



University of Wisconsin-Extension

## **Common Sense Approach to Wisconsin Open Meetings Law**

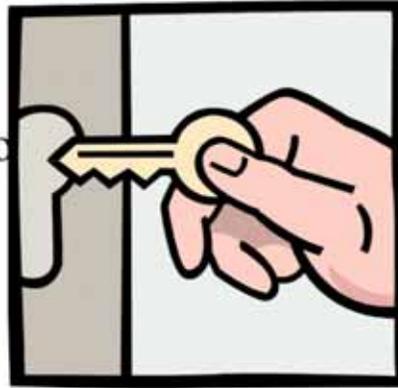
*2008 Lake Leaders' Conference*

*Dan Hill  
Local Government Center*



## Common Sense Approach

- Public Access
- Open Decision-Making: information gathering, discussion, and voting



Public is entitled to fullest and most complete information regarding the affairs of government. All 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.

Think of decision-making as more than simply taking the vote. Decision-making involves gathering information, dialogue and debate, and voting. If you are engaged in decision-making—in its broadest sense—regarding the affairs of government, then you need to comply with the law.

Every meeting of a governmental body is open and accessible. Not accessible if you don't know about it.

## Intent of Open Meetings Law

### The Open Meetings

**Law** is meant to ensure:

- Advance public notice of meetings,
- meetings are open and accessible to the public, and
- closed sessions are limited.

## Bodies subject to the law

- local governing bodies of general and special purpose units of government,
- their committees, commissions and boards,
- special study and advisory committees, and other bodies or subunits created by a governmental body or an officer, and
- governmental and quasi-governmental corporations.
- (Body members covered by the law include citizen members.)

Virtually any body created by the parent body.

## Meeting defined

**Meeting** = a gathering of members of a governmental body for the purpose of exercising its responsibilities.

A meeting occurs when both a purpose test and a numbers test are met.



## The Two Tests

**Numbers test = enough members of a body are present to determine the outcome of an action**

**Purpose test = discussion, information gathering or decision-making on a matter within the jurisdiction of the body.**



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## Numbers Test

- By statute, 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 lesser number of members may meet the numbers test if they can affect the outcome.

## Quiz Question

- Are these board members in violation of the open meetings law?



## Special Cases

Walking Quorum--A series of phone calls, e-mails or conversations to "line up votes" or conduct other business, known as a walking quorum, violates the law.

Phone conferences may constitute a meeting if the numbers and purpose tests are met.

Phone conferences may constitute a meeting if the numbers and purpose tests are met. A sequence of phone calls to "line up votes" or conduct other business constitutes an illegal meeting since it is not noticed and open to the public.

Chance and social gatherings and conferences where the numbers test is met are not meetings provided the purpose test is not met (i.e. no board business is discussed).

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A **walking quorum**, violates the law since the public is not notified of a meeting & the meeting is not open.

## Public Notice Requirement

- Every meeting shall be preceded by public notice.
  - Separate notice for each meeting.
  - Reasonably proximate to the time and date of the meeting.
  - Special exemption for subunit meetings held during or right after lawful meeting of parent body.



Whenever there is a meeting.

All meetings must be noticed properly.

## Public Notice: What?

- Time
- Date
- Place
- Subject Matter

## Public Notice: What? Subject Matter

- Apprise public of what will be addressed.
  - Only noticed agenda items may be discussed.
- Specific.
- Does not grant citizens right to participate.
- Public comment period may be included.





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*AGENDA FOR EXTENSION EDUCATION COMMITTEE MEETING*

*TUESDAY, MAY 14, 2002 - 7:00 P.M.*

*AG CENTER CONFERENCE ROOM, 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

Committee plans to attend the regularly scheduled meeting of another committee. Economic development committee has interest in the outcome of a decision to be made by the planning and zoning committee. Provide public notice—not necessarily an agenda; apprise the public of the time, date, place, and subject matter.

## Public Notice: When?

- At least 24 hours prior (2 hours prior for good cause).



## Public Notice: To Whom?

- Recommendation is to post in at least 3 locations.



In general, to the public and the media.

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- **Notify official newspaper, if there is one; if none, notify news medium likely to give notice.**



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## Public Notice: To Whom?

- Recommendation is to post in at least 3 locations.
- Notify official newspaper, if there is one; if none, notify news medium likely to give notice..
- **Must provide notice to any media requesting it.**

In general, to the public and the media.

## Public Notice: By Whom?

- Chief presiding officer.
- Or designee, usually the clerk.
- Ultimate responsibility rests with the chief presiding officer.



## Public Access

- Reasonable access.
- Anticipate large crowds for controversial topics.
- Proximate to the public served.



Allows use of meeting places that provide reasonable access, with assistance, to persons with disabilities. The law and its interpretations predate the Americans with Disabilities Act.

Overflow crowds do not violate the law.



## Permitted closed sessions

Closed sessions are limited to those authorized by statute, including...

- Deliberations concerning a judicial or quasi-judicial "case".
- Personnel matters including employee discipline and licensing.
- Deliberations on property acquisitions, investments, or for competitive or bargaining issues.

## Closed session procedures

- Convene in open session.
- Announce authority and purpose of proposed closed session.
- Close session by a majority vote, showing vote of each member.



## Closed session procedures

- Objecting body members, personnel essential to closed discussion and members of parent body may remain.
- Limit discussion to announced items.
- Do not reconvene in open session unless it was included in the public notice.



Members of the parent body may not be excluded, unless the parent body has its own rules to the contrary.

## Votes and Ballots

- No secret ballots, except election of officers.
- Any member may request that a vote be taken so that the vote of each member is ascertained and recorded.



## Votes and Ballots

- Vote in open session unless the vote would compromise the need for the closed session.
- Record motions, seconds, and votes
- Preserve record and allow access per public records law.

**Meeting minutes should document:**

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

## Open Meetings Law Violations

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.

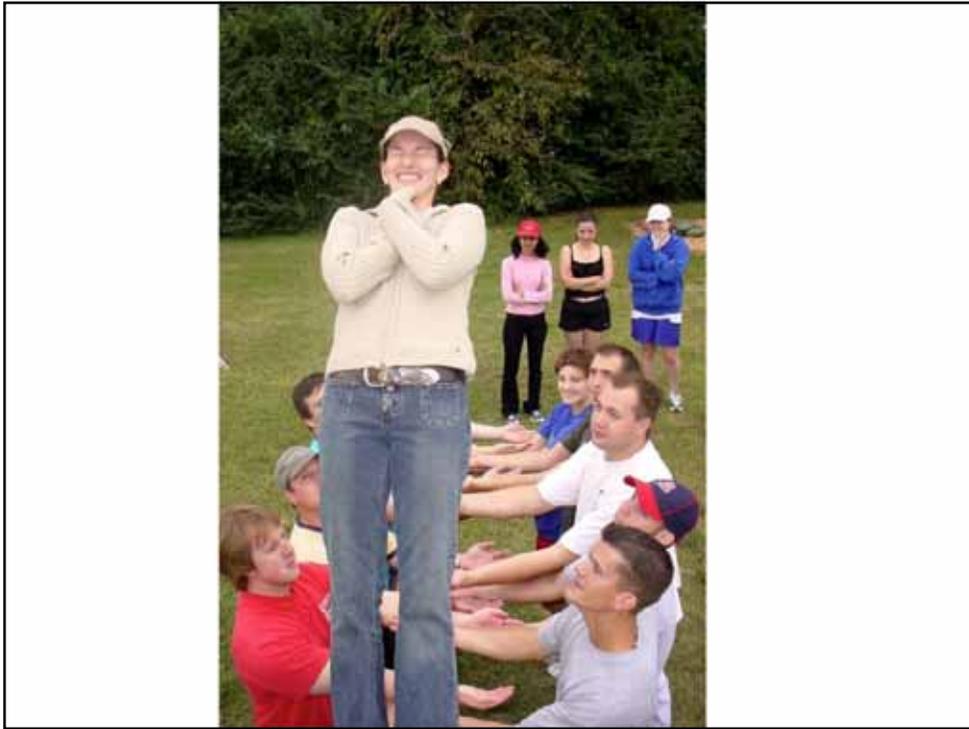
## Penalties

Any member

- \$25-\$300 non-reimbursable forfeiture.
- Attorney's fees may or may not be reimbursable.
- Loss of public trust.
- Personal embarrassment.



## Non-elected members



## 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  
[http://www.doj.state.wi.us/AWP/2007OMCG-PRO/2007\\_OML\\_Compliance\\_Guide.pdf](http://www.doj.state.wi.us/AWP/2007OMCG-PRO/2007_OML_Compliance_Guide.pdf)  
Wisconsin Department of Justice



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**Non-elected members**