

19.82 GENERAL DUTIES OF PUBLIC OFFICIALS

Updated 23-24 Wis. Stats. 36

if there is a constitution, statute, ordinance, rule, or order conferring collective power and defining when it exists. To cause a body to exist, the relevant directive must confer upon it the collective responsibilities, authority, power, or duties necessary to a governmental body's existence under the open meetings law. The creation of a governmental body is not triggered merely by any deliberate meetings involving governmental business between two or more officials. Loosely organized, ad hoc gatherings of government employees, without more, do not constitute governmental bodies. Rather, an entity must exist that has the power to take collective action that the members could not take individually. State ex rel. Krueger v. Appleton Area School District Board of Education, 2017 WI 70, 376 Wis. 2d 239, 898 N.W.2d 35, 15-0231.

When a governmental entity adopts a rule authorizing the formation of committees and conferring on them the power to take collective action, such committees are created by rule under sub. (1), and the open meetings law applies to them. Here, a school board provided that the review of educational materials should be done according to the board-approved handbook. The handbook, in turn, authorized the formation of committees with a defined membership and the power to review educational materials and make formal recommendations for board approval. Because the committee in question was formed as one of these committees, pursuant to the authority delegated from the board by rule and the handbook, it was created by rule and therefore was a "governmental body" under sub. (1). State ex rel. Krueger v. Appleton Area School District Board of Education, 2017 WI 70, 376 Wis. 2d 239, 898 N.W.2d 35, 15-0231.

Under *Showers*, 135 Wis. 2d 77 (1987), the open meetings law may apply to a walking quorum. A walking quorum is a series of gatherings among separate groups of members of a governmental body, each less than quorum size, who agree, tacitly or explicitly, to act uniformly in sufficient number to reach a quorum. To establish a walking quorum, a plaintiff must prove that members of a governmental body purposefully engaged in discussions of governmental business and that the discussions were held between a sufficient number of members so as to affect the vote. State ex rel. Zecchino v. Dane County, 2018 WI App 19, 380 Wis. 2d 453, 909 N.W.2d 203, 17-0002.

A municipal public utility commission managing a city owned public electric utility is a governmental body under sub. (1). 65 Atty. Gen. 243.

A "private conference" under s. 118.22 (3) on nonrenewal of a teacher's contract is a "meeting" within sub. (2). 66 Atty. Gen. 211.

A private home may qualify as a meeting place under sub. (3). 67 Atty. Gen. 125.

A telephone conference call involving members of a governmental body is a "meeting" that must be reasonably accessible to the public, and public notice must be given. 69 Atty. Gen. 143.

A "quasi-governmental corporation" in sub. (1) includes private corporations that closely resemble governmental corporations in function, effect, or status. 80 Atty. Gen. 129.

Election canvassing boards operating under ss. 7.51, 7.53, and 7.60 are governmental bodies subject to the open meetings law—including the public notice, open session, and reasonable public access requirements—when they convene for the purpose of carrying out their statutory canvassing activities, but not when they are gathered only as individual inspectors fulfilling administrative duties. OAG 5-14.

19.83 Meetings of governmental bodies. (1) Every meeting of a governmental body shall be preceded by public notice as provided in s. 19.84, and shall be held in open session. At any meeting of a governmental body, 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.

(2) During a period of public comment under s. 19.84 (2), a governmental body may discuss any matter raised by the public.

History: 1975 c. 426; 1997 a. 123.

When a quorum of a governmental body attends the meeting of another governmental body when any one of the members is not also a member of the second body, the gathering is a "meeting" unless the gathering is social or by chance. State ex rel. Badke v. Village Board, 173 Wis. 2d 553, 494 N.W.2d 408 (1993).

Compliance with s. 19.88 (3) does not immunize officials' conduct in violation of sub. (1). State ex rel. Wied v. Wheeler, 2025 WI App 16, 415 Wis. 2d 542, 19 N.W.3d 686, 22-1953.

19.84 Public notice. (1) Public notice of all meetings of a governmental body shall be given in the following manner:

(a) As required by any other statutes; and

(b) By communication from the chief presiding officer of a governmental body or such person's designee to the public, to those news media who have filed a written request for such notice, and to the official newspaper designated under ss. 985.04, 985.05 and 985.06 or, if none exists, to a news medium likely to give notice in the area. Communication from the chief presiding officer of a governmental body or such person's designee shall be made to the public using one of the following methods:

1. Posting a notice in at least 3 public places likely to give notice to persons affected.

2. Posting a notice in at least one public place likely to give

notice to persons affected and placing a notice electronically on the governmental body's Internet site.

3. By paid publication in a news medium likely to give notice to persons affected.

(2) Every public notice of a meeting of a governmental body shall set forth the time, date, place and 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 and the news media thereof. The public notice of a meeting of a governmental body may provide for a period of public comment, during which the body may receive information from members of the public.

(3) Public notice of every meeting of a governmental body shall be given at least 24 hours prior to the commencement of such meeting unless for good cause such notice is impossible or impractical, in which case shorter notice may be given, but in no case may the notice be provided less than 2 hours in advance of the meeting.

(4) Separate public notice shall be given for each meeting of a governmental body at a time and date reasonably proximate to the time and date of the meeting.

(5) Departments and their subunits in any University of Wisconsin System institution or campus are exempt from the requirements of subs. (1) to (4) but shall provide meeting notice which is reasonably likely to apprise interested persons, and news media who have filed written requests for such notice.

(6) Notwithstanding the requirements of s. 19.83 and the requirements of this section, a governmental body which is a formally constituted subunit of a parent governmental body may conduct a meeting without public notice as required by this section during a lawful meeting of the parent governmental body, during a recess in such meeting or immediately after such meeting for the purpose of discussing or acting upon a matter which was the subject of that meeting of the parent governmental body. The presiding officer of the parent governmental body shall publicly announce the time, place and subject matter of the meeting of the subunit in advance at the meeting of the parent body.

History: 1975 c. 426; 1987 a. 305; 1993 a. 215; 1997 a. 123; 2007 a. 20; 2019 a. 140.

There is no requirement in this section that the notice provided be exactly correct in every detail. State ex rel. Olson v. City of Baraboo Joint Review Board, 2002 WI App 64, 252 Wis. 2d 628, 643 N.W.2d 796, 01-0201.

Sub. (2) does not expressly require that the notice indicate whether a meeting will be purely deliberative or if action will be taken. The notice must alert the public of the importance of the meeting. Although a failure to expressly state whether action will be taken could be a violation, the importance of knowing whether a vote would be taken is diminished when no input from the audience is allowed or required. State ex rel. Olson v. City of Baraboo Joint Review Board, 2002 WI App 64, 252 Wis. 2d 628, 643 N.W.2d 796, 01-0201.

Sub. (2) sets forth a reasonableness standard for determining whether notice of a meeting is sufficient that strikes the proper balance between the public's right to information and the government's need to efficiently conduct its business. The standard requires taking into account the circumstances of the case, which includes analyzing such factors as the burden of providing more detailed notice, whether the subject is of particular public interest, and whether it involves non-routine action that the public would be unlikely to anticipate. State ex rel. Buswell v. Tomah Area School District, 2007 WI 71, 301 Wis. 2d 178, 732 N.W.2d 804, 05-2998.

The supreme court declined to review the validity of the procedure used to give notice of a joint legislative committee on conference alleged to violate the sub. (3) 24-hour notice requirement. The court will not determine whether internal operating rules or procedural statutes have been complied with by the legislature in the course of its enactments and will not intermeddle in what it views, in the absence of constitutional directives to the contrary, to be purely legislative concerns. State ex rel. Ozanne v. Fitzgerald, 2011 WI 43, 334 Wis. 2d 70, 798 N.W.2d 436, 11-0613.

Under sub. (1) (b), a written request for notice of meetings of a governmental body should be filed with the chief presiding officer or designee, and a separate written request should be filed with each specific governmental body. 65 Atty. Gen. 166.

Discussing the method of giving notice pursuant to sub. (1). 65 Atty. Gen. 250. Discussing the specificity of notice required by a governmental body. 66 Atty. Gen. 143, 195.

Discussing the requirements of notice given to newspapers under this section. 66 Atty. Gen. 230.

A town board, but not an annual town meeting, is a "governmental body" within the meaning of the open meetings law. 66 Atty. Gen. 237.

News media who have filed written requests for notices of public meetings cannot