


WISCONSIN OPEN MEETINGS LAW: High Level 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.
- OCA offers more in-depth training + resources on OCA webpage
- <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



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Sub Committees & Work Groups

- Applies to all governmental bodies, including boards, commissions, committees, councils, etc.
- All designated subunits of the above
- Work groups, task forces 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

STAFF RESPONSIBILITIES

- Meetings must be held in a publicly accessible location (including disabled public)
- Meetings must be preceded by notice (even for closed meetings)
- 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

Timing



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

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 only for the limited purposes set forth in statutes.

**TALK TO YOUR ATTORNEY BEFORE PLACING A CLOSED
SESSION ON AGENDA**

Recording Meetings

- Must reasonably accommodate any person desiring to record meeting
- Many are recorded On CitiChannel & city website





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