highway 12, Baldwin, WI 54002, and is named in his official capacity.
10. Deb Rasmussen is a duly elected member of the Board. She maintains a business address of 550 Highway 12, Baldwin, WI 54002, and is named in her official capacity.
11. Ann Hilmanowske is a duly elected member of the Board. She maintains a business address of 550 Highway 12, Baldwin, WI 54002, and is named in her official capacity.
12. Brian Bedford is a duly elected member of the Board. He maintains a business address of 550 Highway 12, Baldwin, WI 54002, and is named in his official capacity.
13. On December 19, 2011, at approximately 7:30 p.m., the Board convened in a “meeting” as that term is defined in § 19.82(2) in the District Board Room at 550 Highway 12, Baldwin, WI 54002. All seven Board members were present.
14. Prior to the meeting, and on or about December 13, 2011, the Board posted notice of the December 19 meeting which included the following relevant agenda items:
 - 16) **Motion to go into closed session for the purpose of employee compensation in accordance with Wis. Stat. 19.85 (1) (c) considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.**
 - 17) **Motion to reconvene into open session**
 - 18) **Action on any decision taken in closed session, if any, and if appropriate**
15. A true and accurate copy of the notice is attached as Exhibit A.

16. The minutes for the December 19 meeting, a true and accurate copy of which is attached as Exhibit B, indicate that the members voted unanimously to go into closed session “to review and evaluate personnel as provided in Wisconsin Statutes 19.85(1)(c), considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.”
17. The minutes also indicate that the members voted unanimously, approximately 17 minutes later, to reconvene into open session.
18. The minutes do not indicate that the Board either considered or voted on a measure granting over 200 Baldwin-Woodville full-time and part-time employees a \$500 Christmas bonus. However, upon information and belief, such a measure was discussed in that closed session and unanimously adopted upon a consensus vote in the closed session.
19. Based on the preceding, Complainant hereby makes the following allegations of wrongdoing:

ALLEGATIONS

First – Violation of Wis. Stat. § 19.84(2); Failure of Notice

20. Under § 19.84(2), notice of a meeting of a governmental body must be “reasonably likely to apprise members of the public and the news media” of the “subject matter . . . intended for consideration at any contemplated closed session.”
21. The notice of closed session in this case merely mentioned “employee compensation” and then quoted verbatim the statutory exemption from the requirement of open meetings found in § 19.85(1)(c): “Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.”

22. Such notice is not “reasonably likely to apprise members of the public and the news media” of the “subject matter . . . intended for consideration at any contemplated closed session” under § 19.84(2).
23. First, the statutory language refers to a single public employee, not all public employees as was the case at this meeting.
24. Second, the statutory language posits four separate subject matters related to that single public employee, and the notice in this case picked one but failed to describe with any specificity at all what type of compensation was to be discussed.
25. Third, under the three-factor test set forth in *Buswell v. Tomah Area School District*, 2007 WI 71, 301 Wis. 2d 178, 732, N.W.2d 804, this notice was not “reasonably specific under the circumstances”, *id.* ¶22, because providing a more detailed notice would impose virtually no burden on the Board, in these tough budgetary times, spending \$100,000 on bonuses would be of particular interest to the public, and adopting a one-time bonus would be a nonroutine action the public would be unlikely to anticipate.
26. Finally, under Attorney General opinions, merely identifying or reciting the exemption language verbatim is insufficient to give proper notice. *See* 66 Wis. op. Att’y Gen. 93, 98 (1977) (OAG-26-77); Informal Correspondence from Wis. Att’y Gen. to Mr. Peter Weinschenk, TP Printing Co. (Dec. 29, 2006); Informal Correspondence from Wis Att’y Gen. to Mr. Mark Anderson (Feb. 13, 2007); *Wisconsin Open Meetings Law: A Compliance Guide* 12 (2009).
27. Thus, the Board violated § 19.84(2) by failing to give sufficient notice that the Board would consider or vote on a measure granting over 200 Baldwin-Woodville full-time and part-time employees a \$500 Christmas bonus at the December 19 meeting.

Second – Violation of Wis. Stat. § 19.85(1); Failure of Closed Session Procedure

28. Before going into closed session, § 19.85(1) requires the chief presiding officer of the governmental body to “announce[] to those present at the meeting at which such motion [to go into closed session] is made, the nature of the business to be considered at such closed session, and the specific exemption or exemptions under this subsection by which such closed session is claimed to be authorized.” Furthermore, that announcement “shall become part of the record of the meeting.” Finally, “[n]o business may be taken up at any closed session except that which relates to matters contained in the chief presiding officer’s announcement of the closed session.”
29. The minutes, the “record of the meeting,” do not reflect that such an announcement was made at all.
30. Upon information and belief, to the extent such an announcement was made, it was a recitation of the statutory exemption language contained in the noticed agenda. Furthermore, the language in the minutes differs slightly from the language in the notice in that the minute entry contains the words “to review and evaluate personnel” preceding the statutory language, while the notice contains the words “employee compensation” preceding the statutory language. That notice, as explained above, was insufficient to apprise the public of the “nature of the business to be considered” in closed session.
31. Thus, the Board violated § 19.85(1) both by failing to make an announcement that the closed session would discuss a measure granting over 200 Baldwin-Woodville full-time and part-time employees a \$500 Christmas bonus and by failing to properly record such an announcement as part of the record of the meeting.

Third – Violation of Wis. Stat. § 19.83(1); Improper Subject of Closed Session

32. Under § 19.83(1), “[e]very meeting of a governmental body . . . shall be held in open session[, and] all discussion shall be held and all action of any kind, formal or informal, shall be initiated, deliberated upon and acted upon only in open session except as provided in s. 19.85.”
33. Section 19.85(1)(c), the exemption under which the Board claimed to proceed, permits a closed session for “[c]onsidering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.”
34. This exemption does not permit a closed session for the purposes of considering an across-the-board bonus to all employees.
35. Under controlling Wisconsin Supreme Court precedent, exemptions should be construed narrowly, in light of the legislative mandate of § 19.81(4) to provide the public with the fullest and most complete information possible regarding the affairs of government. *State ex rel. Hodge v. Town of Turtle Lake*, 180 Wis. 2d 62, 70, 508 N.W.2d 603 (1993).
36. The legitimate public purposes behind the § 19.85(1)(c) exemption are protecting the reputational or privacy interest of a single employee under consideration and allowing governmental bodies to hold frank discussion of sensitive information. *Oshkosh Northwestern v. Oshkosh Library Board*, 125 Wis. 2d 480, 486, 373 N.W.2d 459 (Ct. App. 1985).
37. The Attorney General has opined that this exemption does not apply to general employment decisions, only employment decisions regarding a specific individual employee or applicant. *See* 80 Wis. Op. Att’y Gen. 176, 180 (1992); Attorney General’s Synopsis of Opinions Involving Anti-Secrecy Law, 49 Wis. Op. Att’y Gen. (1960).

38. Thus, the Board violated § 19.83(1) by not holding its discussion of a measure granting over 200 Baldwin-Woodville full-time and part-time employees a \$500 Christmas bonus in open session.

Fourth – Violation of Wis. Stat. § 19.83(1); Improper Action in Closed Session

39. Even if the subject under consideration in the December 19 closed session was appropriate under § 19.83(1), taking action upon that subject in closed session would be inappropriate.

40. As noted, under § 19.83(1), “all action of any kind, formal or informal, shall be initiated, deliberated upon and acted upon only in open session,” subject to the § 19.85(1) exemptions.

41. The exemption in § 19.85(1)(c) provides for only “considering . . . compensation” not acting upon compensation. Voting to actually give a Christmas bonus is an “action” that does not fall under the exemption to the requirement for open sessions. *See State ex rel. Schaeve v. Van Lare*, 125 Wis. 2d 40, 47, 370 N.W.2d 271 (Ct. App. 1985) (holding that no exemption under § 19.85(1) expressly permits any vote to be taken in closed session).

42. Furthermore, the notice of the December 19 meeting explicitly states that any action on a decision made in closed session will be taken after the meeting is reconvened into open session.

43. Thus, the Board violated § 19.83(1) by not voting on a measure granting over 200 Baldwin-Woodville full-time and part-time employees a \$500 Christmas bonus in closed session.

WHEREFORE, Complainant hereby requests that the District Attorney of St. Croix County and/or the Attorney General of the State of Wisconsin investigate the above allegations and issue charges as appropriate under Wis. Stat. § 19.97(1) seeking the forfeitures provided in § 19.96 against the above named Board members and such other legal or equitable relief as appropriate, including voiding any

improper action taken by the Board at the December 19 meeting, as provided in § 19.97(3). Complainant reserves her right to bring an action under § 19.97(4) if the District Attorney fails to commence an action within 20 days after receiving this verified complaint.

VERIFICATION

I hereby swear that I have read the foregoing complaint and that it is true and correct to the best of my knowledge.

Leanne D. Rice, Complainant

Date

Subscribed and sworn to before me
this ___ day of _____, 2012.

Notary Public, State of Wisconsin
My Commission _____

Drafted by:

Thomas C. Kamenick
Wisconsin State Bar No. 1063682
Wisconsin Institute for Law & Liberty, Inc.
225 E. Mason St., Suite 300
Milwaukee, WI 53202
(414) 727-WILL
(414) 727-6385 (fax)
tom@will-law.org