

WISCONSIN OPEN MEETINGS LAW OVERVIEW



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The Open Meetings Law

- Secs. 19.81 - 19.98 of the Wisconsin Statutes
- Sec.3.71 Madison General Ordinances
- Supplemented by Administrative Procedure Memorandum (APM) 3-13.

<https://www.doj.state.wi.us/sites/default/files/dls/open-meetings-law-compliance-guide-2010.pdf>



Purpose of the Law

“...a representative government of the American type is dependent upon an informed electorate... [therefore] the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.” Sec. 19.81(1), Wis. Stats.



Purpose of the Law

- The public is entitled to observe not only the actions taken by a public body but also who is trying to influence that body and the information the body is relying upon.
- Thus, this law applies to sessions where no action will be taken, i.e., purely informational gathering and/or discussion.



What Constitutes A “Meeting”?

TWO FACTOR TEST

Engagement in governmental business. Discussion/debate, information gathering, public hearings, or decision making

AND

Sufficient number of members present that can ***determine the body’s course of action*** on the subject under discussion



CAUTION

The Open Meetings law applies in at least two situations where a quorum may not be present:

- Negative Quorum
- Walking Quorum



Negative Quorum

A gathering of less than a quorum but enough members that they can block passage of an item





Negative Quorum Example

- Ballroom Dance Committee
 - 7 Members, Chair votes only to change outcome
 - 4 members constitute a quorum
 - WHAT CONSTITUTES A NEGATIVE QUORUM?
 - If all members show up – negative quorum would be three if the chair does not vote (3 to 3 tie vote = item fails)
 - Only a quorum present – negative quorum is two – (2 against to 1 vote in favor = item fails, chair's vote would not change outcome as item would still fail on a 2 to 2 tie)
 - *Note: Would still fail if two in favor as that's less than a majority of a quorum – s. 33.01(8)(d), MGO*



Walking Quorums/Meetings

Serial gatherings or contacts (phone calls, conference calls, emails, IM/TM, chat rooms) among members such that a quorum or negative quorum exists – renders an actual meeting a mere formality





Walking Quorum Examples

- Citizen Emails Idea to all Members
- Two members engage in email discussions
- Each member shares emails with other members

Soon, a quorum (or negative quorum?) of members are exchanging thoughts





Walking Quorum Examples

- The Wheel or Hub Walking Quorum – use of an intermediary (staff person) to engage in a series of communications that would otherwise violate Open Meetings Laws





Sub Committees & Work Groups

- Applies to all governmental bodies, including boards, commissions, committees, councils, etc.
- All designated subunits of the above
- Work groups are merely another form of subunit – OML applies
- *Remember – the purpose of the law is for the public to be able to observe not only the laws or policies enacted but also observe the process by which they are created*



General Requirements

- Meetings must be held in a publicly accessible location (including disabled public)
- Meetings must be preceded by notice (even for closed meetings)
 - No less than 24 hours notice
 - No less than two hours notice in emergency situations (there are no emergency situations)
- Meetings must be open to the public



Notice Requirements

- Notice must provide:
 - Time, Date, Place
 - Subject Matter (stated sufficient enough to identify topic to average person) **BE EXPLICIT NOT VAGUE OR GENERAL!!!**
Wisconsin Supreme Court – More controversial the item – the more explicit the item description
 - Do Not Include General Headings Such as – Updates, New Items, Action Items, Information Items, Announcements



Who must Be Notified

- Public (through posting on Clerk's bulletin board)
- City's Official Newspaper
- News Media Outlets (those which have previously filed written request for notice)

Practice tip – meeting minutes or records should reflect that proper notice was given



Timing



- 24 Hours notice
(unless impossible or impractical – excludes Saturdays, Sundays, legal holidays)
- ABSOLUTELY NO LESS THAN TWO (2) HOURS NOTICE



Unique Situations

I am
unique
and
SPECIAL.

POSITIVEMOTIVATION.NET

- No Quorum
- Conference Calls
- Closed Sessions
- Attending Other Bodies Meetings/Joint Meetings
- Closed Sessions
- Tours/Site Visits
- Social Gatherings
- Recording Meetings



Failure to Attain A Quorum

- Fifteen Minutes – no meeting
- Only action – rescheduling
 - * Angry mob has shown up – let staff/chair take their comments and report back at rescheduled meeting





Telephone Conference Calls

- 2 Conditions Set by APM:
 - Meeting notice must state who will be appearing by phone/video
 - Provide a device that works well enough for public to hear participation of those appearing by phone





Attendance at Another Body's Meeting & Joint Meetings

- May need to provide notice if attending another body's meeting:
 - “a quorum of the XYZ committee may be present in attendance at the ABC Board meeting for the purpose of ...”

JOINT MEETINGS - NOTICES SHOULD BE PUBLISHED BY EACH BODY INVOLVED IN A JOINT MEETING (should also indicate whether the body will go forward with its meeting if other body fails to achieve a quorum)



Closed Sessions

- Allowable for limited purposes set forth in statutes. Examples:
 - Judicial/quasi-judicial deliberations (PFC, EOC)
 - Discipline & licensing (personnel comm., ALRC)
- Formal procedures apply to closed sessions
- **TALK TO YOUR ATTORNEY & STAFF BEFORE PLACING A CLOSED SESSION ON AGENDA**



Tours & Site Visits

1. Must be properly noticed
2. Consider transporting less than quorum numbers to avoid presumption of a meeting while traveling
3. Provide transportation for public? Media?

**BEST RULE - CONTACT OCA
& RISK MANAGER FOR
GUIDANCE ASAP**





Social gatherings & Chance Meetings

Permissible under following conditions—

- not an attempt to circumvent public meetings law
- Business of the public body does not get discussed nor acted upon
- If a quorum or more present – will be presumed to have held a meeting and burden of proof shifts to body to prove that a meeting did not occur



Recording Meetings

- Must reasonably accommodate any person desiring to record meeting
- Many are recorded On CitiChannel & city website
- Minutes – staff responsibility (attendance & votes on motions – not transcripts)





Enforcement

- Prosecution
 - Attorney general, district attorney or an individual citizen may initiate prosecution

- Penalty
 - Forfeiture of \$25.00 to \$300 plus statutory costs (nearly double the total)
 - Liability is personal, city cannot reimburse individual

- Actions taken during illegal meeting may be voided