



An Informed Public: Part One *The Open Meetings Law*

A GOVERNMENT “DEPENDENT UPON AN INFORMED ELECTORATE”

Wisconsin recognizes that a representative government is “dependent upon an informed electorate,” and that the public is entitled to the most complete information possible regarding the affairs of its government as is compatible with the running of government business. The Wisconsin Legislature has incorporated this policy into the laws concerning government meetings and records in this state. One of those laws, the open meetings law, is based on the principle that the operations of state and local governments should be exposed to the “full light of day” in order for citizens to participate in their democracy.

WHEN AND HOW THE LAW APPLIES

The Wisconsin open meetings law applies to virtually all meetings of all state and local governmental bodies. Examples of governmental bodies are the state assembly, a city council, a town board, and a school board. Governmental bodies are defined in the law based on how they are created, rather than on what authority they have. A meeting is defined as the gathering of the members of a body for the purpose of exercising the authority, powers, or duties invested in that body. A meeting is generally assumed to take place and subject to the open meetings law if one-half or more of the members come

together. The open meetings law also applies in some cases if less than half of the membership meets. Social or chance gatherings are not subject to the law.

The open meetings law states “Every meeting of a governmental body shall be preceded by public notice ... and shall be held in open session.” “Open session” is defined as a meeting held in a place reasonably accessible to members of the public and open to all citizens at all times. With certain exceptions, all action taken at a meeting must be initiated, discussed, and acted upon in open session. Members of the public have the right to tape record or videotape meetings in open session provided they do not disrupt the meeting. While citizens have the right to attend open session meetings, the law does not grant them the right to participate in those meetings. Other laws in the Wisconsin statutes provide for public hearings on certain matters before certain types of governmental bodies where citizens can voice their opinions.

PUBLIC NOTICE

The open meetings law details how public notice must be given prior to any meeting. The chief presiding officer of a body must communicate the notice to the public, to

news media who have filed a written request for a notice, and to the official newspaper for that area. If there is no official newspaper, notice must be given to a news medium likely to give notice in the area. The requirement to notify the public is distinct from the requirement to give notice in the official newspaper; so if the presiding officer chooses to notify the public through the newspaper, he or she must ensure that the notice is actually published.

Public notice must be given at least 24 hours prior to a meeting. Shorter notice may be given if the 24-hour requirement is impossible or impractical to meet, but notice may not be given less than two hours in advance of a meeting.

The content of the notice is also specified by law. It must contain the time, date, place, and subject matter of the meeting. The notice must be reasonably specific as to what subject matter will be discussed, and may not include generic terms such as “miscellaneous business” as a way to avoid disclosure of business that is likely to be discussed. The notice must also include any subjects intended for consideration during a closed session. (“Closed session” means that the meeting is closed to public access.) A notice can provide for a period of public comment, and during that period the body may discuss matters that are raised by the public even if they are not

mentioned in the public notice; however, the Wisconsin attorney general generally advises bodies not to take action (vote) on those matters.

CLOSED SESSION EXEMPTIONS

The open meetings law provides specific exemptions that allow a governmental body to convene in closed session. However, the law also states that every meeting must be initially convened in open session before it can go into closed session. The chief presiding officer must announce the business to be discussed in closed session and cite the specific exemption that authorizes the closed session. The body must then pass a motion to go into closed session. The following are some of the exemptions that allow a governmental body to convene in closed session:

- Consideration of dismissal, demotion, licensure, or discipline of a public employee or person licensed by a board or commission, or the investigation of charges against the person, or consideration of the granting or denial of tenure to a university faculty member, and the taking of formal action on any of these matters. (Closed session is not allowed here unless the person to be discussed is first given notice that the meeting will take place and that final action may be taken. The person has the right to request that the meeting be held in open session, and if he or she does so, the meeting may not be held in closed session.)
- Consideration of employment, promotion, compensation, or performance evaluation of any employee over whom the body has jurisdiction; this includes interviews of applicants for employment; it does not include

discussion of general policies, such as qualifications and salary range, that do not involve specific employees.

- Consideration of financial, medical, social, or personal information, or the investigation of charges that, if discussed in public, “would be likely to have a substantial adverse effect upon the reputation of any person” referred to or involved, unless that person requests an open session.

A body may not reconvene in open session within 12 hours of the end of the closed session unless public notice of the return to open session was given at the same time as the original meeting notice.

THE LEGISLATURE

Meetings of caucuses of the legislature, such as senate and assembly Democrats or senate and assembly Republicans, are not subject to the open meetings law, unless otherwise provided by legislative rule. If the open meetings law conflicts with a legislative rule, the rule takes precedence.

VOTING

Motions and roll call votes of meetings must be recorded, preserved, and open to public inspection under the public records law. Except in the election of a body’s officers, a body may not use secret ballots to vote.

ENFORCEMENT

The Wisconsin attorney general is required by law to give advice on and enforce the open meetings law. District attorneys can also enforce the law in their counties. If a district attorney refuses to or does not commence action on an open meetings law complaint within 20 days

of receiving it, the person who filed the complaint can bring an action to enforce the law. All actions to enforce the law must be made in the name and on behalf of the state.

If an individual wins his or her suit to enforce the law, the individual may be awarded his or her attorney fees, but any other forfeited moneys are paid to the state. The court may

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also grant a declaration that the law was violated; it can void certain actions made in violation of the open meetings law if the court finds that the public interest in enforcing the law outweighs the public interest in sustaining the action’s validity. Members of the body who are found to have violated the open meetings law are subject to a monetary forfeiture for each violation.

SUMMARY

Public officials have a duty to keep their actions open to the scrutiny of the public whom they serve, and the open meetings law is one way to make sure they do just that. The law also recognizes that sometimes there is a need for privacy in government matters and allows exemptions to protect that privacy. But the law is designed to be strict with such exemptions and to allow citizens to participate fully in the democratic process by giving them broad access to the information they need.

Governing Wisconsin: "The Open Meetings Law"

Study Questions

1	Do citizens have the right to record an open meeting? Do they have the right to speak at the meeting?	
2	Does the notice requirement hamper the efficient operation of a governmental body?	
3	Write a meeting notice for the next school board meeting.	
4	How do the exemptions from the open meeting requirement, which allow closed sessions in certain circumstances, protect important rights?	
5	What would happen if all meetings were open without exception?	
6	What are the disadvantages of requiring that most governmental meetings be open to the public?	

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Study Questions in the Cognitive Domain

1	Do citizens have the right to record an open meeting? Do they have the right to speak at the meeting?	Members of the public have the right to record the meeting if they do not disrupt it. Except for some specific meetings, members of the public do not have the right to speak or otherwise participate in the meeting.	Cognition
2	Does the notice requirement hamper the efficient operation of a governmental body?	It prevents governmental bodies from acting quickly in some cases, and it may prevent the body from considering an issue that is raised at a meeting but was not included in the notice.	Comprehension
3	Write a meeting notice for the next school board meeting.	E.g.: "The Acme School Board will meet on January 8, 2007, at noon, at the school board office at 123 Main Street, to discuss teachers' salaries. Part of the meeting will be closed to discuss administrators' performance evaluations."	Application
4	How do the exemptions from the open meeting requirement, which allow closed sessions in certain circumstances, protect important rights?	Exemptions protect the right of privacy of persons whose financial status, employment status, government license, medical information, or criminal liability may be discussed at a government meeting, and who would be adversely affected if that information was made public.	Analysis
5	What would happen if all meetings were open without exception?	See Q4. Open meetings would violate the right to privacy of certain persons. Some members of the governmental body might be reluctant to express their true views.	Synthesis
6	What are the disadvantages of requiring that most governmental meetings be open to the public?	Government bears the added expenses of preparing and publishing notices. Some members of the body may be reluctant to discuss sensitive issues or their views in public. Meeting rooms must be larger to accommodate more people. The body cannot act swiftly in some cases.	Evaluation