

FACT SHEET

Number 1

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WISCONSIN OPEN MEETINGS LAW

§§19.81-19.98, *Wisconsin Statutes*

PURPOSE

To enable the public to know about and attend meetings of state and local governmental bodies, and to require documentation of certain actions taken at such meetings. To ensure that meetings of governmental bodies are held in places reasonably accessible to the public, and that they are open to the public unless otherwise expressly provided by law.

DEFINITIONS; COVERAGE

A. Meetings under the Open Meetings Law

1. A meeting is a gathering of members of a governmental body for the purpose of exercising responsibilities and authority vested in the body. The courts apply a purpose test and a *numbers test* to determine if a meeting occurred.
2. The *purpose test* is met when discussion, information gathering or decision-making takes place on a matter within the jurisdiction of the governmental body. Note that this test is met even if no votes are taken; mere discussion or information gathering satisfies the test. Notice is therefore required if the *numbers test* (see below) is also met.
3. Chance gatherings, purely social gatherings, and joint attendance at conferences, where the *numbers test* is met, are not meetings if business is not conducted (that is, if the *purpose test* is not met).
4. If one-half of the members of the body are present, there is statutorily presumed to be a meeting. This presumption can be overcome by showing that the *purpose test* was not met or that an exception applied.
5. If less than one-half of the members of the body are present, but there are enough members to determine the outcome of an action, a meeting occurs if the *purpose test* is met. For example, since amending an adopted budget requires a two-thirds vote, a meeting occurs when one-third plus one of the members meet to discuss the matter.
6. Limited exceptions to when a "meeting" occurs under the Open Meetings Law have been created for town boards, town sanitary commissions and drainage boards gathering at sites. The town board may gather at the site of a public works project or highway, street or alley project approved by the board for the sole purpose of inspecting the work, without following the usual notice, accessibility and other requirements under the Open Meetings Law. To come under this exception, the town chairperson or designee must notify news media by telephone or fax of the upcoming inspection, if the media have filed a written request for notice of "such inspections in relation to that project." Also, after the inspection, the chairperson or designee must submit a report describing the inspection at the next town board meeting. No town board action may be taken at the inspection site. The same exception and requirements apply to town sanitary commissions gathering at one of their public works projects, with the notice and reporting duties performed by the commission president or designee. A similar provision applies to drainage district boards gathering at specified sites.

B. Local governmental bodies subject to the Open Meetings Law

1. County, village, and town boards and city councils, and all their committees, commissions, and boards, such as housing authorities or human services boards, are subject to the law.

2. Special study committees and other advisory committees set up by a local officer, the local government, or by a body it has created are also subject to the law. (Citizen members are covered by the law.)
3. A local body conducting collective bargaining is not subject to the law. However, notice of reopening a collective bargaining agreement must be given under the Open Meetings Law and final ratification of the agreement must be done in open session under such law.
4. The main test of whether the law applies to a local body is whether it was created by a local governmental body or a local officer, including mayors and county executives. In some cases a body, such as an economic development corporation, may perform public duties and be so intertwined with a local government unit (e.g., financed primarily by public monies) that it is deemed a "quasi-governmental corporation" subject to the law, even though it was not created by a local governmental body or local officer.

NOTICE AND ACCESS

- A. The place of meeting must be reasonably accessible to the public, including persons with disabilities.
- B. Public notice is required and may be accomplished by posting. (A minimum of three locations is recommended.) Paid, published notices are *not* required by the Open Meetings Law, but other specific statutes may require them. If notices are published, posting is still recommended.
- C. At least a 24-hour notice is required; however, if 24 hours is impossible or impractical for good cause, a shorter notice may be given, but in no case may the notice be less than 2 hours.
- D. Notice, which may be by phone or fax, must be provided to any media requesting it. Notice must be provided to the governmental unit's official newspaper, or, if there is no official newspaper, it must be sent to a news medium likely to give notice in the area.
- E. A separate notice for each meeting is required; a general notice at the beginning of the year is not sufficient.
- F. Notice must specify the time, date, place and subject matter of the meeting. Such notice must be specific enough to let people interested in a matter know that it will be addressed. If a closed session on an item is anticipated, notice of such item and closed session must be given, and the statutory citation allowing closure should be cited. Consideration of matters in open and closed session is limited to the topics specified in the notice. However, the notice may provide for a period of "*public comment*." During this period the body may receive information from members of the public and discuss such matters (but may not take action on them unless properly noticed).
- G. The meeting must be open to all persons, except when closed for specific purpose(s) according to law (see following).

PERMITTED EXEMPTIONS FOR HOLDING CLOSED SESSIONS

- A. Deliberating considering a case which was the subject of a quasi-judicial hearing. [§19.85 (1)(a)] Note: this exemption may rarely be used in light of recent judicial interpretation.
- B. Considering dismissal, demotion, licensing, or discipline of a public employee or licensee. [§19.85 (1)(b)]
- C. Considering employment, promotion, compensation, or performance evaluation data of an employee. [§19.85 (1)(c)]
- D. Considering specific applications of probation or parole, or strategy for crime prevention or detection. [§19.85 (1)(d)]
- E. Deliberating or negotiating the purchase of public property, investment of public funds, or when other competitive or bargaining reasons exist. [§19.85 (1)(e)]
- F. Considering financial, medical, social or personal histories or disciplinary data of specific persons which would be likely to have a substantial adverse effect on the reputation of a person. [§19.85 (1)(f)]
- G. Conferring with legal counsel about strategy regarding current or likely litigation. [§19.85 (1)(g)]
- H. Considering a request for confidential written advice from a local ethics board. [§19.85 (1)(h)]

CONDUCTING PERMITTED CLOSED SESSIONS

- A. Notice of a contemplated closed session must describe the subject matter and should specify the specific statutory exemption(s) allowing closure.
- B. The body must initially convene in open session.
- C. To convene in closed session (from open session), the presiding officer must first announce the specific statutory exemption(s) and the nature of business for the closed session. Then, a motion must be made and a recorded vote taken.
- D. Once a body convenes in closed session it may not reconvene in open session for at least 12 hours, *unless* public notice of its intent to return to open session was given in the original notice of the meeting. If notice of a return to open session was not provided in the meeting notice, the body should place the closed session at the end of the agenda.
- E. The body may go into an unanticipated closed session, if the need arises, on an item specified in the public notice. In such case, the closed session item should be placed at the end of the agenda because the body cannot reconvene in open session without having given prior notice. This provision on unanticipated closed sessions is very narrow. Whenever time allows, the 24-hour notice provision must be followed, or at a minimum, when there is good cause, the 2-hour notice can be used to give an amended notice of the meeting indicating a closed session on an item that was not previously anticipated.
- F. Motions and decisions must be recorded. Whenever feasible, vote in open session.
- G. The body may consider only the matter(s) for which the session was closed.

VOTING AND RECORDS

- A. A member of a governmental body may require that each member's vote be ascertained and recorded.
- B. Certain statutes may require that each member's vote be recorded. For example, motions, seconds, and the votes of each member to convene in closed session must be recorded.
- C. In general, motions, any roll call votes, and vote results must be recorded, preserved, and made available to the extent prescribed in the Public Records Law.
- D. A very narrow exception allows secret balloting for the election by a governmental body of the officers of such body. For example, a city council may so elect its president and a committee may so elect its chair (unless the chair is otherwise designated). This narrow exception does not allow secret balloting to fill offices of the governmental unit, such as vacancies in the office of chief executive officer or on the governing body.

SUBUNITS

- A. Subunits are created by the parent body and consist of members of the parent body.
- B. Generally, meetings of subunits are subject to the Open Meetings Law.
 - (1) However, a subunit, such as a committee of a governing body, may meet without prior notice during the parent body's meeting, during its recess, or immediately after the meeting to discuss noticed subjects of the parent body's meeting.
 - (2) To allow the subunit to meet without prior notice, the presiding officer of the parent body must publicly announce the time, place, and subject matter (including any contemplated closed session) of the subunit.
- C. Members of a parent body may attend closed sessions of a subunit unless the rules of the parent body provide otherwise.

VIOLATIONS AND LIABILITY

- A. All members are covered by the law. E.g., if a committee consists of two governing body members and one citizen member, the law applies to the citizen member just as it does to the other members.
- B. Each member of the body should determine, at the beginning of each meeting, that the meeting had proper notice. During meetings members should make sure that closed sessions are closed properly, and that they vote against going into any improper closed session. Members who vote against convening a closed session may still participate in the closed session if it is held.

- C. Board, council, commission, and committee members individually or as a group can be sued for alleged violations.
- D. Forfeitures (\$25-\$300) can be levied against governmental body members who break the law. No reimbursement for forfeitures is allowed.
- E. Courts may void any actions taken by the body at an illegal meeting.
- F. Media and persons unhappy with actions of the body are the most likely to bring complaints of open meeting violations.
- G. Useful protection can come from a clerk's log documenting proper notice, particularly when shorter notice is given or the notice is amended.

Advice is available from your corporation counsel, district attorney, municipal attorney, or the Wisconsin Department of Justice.

Edited by attorney James H. Schneider, UWEX Local Government Center

Local Government Center
University of Wisconsin-Extension
610 Langdon Street, 229 Lowell Center
Madison, WI 53703

Phone (608) 262-9961
Fax (608) 265-8662