

Wisconsin Open Meetings Law

Agenda

1. Introduction
2. Wisconsin Open Meetings Law
 Governmental Bodies
 What Constitutes a Meeting
3. Public Notice
4. Reasonable Access
5. Closed Sessions
6. Voting
7. Enforcement

Wisconsin Open Meetings Law

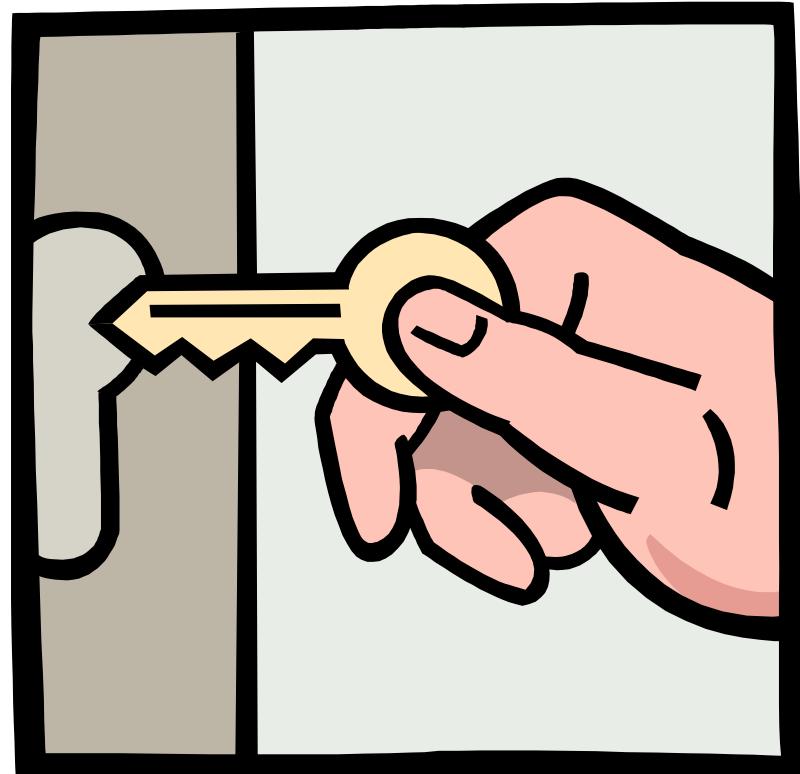
- Wis. Stat. §§ 19.81 to 19.98
- Generally, the open meetings law requires that all **meetings of governmental bodies**:
 - must be preceded by **public notice**;

AND

- must be held in a place that is **open and reasonably accessible** to all members of the public;
- except in limited situations in which a **closed session** is specifically authorized.

Common Sense Approach

- Public Access
- Open Decision-Making



Wisconsin Open Meetings Law Roadmap

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Bodies subject to Wisconsin Open Meetings Law

“‘Governmental Body’ means a state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order.” Wis. Stat. § 19.82(1).

- Local governing bodies of general and special purpose units of government,
 - Their committees, commissions and boards
- Special study and advisory committees (including citizen members), and
- Governmental and quasi-governmental corporations.

“Friends of Rome Parks”

- Citizen Group
- Gets together on their own, interested in improving Town parks
- At times will attend public meetings to voice concerns/ideas
- Recent initiative – raising money for playground equipment to donate to the Town

Subject to Open Meetings Law?

What if Town Board members attend the meetings?

Library Board

- Governmental Body Formed when Town Establishes a Library
 - Wis. Stat. § 43.54 – Each public library shall be administered by a Library Board
- Wis. Stat. § 43.58 – Defines the Powers and Duties of Library Board

Subject to Open Meetings Law?

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Meeting, Defined

“Meeting’ means the **convening** of members of a governmental body for the **purpose** of exercising the responsibilities, authority, power or duties delegated to or vested in the body.” Wis. Stat. § 19.82(2).

Showers Test - A meeting occurs when **both** a **purpose** test and a **numbers** test are met.



Numbers Test

Enough members of a body are present to determine the outcome of an action. (Quorum)

Wis. Stat. § 19.82(2) - if one-half of the members of a body are present, **there is a presumption that a meeting has occurred** (*unless the purpose test is not met*).

A sufficient number of members to determine a body's course of action can refer to

1. Affirmative power to pass an action
OR
2. Negative power to defeat an action.
- Wis. Stat. § 65.90(5)



Special Situations

- Social or Chance Gatherings

- Not automatically a violation, even if sufficient numbers to affect the outcome
- Need to refrain from talking about government business

A “meeting” does not include a **social or chance gathering** of members of a body, unless the gathering is intended to avoid compliance with the law. Wis. Stat. § 19.82(2)

If one-half or more of the members are present at a gathering, they have the burden to prove that the gathering was social or chance and was not for the purpose of conducting governmental business. Wis. Stat. § 19.82(2)

- Commuting to an event
- Annual Road Inspections

Special Situations, Continued

- “Walking Quorum” – Series of gatherings among members smaller than a quorum, agreement to act uniformly sufficient to control the body
 - A series of phone calls, e-mails or conversations to “line up votes” or conduct other business
- Written Correspondence (Texting?)
 - One Way v. Back and Forth
 - The more spread out and one way written communication is, the less likely Courts are to find it a “convening”
- Telephone Calls, Video Conferences
 - More instantaneous, equivalent to physical gathering

Purpose Test

Discussion, information gathering, fact finding or decision-making on a matter within the jurisdiction of the body

Wis. Stat. § 19.82(2) – 'Meeting' means convening of members of a governmental body **for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body.**

Includes:

- Preliminary Decisions
- Discussion
- Information Gathering



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Notice Requirements

- “Every meeting of a governmental body shall be preceded by public notice . . .” Wis. Stat. § 19.83(1).
 - **Separate notice for each meeting** (Wis. Stat. § 19.84(4))
 - **Reasonably proximate to the time & date of meeting** (Wis. Stat. § 19.84(3))
 - At least 24HR before, unless for good cause- never less than 2 hours!
 - Special exemption for **subunit meetings held during or right after lawful meeting of parent body** (Wis. Stat. § 19.84(6))
- **Who has Responsibility:**

Presiding officer is legally responsible for making sure notice requirements are met.

This may be delegated to staff, but presiding officer is still liable for any violation



Content of Public Notice

- The meeting notice must reasonably inform the public of the **time, date, place, and subject matter** of the meeting. Wis. Stat. § 19.84(2).

Time

Date

Place

Subject Matter

Subject Matter - How Specific?

Notice must apprise the public of what will be addressed

- Only noticed agenda items may be discussed
- Includes Closed Session items!

How Specific must the agenda be?

The Wisconsin Supreme Court has said that the **description must be reasonable under all of the relevant circumstances of the particular case.** *State ex rel. Buswell v. Tomah Area Sch. Dist.*, 2007 WI 71, 301 Wis. 2d 178, 732 N.W.2d 804.

Relevant circumstances include:

- Burden of providing more detail
- Degree of public interest in the subject
- Whether the subject is routine or non-routine

How Specific, Continued

- A notice should **not** use generic, uninformative subject- matter designations, such as:
 - “Old business” or “New business”
 - “Agenda revisions”
 - “Miscellaneous business”

Examples:

- 1) "Bid award"
- 2) "Bid award for the sale of 1998 Ford police interceptor"



University of Wisconsin-Extension

AGENDA FOR EXTENSION EDUCATION COMMITTEE MEETING

TUESDAY, MAY 14, 2015 - 7:00 P.M.

AG CENTER CONFERENCE ROOM #133, DARLINGTON

All Lafayette County Board Members are invited to this orientation meeting and their presence may constitute a quorum of the Lafayette County Board. The only purpose of the meeting is for new and continuing board members to learn about UW-Extension programs. No other county business will be discussed.

1. Call To Order
2. Certification Of Proper Notice Of Meeting
3. Orientation To UW-Extension For New And Continuing County Board Members
4. Review Of Vouchers
5. Next Meeting Date
6. Adjournment

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Public Access

“[A]ll meetings of all state and local governmental bodies shall be **publicly held in places reasonably accessible** to members of the public and **shall be open** to all citizens at all times **unless otherwise expressly provided by law.**” Wis. Stat. § 19.81(2)

“‘Open session’ means a meeting which is held in a place reasonably accessible to members of the public and open to all citizens at all times” Wis. Stat. § 19.82(3)

- Reasonable access.
 - Including for those with disabilities
- Anticipate large crowds for controversial topics.
- Proximate to the public served.



Public Access, Continued

Public accessibility has three aspects:



1. Physical location in the community

Governmental bodies should **hold their meetings in places that are within the geographic area they serve.**

Meetings may **not be held on private premises** unless those premises are open and reasonably accessible to the public

2. Room size and acoustics

Rooms must be reasonably calculated to be **large enough to accommodate all citizens who wish to attend** the meeting.

Members must **take reasonable steps to make it possible for them to be heard.**

3. Physical accessibility

Whenever a meeting is in open session, the room should be **unlocked** to permit free coming and going by the public

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Permitted Closed Sessions

The specific subjects for which closed sessions are authorized (exemptions) are set out in Wis. Stat. § 19.85(1)

1. **Deliberating about a case** that has been the subject of a judicial or quasi-judicial trial or hearing before the body. Wis. Stat. § 19.85(1)(a)
2. Considering **dismissal, demotion, licensing or discipline** of a public employee or the investigation of charges against the employee. Wis. Stat. § 19.85(1)(b)
3. Considering **employment, promotion, compensation, or performance evaluation data** of a public employee. Wis. Stat. § 19.85(1)(c)
4. Considering **sensitive personal information** that would be likely to have a substantial adverse effect upon an individual's reputation. Wis. Stat. § 19.85(1)(f)
5. Deliberating or negotiating the purchase of public properties, the investing of public funds, or conducting "other specified public business" whenever **competitive or bargaining reasons** require a closed session. Wis. Stat. § 19.85(1)(e)
6. **Conferring with legal counsel** about strategy related to litigation. Wis. Stat. § 19.85(1)(g)

Closed Session Procedures

Remember, closed sessions are limited to those authorized by statute!

1. Convene in open session
2. Announce the authority and purpose of the permitted closed session (from Agenda)
3. Close the session by a majority roll call vote
4. Any member of the parent body may remain. Also can determine to allow those essential to the closed session discussion to remain
5. Keep discussion limited to that which is noticed for convening in closed session
6. **Wis. Stat. 19.85(2)** DO NOT reconvene in open session unless it was properly noticed on the agenda

"No governmental body may commence a meeting, subsequently convene in closed session and thereafter reconvene again in open session within 12 hours after completion of the closed session, unless public notice of such subsequent open session was given at the same time and in the same manner as the public notice of the meeting convened prior to the closed session." Wis. Stat. § 19.85(2)

Voting – Wis. Stat. 19.88

- **Vote in open session** unless the vote would compromise the need for the closed session.
 - Secret Ballots may not be used except for electing officers of the body (Wis. Stat. § 19.88(1))
- Any member may require a roll-call vote (Wis. Stat. § 19.88(2))
- Record motions, seconds, and votes (Wis. Stat. § 19.88(3))
 - Preserve record and allow access per public records law.

Minutes – requirements are not found in the Open Meetings Law

Meeting minutes should document:

- proper notice,
- reasons for closed sessions, and
- motions, seconds, votes and procedural requirements.

Enforcement of Open Meetings Law Violations

The enforcement provisions of the open meetings law are found in Wis. Stat. § 19.97

Who commences enforcement action:

Attorney General on behalf of the state

Local District Attorney

Complainant, if District Attorney doesn't act in 20 days

A **court may void a decision** made at an illegal meeting if the public interest in enforcement of the Open Meetings Law outweighs public interests in sustaining the decision (Wis. Stat. § 19.97(3))

Penalties

- **Civil (non-reimbursable) Forfeiture** of \$25 to \$300 per violation for any member of a governmental body if:
 - Member **knowingly** attends a meeting that is in violation of the open meetings law
 - Otherwise violates the law
- A member is not liable for attending an unlawful meeting if they make or vote in favor of a motion to prevent the violation from occurring (Wis. Stat. § 19.96)

Additional Resources:

- Fact Sheet #1 Wisconsin Open Meetings Law
<http://lgc.uwex.edu/program/pdf/fact1-03.pdf>
Jim Schneider, UW-Extension Local Government Center
- Wisconsin Open Meetings Law: A Compliance Guide
<https://www.doj.state.wi.us/sites/default/files/dls/2015-OML-Guide.pdf>
Wisconsin Department of Justice