

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 3, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-0487

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**STATE OF WISCONSIN EX REL.
ROBERT J. AUCHINLECK,**

PLAINTIFF-APPELLANT,

V.

**TOWN OF LAGRANGE, AND TOWN OF LAGRANGE
AD HOC COMMITTEE (PERTAINING TO LAW
ENFORCEMENT AND/OR BOATING AND
SAFETY PATROL), DENNISE PIERCE,
DAVID HEILMEIER, FRANK TAYLOR,
JON JACOBSEN, CHARLES HERBERT SHARPLESS,
AND JAMES SHANNON,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Walworth County:
JAMES L. CARLSON, Judge. *Affirmed.*

Before Snyder, P.J., Nettesheim and Anderson, JJ.

PER CURIAM. Robert J. Auchinleck appeals from an order dismissing his open meetings case. On appeal, Auchinleck contends that the Town of LaGrange violated the Wisconsin open meetings law, §§ 19.81-19.98, STATS., in a variety of ways. We are persuaded by none of his arguments. Accordingly, we affirm the order of the circuit court.

In February 1994, the Town Board of LaGrange set up an Ad Hoc Committee (the committee) to review procedural and personnel matters regarding the water safety patrol (patrol) on the Lauderdale Lakes and to review the relationship of the patrol with the public at large. Auchinleck, who was also the chief of police, was the captain of the patrol.

A member of the committee testified that the committee was to make recommendations to LaGrange about the budget and management of the patrol. These recommendations were to come from a survey of the community. The committee received some 600 responses to the survey. The deposition testimony of the committee's chairperson, Dennise Pierce, indicates that she suggested that the committee go into closed session because "[w]e were discussing personnel issues of the police department employees ... [f]rom the results of the survey."

A committee member testified that at the closed meeting, Auchinleck was discussed "[s]ignificantly.... The behavior that Mr. Auchinleck, or the interaction that Mr. Auchinleck had with some members in the community, including some of the board members, appeared to be a major undercurrent" He further testified that the topic of Auchinleck was "discussed throughout the meeting because many of the comments ... that were of concern to people dealt with the operations of the police force which he was directly responsible for."

Auchinleck brought suit for alleged violations of Wisconsin's open records and open meetings law.¹ Following a trial, the circuit court dismissed Auchinleck's action, concluding that the open meetings law was not violated. Auchinleck appeals.

Auchinleck first contends that LaGrange violated the open meetings law by discussing and acting upon matters not disclosed in the notice of closed meeting. We cannot agree. Auchinleck contends that "the record is clear that at least some discussion of the Committee focused on the hours of operation of the Water Safety Patrol and budget concerns." But, as LaGrange properly points out, the notice statute, § 19.84(2), STATS., requires that notice "shall set forth ... [the] subject matter of the meeting, including that intended for consideration at any contemplated closed session, in such form as is *reasonably likely* to apprise members of the public" (Emphasis added.) We understand that to mean that the notice need not reflect the proposed contents of a closed meeting with scientific precision because of the necessarily fluid quality which attends any unscripted gathering of people.

Auchinleck further asserts that once in closed session, a governmental body must restrict its discussions to the business expressly specified in the announcement. We do not share in this paraphrase of the law. Section 19.85(1), STATS., requires that "[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." We distinguish between

¹ The procedural history of this case from the filing of the lawsuit up to the current trial and appeal may be found in *Auchinleck v. Town of LaGrange*, 200 Wis.2d 585, 547 N.W.2d 587 (1996).

“discussions” and “business.” While the committee could not take up any business unrelated to the notice, the statute does not insist that the law is violated should other matters be discussed in the course of that business. Auchinleck has made no showing that the committee entertained any business not properly noticed.

Next, Auchinleck contends that the committee erred by discussing matters clearly outside the personnel evaluation exception to the open meetings law. Again, we do not agree. His argument appears to be that because the surveys did not ask for personnel evaluations or mention names of anyone on the patrol, the meeting must perforce have gone beyond the exception. However, the testimony indicated that Auchinleck was discussed throughout the meeting because of the comments made on the surveys. We therefore reject this argument.

Finally, Auchinleck contends that the committee exceeded its authority in discussing personnel matters. We disagree. Section 19.85(1)(c), STATS., provides that a closed meeting may consider “employment, promotion, compensation or performance evaluation data of any public employe over which the governmental body has jurisdiction or exercises responsibility.” Here, the surveys provided performance evaluation data, namely, the comments, about members of the patrol. The committee was empowered to review the relationship of the patrol with the public at large. It did not exceed its authority.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

