



**John R. Hohenfeldt**

**Mayor, City of Cudahy**

Department Manager or Elected Official Update

Agenda Item: Research and update on alleged open meeting law violation.

Honorable Council Members:

At a previous meeting of the Common Council, a citizen commented during the public comment section that the City of Cudahy violated Wisconsin Open Meetings Law as an agenda was reportedly not posted in the community for a meeting of the Common Council. The City of Cudahy Clerk / Treasurer goes above and beyond what is required by law in the posting of public meeting notices. One of the posting locations is the Cudahy Family Library which is a public place accessible to the public and another one of the locations for the city to be transparent to our residents.

A complaint was filed against the City of Cudahy, Office of the Mayor, Clerk / Treasurer, and Deputy Clerk and Director of Office Services with the Milwaukee County Corporation Counsel. After review and investigation of the Milwaukee County Corporation Counsel, they have determined that no open violations law occurred.

Furthermore, the Common Council is aware of the ongoing investigation of the theft of public notices from the Cudahy Family Library. This action is still being addressed as of this time with the Cudahy Police Department and the Milwaukee County District Attorney's Office.

Respectfully reported to the Common Council:



John R. Hohenfeldt

Mayor

07/17/2018

Attachment:

"Generations of Pride"

Office of the Mayor, City Hall, 5050 South Lake Drive, P.O. Box 100510, Cudahy, WI 53110  
(414)769-2222 Fax (414) 769-2257 jhohenfeldt@ci.cudahy.wi.us

## John Hohenfeldt

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**From:** Paul Eberhardy  
**Sent:** Friday, July 06, 2018 10:54 AM  
**To:** John Hohenfeldt  
**Cc:** Carolyn Toms-Neary; Kelly Sobieski  
**Subject:** FW: Cudahy Open Meetings Violation

**Importance:** High

**Follow Up Flag:** Flag for follow up

**Flag Status:** Flagged

Mayor,

It appears that Corp. Counsel does not share Mr. [REDACTED] opinion.

I will leave dissemination of this information to your own good judgment.

Paul T. Eberhardy  
Cudahy City Attorney  
4600 S. Packard Ave., Ste. 3  
Cudahy, WI 53110  
Ph: (414) 769-2243  
Fax: (414) 744-1911  
Email: [eberhardyp@ci.cudahy.wi.us](mailto:eberhardyp@ci.cudahy.wi.us)

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**From:** Kuglitsch, Paul [Paul.Kuglitsch@milwaukeecountywi.gov]  
**Sent:** Friday, July 6, 2018 9:57 AM  
**To:** [REDACTED]  
**Cc:** Daun, Margaret; Paul Eberhardy  
**Subject:** RE: Cudahy Open Meetings Violation

Dear Mr. [REDACTED]

The Milwaukee County Office of Corporation Counsel received your *verified open meetings law complaint* on June 18, 2018. In the complaint, you alleged that the Mayor of the City of Cudahy (Mr. John Hohenfeldt) knowingly attended a meeting of the City Common Council on June 5, 2018 in violation of Wisconsin's open meetings law. You also alleged that the City Clerk/Treasurer (Mr. Dennis Broderick) and the Director of Office Services for the City Clerk/Treasurer (Ms. Carolyn Toms-Neary) – not the Mayor – should be subject to penalties for violations of the open meetings law, yet your complaint does not contain any allegations against them. In any event, as described below, I have come to my conclusions about these allegations based upon information you provided me in the complaint and over the phone, as well as information available to me from my limited investigation.

First, as to the Mayor himself, it is unclear whether he is part of the City Common Council, based on the information available to me. If he is not a member of the common council, then he is not subject to open meetings law in this particular situation because he alone occupies the office of Mayor. See *State ex rel. Plourde v. Habegger*, 2006 WI App 147, ¶¶ 12-13, 294 Wis. 2d 746, 720 N.W.2d 130 (open meetings law does not apply to single-member governmental bodies; Wis. Stat. § 19.82(2) contemplates that there be at least two members in a governmental body for the open meetings law to apply).

Second, as to the City Clerk/Treasurer and the Director of his office, you have not alleged any facts in your complaint or otherwise that these city officials are members of the common council or in any way together constitute a governmental body subject to open meetings law.

Last, although not mentioned your complaint, when we spoke by phone you orally alleged that the June 5, 2018 common council meeting was held in violation of Wis. Stat. § 19.84(1)(b) because the agenda was not posted in three (3) public places. You asserted that no notice was posted in the Cudahy Public Library, which is one of three (3) places that the City posts public notices. Under the open meetings law, public notice is required to be given "by communication from the chief presiding officer of a governmental body or such person's designee to the public...[among others]" Wis. Stat. § 19.84(1)(b) (emphasis added). The nature of the "communication" that the chief presiding officer is required to give to the public is not defined in the statutes. However, in a 1977 opinion written shortly after the adoption of the current open meetings law, the Attorney General advised as follows:

"Posting is not required by subsecs. (1)(a) or (1)(b) of sec. 19.84, Stats. Posting may be a means of informing the public of regular or special meetings or as a supplement to the publication of a class 1 notice.... The statutes do not specify a number of places where posting must occur. Since [] sec. 19.84(1) [does not] *require* publication of a notice in a newspaper, the provisions of sec. 985.02(2), Stats., which require, when posting is elected in place of publication, posting in "at least 3 public places likely to give notice to persons affected" are not applicable. However, three public places would be a prudent number to utilize. Where posting is to be relied upon, the number of places used might well vary depending on the size of the district ... and the place or places the [council] customarily holds its meetings."

66 Op. Att'y Gen. 93, 95 (1977) (emphasis in original).

This opinion essentially requires every governmental body to act reasonably in notifying the public about the business it is likely to take up at its meetings. Applying this reasonableness standard to the facts you presented to me and the facts I gathered in the course of my investigation, the question is whether the public was reasonably apprised of the June 5, 2018 common council meeting. After a conversation I had with the Cudahy City Attorney (Atty. Paul Eberhardy), I learned that the City Common Council communicated public notice of its June 5 meeting by posting the agenda at (1) City Hall and (2) the Cudahy Post Office.\* I also learned that the common council communicated public notice of its June 5 meeting by posting the agenda at (3) the Cudahy Public Library, but that some bad actor took it down. As you note in your below message, this incident is currently under investigation. In addition to the three aforementioned public places, the common council communicated public notice of its meeting on the City website. Because the common council did in fact communicate public notice by posting the agenda at three (3) separate locations and on the City website, a court would likely find that the council communicated proper notice to public as the Attorney General opinion indicates. Further, given the geographical size of the City, a court may even find that posting the agenda at two (2) separate locations and on the City website qualifies as communicating proper notice. So, based on these facts and in the absence of any contravening information, there appears to be no factual basis for arguing to a court that the Mayor, City Clerk/Treasurer, Director of Office Services, or any member of the Common Council violated Wisconsin's open meetings law by convening and/or attending the June 5, 2018 common council meeting.

For reasons stated, we consider this matter closed. If you are not satisfied by my decision, you can forward this case to the Attorney General as authorized by Wis. Stat. § 19.97(4). Thank you for your interest in assuring full compliance with the open meetings law.

\*The person responsible for communicating notice to the public is the chief presiding officer of the governmental body. In this case, it is not clear to me exactly who is the chief presiding officer of the common council. Typically, the chief presiding officer of a city common council is one of the alderpersons – not the mayor or any other elected or appointed city official or employee.

Regards,

Paul Kuglitsch

Deputy Corporation Counsel  
901 N. 9<sup>th</sup> Street, Room 303  
Milwaukee, WI 53233  
(414) 278-4289  
paul.kuglitsch@milwaukeecountywi.gov

**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Wednesday, June 27, 2018 7:10 AM  
**To:** Kuglitsch, Paul <Paul.Kuglitsch@milwaukeecountywi.gov>  
**Cc:** Daun, Margaret <Margaret.Daun@milwaukeecountywi.gov>  
**Subject:** RE: Cudahy Open Meetings Violation

Paul,

So you know, At the Cudahy Common Council meeting last night, I asked about the non-posting of the June 5<sup>th</sup>, 2018 Common Council meeting and was told it was "under investigation" by the Cudahy Police Department as to the possibility that the notice was posted but removed by someone they hoped would be verified by video surveillance. This is contrary to what I understood that the notice was faxed to the Cudahy Library and never posted. Please let me know of your findings.

Thank You,

[REDACTED]  
[REDACTED]  
Office [REDACTED] Mobile [REDACTED]  
[REDACTED]

**From:** Kuglitsch, Paul [mailto:Paul.Kuglitsch@milwaukeecountywi.gov]  
**Sent:** Tuesday, June 26, 2018 4:11 PM  
**To:** [REDACTED]  
**Cc:** Daun, Margaret <Margaret.Daun@milwaukeecountywi.gov>  
**Subject:** [EXTERNAL] RE: Cudahy Open Meetings Violation

Hi, [REDACTED]

I received the verified complaint on June 18 and it is under review.

Regards,

Paul Kuglitsch

Deputy Corporation Counsel  
901 N. 9<sup>th</sup> Street, Room 303  
Milwaukee, WI 53233  
(414) 278-4289  
paul.kuglitsch@milwaukeecountywi.gov

From: [REDACTED]  
Sent: Monday, June 25, 2018 3:13 PM  
To: Kuglitsch, Paul <Paul.Kuglitsch@milwaukeecountywi.gov>  
Cc: Daun, Margaret <Margaret.Daun@milwaukeecountywi.gov>  
Subject: Cudahy Open Meetings Violation

Paul,

As time is of the essence, I have not heard a response from your office on whether not the City of Cudahy held a Common Council Meeting (June 5<sup>th</sup>, 2018) without proper postin in a public place, i.e The Cudahy Public Library. As they have scheduled their next meeting for 6/26/2018 and the agenda does not make any mention of redoing the meeting or any of the agenda items that were passed at that meeting. Pleeae call me ASAS with an update.

[REDACTED]  
[REDACTED]

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