



# WISCONSIN OPEN MEETINGS TRAINING

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# WHAT IS IT?



- Requires that the business of governmental bodies be conducted publicly.
  - Provides the public with essential information regarding the affairs of government.
  - Assists the public in becoming an informed electorate.
  - Prevents governmental bodies from governing in secret.
- Open meetings law is to be liberally interpreted to promote the policy of openness and transparency in government.
  - Wis. Stat. § 19.81(4).
- Wis. Stat. § 19.81(1): “In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that 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.”





What does this mean?

All meetings of governmental bodies  
must be preceded by **public notice**,  
and must be **reasonably accessible**  
to members of the public.





# GOVERNMENTAL BODIES

- A **GOVERNMENTAL BODY** is any state or local agency, board, commission, committee, council, department or public body corporate and politic, *that is created by constitution, statute, ordinance, rule or order.*

- Wis. Stat. § 19.82(1).

- The DOJ advises that a governmental body is defined primarily in terms of the manner in which it is created, rather than what it's called or in terms of the type of authority it possesses.

- Wisconsin Open Meetings Law Compliance Guide, May 2019, pg. 2.

# GOVERNMENTAL BODIES

- The phrase “rule or order” should be liberally construed to include any directive, formal or informal, creating a body and assigning it duties, including directives from mayors, county executives and local agencies, departments and divisions.

- 78 Op. Att’y Gen. 67.

- The determination of whether a body is created by rule or order must be made on a case-by-case basis. Look to:

- Definable number of members in body?
  - Exercising collective power?
  - Definition of when that collective power exists?

- Informal Correspondence Wis. Op. Att’y Gen. (September 24, 1998).

# GOVERNMENTAL BODIES

- **Subunits**

- A subunit is a body that is created by a parent body and that is composed exclusively of members of that parent body.

- **Governmental Corporations**

- DOJ advises that, for purposes of the open meetings law, a governmental corporation is a corporation that:
    - Has a public purpose; and
    - Is established directly by government pursuant to some specific legislative authorization.
      - 66 Op. Att'y Gen. 113
    - Examples on the federal level: USPS, Amtrak, Federal Deposit Insurance Corporation (FDIC).
    - In Wisconsin, Wisconsin Economic Development Corporation (WEDC).

- **Quasi-Governmental corporations**

- Entities who, based on the totality of the circumstances, resemble a governmental corporation in function, effect or status. Look to:
    - Where the entity obtains its funding;
    - Whether it serves a public function;
    - Whether it appears to the public to be a government entity;
    - Whether it is subject to government control; and
    - The degree of access the government has to the entity's records.
      - State v. Beaver Dam Area Dev. Corp., 2008 WI 90.: BDADC nonprofit corporation organized under WI law to engage in the economic development and business retention within the corporate limits and land of the City. Private individuals elected by the board of directors. Mayor and chairperson of City Community Development Committee on the board (as public officials, not private citizens). Not created by statute or ordinance. City provides office space, clerical support, office supplies, etc. City has access to accounting and finances and City may make funds available to BDADC.



# MEETINGS

- A **MEETING** is a 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).
- The Supreme Court has established a two-part test for determining whether a meeting is occurring. Look to:
  - The **purpose** of the gathering; and
  - The **number** of members present.
    - *State ex rel. Newspapers v. Showers*, 135 Wis.2d 77 (1987).

# MEETINGS

- **Purpose Requirement:**

- Looks to whether the purpose of the gathering is to engage 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).
- Interactions between members is not required.
- Not limited to formal or final decision making.
- Does not include social or chance gatherings or a conference. ***BUT***, there is a rebuttable presumption that governmental business is being discussed if half or more of the body is present. Wis. Stat. § 19.82(2).



# MEETINGS

- **Numbers Requirement:**

- Looks to whether the number of members present are sufficient to determine the governmental body's course of action on the business under consideration.
- Quorums: Enough members to start meeting/take an action.
- Negative Quorums: Enough members to block an action. Typically seen in even numbered bodies, or where voting is by supermajority.
- Walking Quorums: When there is 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.
  - DOJ has opined that this includes agents and surrogates. (Clifford Correspondence (Apr. 28, 1986)).
  - DOJ has opined that members merely asking that a subject be placed on an agenda for discussion at an upcoming meeting does not constitute a walking quorum. (Kay Correspondence (Apr. 25, 2007)).

# MEETINGS

- **Conference Calls**

- Wis. DOJ has advised that meetings can occur if the purpose of the call is to conduct government business and a sufficient number of members are present to determine a course of action under consideration.
  - 69 Op. Att’y Gen. 143.

- **Text Messages**

- Wis. DOJ has advised that text messages are analogous to conference calls in that all participants in the communication are present at the same time.
  - Krischan Correspondence (Oct. 3, 2000).

- **Emails**

- Wis. DOJ strongly discourages, and advises that meetings can occur via e-mail depending on: (1) the number of participants; (2) number of communications re: subject; (3) time frame of the e-mails; and (4) extent of conversation-like interactions in the communications.
  - Schmiede Correspondence (Aug. 22, 2018); see also *State ex rel. Zecchino v. Dane County*, 2018 WI App 19.
  - *Zecchino*: multiple emails from Board Supervisor to other members of the board prior to a vote on billboards. Ultimately, the Court said no violation given specific circumstances here (not a lot of responses, not specific in email about which way the vote would go, etc.)

# NOTICE

- “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.” Wis. Stat. § 19.84(2).



# NOTICE

- Notice must be provided to:
  - **The Public;**
    - Posted in 3 physical locations; or
    - Posted in 1 physical location and online; or
    - Paid publication.
  - **News Media** that have filed a written request for such notice; and
  - **Officially Designated Newspaper**, or, if none exists, a news medium likely to give notice in the area.
    - Wis. Stat. § 19.84(1)(b).



# NOTICE

- The content of notices must be *reasonably specific*. Determining what is reasonable requires a case-specific analysis. Look to:
  - Burden of providing more specificity;
  - Matters of particular interest to the public; and
  - Non-routine actions.
    - *State ex rel. Buswell v. Tomah Area Sch. Dist.*, 2007 WI 71, ¶ 28.: language of “contract renewal” and “employment/negotiations” not enough notice to public that this meeting would discuss hiring of coaches.
- Generic designations are not sufficient (e.g. miscellaneous business, old business, new business, agenda revisions, others matters authorized by law).
  - Erickson Correspondence (Apr. 22, 2009).

# NOTICE

- No statutory requirement that a notice must indicate that an action will occur at a meeting. But at least one court has acknowledged that there may be instances where matters of public importance require notice that an action will take place.
  - *State ex rel. Olson v. City of Baraboo*, 2002 WI App 64, ¶15.
- No requirement that agenda items be discussed in the order they are listed on the notice, unless item noticed for a specific time.
  - Stencil Correspondence (Mar. 6, 2008).
- All closed sessions must be noticed. Must contain the specific nature of the business to be discussed in closed session, unless conferring with legal counsel re: litigation. Merely citing and quoting from statute is not sufficient.
  - Weinschenk Correspondence (Dec. 29, 2006).
- Body must notice that it intends to go back into open session after a closed session, or else it must wait 12 hours.
  - Wis. Stat. § 19.85(2).



# NOTICE

- **Simultaneous (Multiple) Meetings**

- When a quorum of one government body knowingly attends the meeting of a subunit of that body, or a meeting of a different body, to gather information, two meetings are actually taking place, and both must be properly noticed.

- *Badke*, 173 Wis. 2d at 577.

- When must notices be posted?

- Notices must be provided 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, but not less than two hours in advance of the meeting.

- Wis. Stat. § 19.84(3).

# ACCESSIBILITY

- Open meetings must be held in a place reasonably accessible to members of the public and open to all citizens at all times.

- Wis. Stat. § 19.81(2).

- Reasonable access does not mean total access, nor does it mean that a body can systematically exclude or arbitrarily refuse admittance to any individual.

- *Badke*, 173 Wis.2d at 580-81.

# ACCESSIBILITY

- DOJ has advised that, in light of **COVID-19**, governmental bodies can comply with their accessibility obligations by providing members of the public with a way to monitor the meeting, even if there is no central location at which the public can convene for the meeting.
  - Audio only teleconferences are likely not considered reasonably accessible if complex plans, drawing or charts are being displayed or the demeanor of a witness is significant.
    - Coronavirus Disease 2019 (COVID-19) and Open Meetings Advisory, March 17, 2020.
- For online only video conferences, notices must include a hyperlink that allows members of the public to watch or listen to the meeting.



# ACCESSIBILITY

- **Recordings:**

- Citizens have the right to tape record or videotape meetings in open session, as long as doing so does not disrupt the meeting. Reasonable efforts must be made to accommodate anyone who wants to record, film or photograph an open session meeting.
  - Wis. Stat. § 19.90.
  - Recent St. Francis School District settlement agreement with TMJ 4 (Milwaukee Journal Sentinel)

- **Citizen Participation:**

- The Open Meetings Law grants citizens the right to attend and observe meetings occurring in open session. It does not require that members of the public be allowed to speak or actively participate in the meeting. However, a body may set aside a portion of the meeting for public comment if it wishes.
  - Wis. Stat. §§ 19.83(2) and 19.84(2).

# OPEN MEETINGS LAW: OPEN SESSION VERSUS CLOSED SESSION

When and how and why can we close the meeting?



# OPEN SESSION

- **Open Session** means a meeting which is held in a place reasonably accessible to members of the public and open to citizens at all time.
  - Wis. Stat. § 19.82(3).
- Every meeting of a governmental body must first be convened in open session, and all business of any kind must be initiated, discussed and acted upon in open session unless one of the 11 exemptions in Wis. Stat. § 19.85(1) applies.



# CLOSED SESSION

- If one of the exemptions applies, bodies can motion and vote to go into ***Closed Session***.
- Bodies have wide discretion to admit anyone into a closed session whose presence the body determines is necessary for the business at hand.
- No members of a governmental body may be excluded from any meeting of the body.
  - Nor may a member be excluded from a subunit of that body, unless the body's rules state otherwise.
  - Wis. Stat. § 19.89.

# CLOSED SESSION



NO BUSINESS MAY BE TAKEN UP  
DURING THE CLOSED SESSION  
EXCEPT THAT RELATING TO MATTERS  
SPECIFICALLY NOTICED!

# AUTHORIZED REASONS FOR CLOSED SESSION UNDER WIS. STAT. 19.85

- ***Judicial or quasi-judicial hearings:*** deliberations on a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body can be held in closed session.
  - Wis. Stat. § 19.85(1)(a).
- ***Employment and Licensing Matters:*** for “[c]onsidering dismissal, demotion, licensing or discipline of any public employee or a person licensed by a board or commission or the investigation of charges against such person, or considering the grant or denial of tenure for a university faculty member, and the taking of formal action on any such matter....”
  - Wis. Stat. § 19.85(1)(b).



# AUTHORIZED REASONS FOR CLOSED SESSION UNDER WIS. STAT. 19.85

- ***Consideration of employment, promotion, compensation and performance evaluation data*** of any public employee over which the governmental body has jurisdiction or exercises responsibility.
  - Wis. Stat. § 19.85(1)(c).
- ***Considering extended supervision, probation, parole or strategy for crime detection or prevention:*** except during parole commission hearings designed for victims or family members to have direct input in parole decision making process for certain crimes.
  - Wis. Stat. § 19.85(1)(d).
- ***Conducting public business with competitive or bargaining implications:*** for “[d]eliberating or negotiating the purchase of public properties, the investing of public funds, or conducting other specific public business, whenever competitive or bargaining reasons require a closed session.”
  - Wis. Stat. § 19.85(1)(e).

# AUTHORIZED REASONS FOR CLOSED SESSION UNDER WIS. STAT. 19.85

- ***Deliberating to discuss unemployment insurance.***
  - Wis. Stat. § 19.85(1)(ee).
- ***Deliberating to discuss worker's compensation issues.***
  - Wis. Stat. § 19.85(1)(eg).
- ***Deliberating on issues arising out of location of burial sites.***
  - Wis. Stat. § 19.85(1)(em).
- ***Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons*** which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation upon any person referred to in such histories or data, or involved in such problems or investigations.
  - Wis. Stat. § 19.85(1)(f).

# AUTHORIZED REASONS FOR CLOSED SESSION UNDER WIS. STAT. 19.85

- ***Conferring with legal counsel*** for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.
  - Wis. Stat. § 19.85(1)(g).
- ***Consideration of requests for confidential written advice from the elections commission or the ethics commission*** or from any county or city ethics board.
  - Wis. Stat. § 19.85(1)(h).



# A DEEPER DIVE INTO WIS. STAT. 19.85 REQUIREMENTS: *STATE EX REL. DOUGLAS OITZINGER V. CITY OF MARINETTE AND MARINETTE COMMON COUNCIL, 2025 WI APP 19.*

- Court of Appeals decision from 2/18/25
- Court examined one of the closed session exceptions under Wis. Stat. 19.85 and found that Marinette violated the open meetings law.
- Specifically, the Court analyzed whether the City's use of closed session to discuss negotiations related to a donation agreement that was presented to council during closed session and a second meeting where council discuss ongoing issues related to providing water service to a neighboring city.
- "The legislature's choice of the word 'require'...connotes intent to limit the exception under 19.85 (1)(e) to those situations where the government's competitive or bargaining reasons leave no other option than to close the meetings." citing *State ex rel. Citizens for Responsible Development v. City of Milton*, 300 Wis.2d 649 (WI App. 2007).

# IMPORTANT LESSONS FROM MARINETTE

Court held “developing a negotiation strategy or deciding on an offer to make for a piece of land is an example of “whenever competitive bargaining reasons require a closed session...however, just because those concerns were present for portions of some of the meetings does not mean the entirety of the meetings fell within the narrow exemption under Wis. Stat. 19.85 (1)(e).” *citing Milton*, 300 Wis.2d 649 .

Court specified which parts of the meeting could have been in open session versus closed session for each meeting:

- First meeting: proposal could have been discussed in open session and then if a counteroffer was proposed, that discussion could happen in closed session to develop a negotiation strategy.
  - Court noted that when Oitzinger suggested asking for more money, the attorney told him that negotiations were done.
- Second meeting: if Marinette had decided to negotiate with Peshtigo to provide water, there would have been bargaining interests to protect and closed session would be appropriate, but as the meeting occurred it was only information-gathering.

# IMPORTANT LESSONS FROM MARINETTE

- All meetings and discussions at all meetings must start in open session by default.
- Under Wis. Stat. 19.85(1), the chief presiding officer must announce to those present *at the meeting...*the nature of the business to be considered as such closed session, and the specific exemption or exemptions under the subsection which authorizes the closed session.
- If there is not some discussion on the record regarding a proposed closed session, the governmental body fails to comply with Wis. Stat. 19.85(1).
- *Milton* court suggests following steps: (1) begin discussion in open session, (2) place initial discussion of topic on the record, and (3) clarify why a specific topic within that discussion requires a closed session *prior* to voting to go into closed session.
  - *Court noted that council had never seen agreement before closed session and thus had no reason to conclude that a closed session was required or to ascertain the exemption that applied.*





# OPEN MEETINGS LAW: VOTING AND RECORDS



# VOTING

- Any member of a governmental body may require that a vote be taken at any meeting in such manner that the vote of each member is ascertained and recorded.

- Wis. Stat. § 19.88(2).

- Unless otherwise specifically provided by statute, **no secret ballots** may be utilized to determine any election or other decision of a governmental body except the election of the officers of such body.

- Wis. Stat. § 19.88(1).



# VOTING

- RECUSAL

- WMC 2.05.01: The proper operation of democratic government requires that public officials and employees be independent, impartial and responsible to the people; that government decisions and policy be open and transparent; that public office not be used for personal gain; and that the public have confidence in the integrity of its government.
- Consider when analyzing if a conflict of interest exists:
  - Influence or reward: may not solicit or accept anything of value if it could reasonably be expected to influence judgment or could reasonably be considered a reward for official action.
  - Private benefit: may not use position or office to obtain financial gain or anything of substantial value for the private benefit of self or immediate family, or for an organization with which the official is associated.
  - Financial interest: no official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.

- ABSTENTION

- WMC 2.02.01(J): Every member, when a vote is taken, shall be expected to vote “aye” or “no.” In the even a member abstains from a vote, it is expected that he will state his reasons for abstaining at that time. Any member may request the cause for abstention by the nonvoting member in the event such cause is not stated at the time he announces his abstention. A nonvoting member need not respond to such a request, but such refusal shall be noted in the minutes of the meeting.



# VOTING

- VOTING IN CLOSED SESSION:

- The Supreme Court, under the old version of the OML, ruled that a body can vote in closed session on matters that are the subject of a legitimate subject of deliberation in the closed session.
  - *State ex rel. Cities Serv. Oil Co. v. Board of Appeals*, 21 Wis.2d 516, 538 (1963)
- Since the OML was rewritten in 1976, a Court of Appeals has ruled that a governmental body must vote in open session unless an exception in Wis. Stat. § 19.85(1) expressly authorizes voting in closed session.
  - *State ex rel. Schaeve v. Van Lare*, 125 Wis.2d 40, 53 (Ct. App. 1985)
- In light of the ambiguity involved with the conflicting opinions, and the fact that the Supreme Court has yet to weigh in since the OML was rewritten, the DOJ advises that bodies should vote in open session unless the vote is “clearly an integral part of the deliberations authorized to be conducted in closed sessions under Wis. Stat. § 19.85(1). Put another way, a governmental body should vote in open session, unless doing so would compromise the need for the closed session.”
  - *Wisconsin Open Meetings Law Compliance Guide*, May 2019, pg. 30.

# RECORD KEEPING

- All motions and roll-call votes of each meeting shall be recorded and preserved and open to public inspection.
  - Wis. Stat. § 19.88(3)
- No specified timeframe in which records of motions and roll call votes must be created.
  - AG advises that motions and roll call votes be recorded at the time of the meeting or as soon thereafter as practicable.
- Open Meetings Law does not require that formal minutes be created (but other statutes, rules or regulations may).

# RECORD KEEPING

- **Meeting minutes and records of votes in closed session** may be subject to disclosure under the Public Records Law, depending on whether the reason for convening in closed session continues.
  - However, the DOJ advises that a record custodian must still separate information that can be made public from that which cannot and must disclose the former, even if the latter is withheld.
    - De Moya Correspondence (June 17, 2009) and 67 Op. Att'y Gen. 117 (1978)



# OPEN MEETINGS LAW: ENFORCEMENT



# OVERSIGHT

- The AG's Office and the DA's Office have the ability to enforce the Open Meetings Law.
  - BUT FOR US, as Milwaukee is a first class county, **Milwaukee Corporation Counsel** takes the place of the DA's Office.
    - Wis. Stat. § 59.42(2)(b)4.
- In order to take action, these agencies must receive a **verified complaint** (written, signed and sworn).
- If these agencies refuse to commence action, or fail to act within 20 days, complainant has the right to bring an action in the name of the state.

# PENALTIES

- Any member of the governmental body who “*knowingly*” attends a meeting in violation of the Open Meetings Law is subject to a forfeiture between \$25 and \$300 for each violation. This is personal liability.
- “*knowingly*” means not only positive knowledge of the illegality of a meeting, but also the awareness of the high probability of the meeting’s illegality or conscious avoidance or awareness of the illegality.

- *State v. Swanson*, 92 Wis. 2d 310 (1979).



# PENALTIES

- No liability for member knowingly attending an unlawful meeting if the member makes or votes in favor of a motion to prevent the violation from occurring, or does so on the advice of counsel.
- A body may not reimburse a member for a forfeiture incurred as a result of violation, unless the enforcement action involved an issue regarding the constitutionality of the Open Meetings Law.
  - But the DOJ has opined that bodies can vote to reimburse attorney fees.
    - 77 Op. Att'y Gen. 177, 180 (1988).

A decorative graphic on the left side of the slide, consisting of white and light blue lines that resemble a circuit board or a stylized tree. The lines are vertical and horizontal, with small circles at the ends, creating a complex, branching pattern.

# SPECIAL THANKS TO:

MILWAUKEE ASSISTANT CITY ATTORNEY PETER BLOCK AND

FORMER WAUWATOSA CITY ATTORNEY ALAN KESNER

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