A Short Guide to the Wisconsin Open Meetings Law

Attorney Douglas H. Frazer, DeWitt Ross & Stevens

Wisconsin's open meetings law, enacted by the state legislature in 1975, requires that all meetings of governmental bodies be open to the public. Found in sections 19.81 through 19.98 of the Wisconsin Statutes, it begins with a statement of policy: because a representative government is "dependent on an informed electorate … the public is entitled to the fullest and most complete information concerning the affairs of government as is compatible with the conduct of government business."[1]

This policy goal is particularly important on the local level, for it is there that the affairs of government affect the public daily. Municipalities provide services and implement procedures on which we all rely. The services include public safety, courts, roads and bridges, snow plowing, solid waste and recycling pickup, water, sewer, zoning, permitting, public health, and libraries. The procedures include rules for petitions, appeals, and in general the opportunity to be heard.

Apart from requiring that all meetings of governmental bodies be open to the public, the law creates a presumption that the public is entitled to receive full and complete information about meetings—including prior notice and a detailed agenda—any time a governing body engages in government business, unless a specific exception applies.

The law applies to all "governing bodies." This includes not only a primary governing body but also boards, commissions, committees, councils, departments, or formally constituted subunits created by constitution, statute, ordinance, rule, or order.[2]

The law applies to "meetings" of governing bodies. This term includes the kinds of activity normally thought of as meetings, but it can also include a lot more. If one-half or more of the members of the governing body are present, the meeting is presumed to be "for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body." The term does not, however, include "any social or chance gathering or conference provided it is not intended to avoid the law."[3]

Wisconsin courts consider the purpose of the gathering and the number of members of the body present. The absence of a majority of the members is not always determinative. In some situations, the number of members who may control the outcome of an issue is less than a quorum of the governing body. This is called a "negative quorum." For example, on issues that are subject to a two-thirds vote, the gathering of three of seven members—a sufficient number to defeat proposed action by the governing body—is subject to the open meetings law if the gathering is for the purpose of discussion, decision, or information-gathering related to that issue.[4]

The law may also apply to a series of gatherings, each one of which includes less than a controlling number of members. For instance, if four of seven members can control the outcome of the matter, the law may be violated if Member A discusses the issue with Member B, then later discusses the issue with Members C and D. That series of discussions could constitute a "meeting" of four members even though not all four were present at the same time. The courts refer to this as a "walking quorum" and subject it to the same requirements that apply to other meetings of governing bodies to promote the purpose of the open meetings law.[5]

Even a telephone call made for the purpose of engaging in government business can be a meeting if a controlling number of members participate in the call. The same goes for e-mail communications—particularly in connection with features such as "forward" and "reply to all."[6]

A key element of the open meetings law is the notice required prior to any meeting.[7] There are two general requirements. First, the presiding officer or designee must communicate notice to the public. This is usually done by posting the notice on the municipality website and places likely to be seen by the general public (municipal notice boards), or by publication in some circumstances.[8] In most cases the public notice must be given at least 24 hours prior to commencement of the meeting.[9]

Second, every public notice must set forth the time, date, place, and subject matter of the meeting.[10] Each agenda item ordinary should appear on the notice.[11]

The definition section of the statute is detailed, and Wisconsin courts have interpreted the law broadly. A governing body is engaged in governmental business when its members gather simply to hear information on a matter within the body's authority. The members need not actually discuss the matter or otherwise interact with one another to be engaged in governmental business.[12]

The open meetings law allows the governing body to go into closed session (without members of the public present) under certain circumstances.[13] Most commonly, closed sessions involve personnel matters, competitive bid or bargaining issues, or conferences with legal counsel who will advise the governing body on litigation strategy.

The requirements of the open meetings law may seem burdensome and legalistic—and in some instances socially awkward—but they make some sense. Put yourself in the shoes of a citizen who may feel differently than you do about an issue. That citizen would want, and should enjoy, equal notice of and access to a gathering of the members of the governing body addressing the issue, and the opportunity to be heard at that gathering if public comment is permitted. The open meetings law protects the right of each citizen to attend and observe open session meetings of governing bodies and to know in advance what will be discussed.

Meetings of governing bodies have both formal and informal aspects. The formal elements of public meetings are the most obvious. Each has its own parliamentary procedures. Each is a business meeting. Each is noticed in advance with an agenda.

On the other hand, most governing bodies try to make their meetings welcoming. In the appropriate time, place, or manner—and consistent with the open meetings law—governing bodies often allow for and receive public comment.[14]

That's our concise guide. It sometimes appears to well-meaning reformers that a governing body's rules and procedures are erected to keep elected officials at arms-length from their constituents. But these rules and procedures are informed not by stuffiness or rigidity but by legal requirements. The notion, for instance, that municipalities could be stronger and government more inclusive if elected officials and residents would get together informally from time to time in a "town hall" setting to exchange ideas and information is not workable. The open meetings law doesn't permit it.

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When it comes to the open meetings law, formality trumps familiarity in just about every case.[15]

Douglas H. Frazer, Northwestern 1985, is a shareholder with DeWitt Ross & Stevens in its Metro Milwaukee office.

[1]Wis. Stat. § 19.81(1).
[2]Wis. Stat. § 19.82(1).
[3]Wis. Stat. § 19.82(2).
[4]*See State ex rel. Newspapers Inc. v. Showers,* 135 Wis. 2d 77, 102-03, 398 N.W.2d 154, 165-66 (1987).
[5]*Id.*
[6]69 Wis. Op. Att'y. Gen. 143 (1980).
[7]Wis. Stat. § 19.84.
[8]*See* 65 Wis. Op. Att'y. Gen. 250 (1976).
[9]Wis. Stat. § 19.84(3).
[10]Wis. Stat. § 19.84(2).
[11]*See State ex rel. Buswell v. Tomah Area School District,* 2007 WI 71, 301 Wis. 2d 178, 732 N.W.2d 804.
[12]*Showers,* 135 Wis. 2d at 92.
[13]Wis. Stat. § 19.85.
[14]Wis. Stat. § 19.84(2) ("The public notice of a meeting … may provide for a period of public comment, during which the body may receive information from members of the public."). No right exists under the open meetings law for the public to speak or participate in a meeting.
[15]For fuller discussions on the subject, see Block, "An Intro to Understanding Wisconsin's Open Meetings Law," *Wisconsin Lawyer* (Dec. 2015); Block and Rutledge, *The Wisconsin Public Records and Open Meetings Handbook,* State Bar of Wisconsin PINNACLE® (5th ed. 2016); Wis. Att'y Gen., *Wisconsin Open Meetings Law Compliance Guide* (2015); and Silverman, "Understanding and Complying with Wisconsin's Open Meetings Law," *The Municipality* (July 2010).