

OVERVIEW OF WISCONSIN'S OPEN MEETINGS LAW

A. What is a "governmental body?" Under the statute, a "government body" includes a state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order. It includes a governmental or quasi-governmental corporation. Wis. Stat. § 19.82(1).

A "formally constituted subunit" of a governmental body is itself a "governmental body" within the definition of Wis. Stat. § 19.82. A subcommittee of a common council comprised solely of members of that body would be a subunit subject to the Open Meetings Law. 74 Op. Att'y Gen. 38, 40 (1985.)

B. Can a Governmental Body Be Created by Rule or Order? Yes. Some factors to be considered when determining whether a governmental body is created by rule or order include the following:

1. Whether there are a definable number of members in the body;
2. Whether they exercise collective power; and,
3. Whether there is a definition of when their collective power exists.

No formal order is required; all that is required is to create a body and assign it duties. Informal Correspondence Wis. Op. Att'y Gen. (September 20, 2005).

C. What triggers the application of the law? The Open Meetings Law applies whenever a gathering of members of a governmental body satisfies two requirements: (1) there is a **purpose** to engage in governmental business; and (2) the **number** of members present is sufficient to determine the governmental body's course of action. *State ex rel. Newspapers v. Showers*, 135 Wis. 2d 77, 102 (1987.)

1. The "**purpose test**" includes any gathering of the members of the governmental body for the purpose of engaging in governmental business including discussion, decisions or information-gathering. *State ex rel. Badke v. Village Board of the Village of Greendale*, 173 Wis. 2d 553 (1993).

2. The "**numbers test**" applies if one-half or more of the members of the body are present the meeting is rebuttably presumed to be for the purpose of exercising its responsibilities, authority, power or duties of the body. Wis. Stat. § 19.82(2).

D. What is a walking quorum? A walking quorum is defined as a series of gatherings among separate groups of the members of a body, each less than the quorum, who agree, passively or explicitly, to act in sufficient numbers to reach a quorum. *Showers*, 135 Wis. 2d at 92. A walking quorum is subject to prosecution. *State ex rel. Lynch v. Conta*, 71 Wis. 2d 662, 687 (1976.)

E. Can an Open Meeting be held via conference call? A telephone conference call is acceptable as long as the appropriate notice is given and the conference call is made reasonably accessible to the public. 69 Op. Att'y Gen. 143 (1980.)

F. What if a quorum of a government body attends a subcommittee meeting? When a quorum of a governmental body attends a subunit meeting for purpose of gathering information about matters over which they have decision-making responsibility, both government bodies must give notice to the public. *Badke*, 173 Wis. 2d at 570, 578.

G. Are e-mail messages covered by the Open Meetings Law? The Attorney General strongly urges governmental bodies to avoid using electronic mail to communicate on matters within the realm of its authority, because such use creates a "serious risk" of violating the Open Meetings Law. Informal Op. Att'y Gen., October 3, 2000.

H. When must notice be given? Public notice for all meetings of a government body shall be given: (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 §§ 985.04, 985.05 and 985.06 or, if none exists, to a news medium likely to give notice in the area. Wis. Stat. § 19.84.

I. What information should be in the public notice? Every public notice of a meeting must give “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.” Wis. Stat. § 19.84(2).

J. How specific must the notice be? A public notice must be “reasonably specific under the circumstances.” *Buswell v. Tomah Area School District*, 2007 WI 71. The factors to be considered by the public official providing the public notice include:

- a.) balancing the burden of providing a more detailed notice,
- b.) making a determination of whether the subject of the meeting is of particular interest to the public; and,
- c.) determining whether the subject to be discussed involves non-routine actions that the public would be unlikely to anticipate. *Id.*, ¶ 28.

K. When should the notice be made available? Wis. Stat. § 19.84(3) requires that every public notice of a meeting be given at least 24 hours in advance of the meeting, unless “for good cause” such notice is “impossible or impractical.” If “good cause” exists, the notice should be given as soon as possible and must be given at least 2 hours in advance of the meeting.

L. How is voting recorded? Unless “otherwise specifically provided by statute, no secret ballot may be utilized to determine any election or other decision of a governmental body, except the election of the officers of such body in any meeting.” Any member of a governmental body may require that a vote be taken at any meeting in a manner that the vote of each member is ascertained and recorded (except the election of officers of the body.) All motions and roll-call votes of each meeting shall be recorded and preserved and open to the public inspection. Wis. Stat. §§ 19.88 (1), (2) and (3).

M. What are the criteria for closed meetings? Every meeting of a governmental body must first be convened in open session. All business of any kind must be initiated, discussed and acted upon in open session unless one of the exemptions in Wis. Stat. § 19.85(1) applies. Wis. Stat. § 19.83(1). There are 13 exemptions to the Open Meetings requirement which permit, **but do not require**, a governmental body to convene in closed session. These exemptions should be narrowly construed. *State ex rel. Hodge v. Turtle Lake*, 180 Wis. 2d 62, 71 (1993). The exemption should be invoked only where necessary to protect the public interest.

N. Every meeting subject to the Open Meetings Law must begin as an open meeting. Wis. Stat. §§ 19.83 and 19.85(1). To convene in closed session a motion must be made and may not be adopted unless the chief presiding officer announces at the meeting the nature of the business to be considered at the closed session and the specific statutory exemption or exemptions which authorize the closed session.

O. Who enforces the open meetings law? The Attorney General and the District Attorney have authority to enforce the Open Meetings Law. Wis. Stat. § 19.97(1). By intergovernmental agreement, in Milwaukee it is the Milwaukee Corporation Counsel rather than the District Attorney who has enforcement authority.

P. What are the penalties for violating the open meetings law? Any member of the governmental body who “knowingly” attends a meeting in violation of the Open Meetings Law is subject to forfeiture between \$25 and \$300 for each violation. Wis. Stat. § 19.96. **The forfeiture is a personal liability.** A governmental body may not reimburse a member for a forfeiture incurred as a result of violation of the law. 66 Op. Att’y Gen. 226 (1977).

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