# **Open Meetings/Closed Session**

Øisconsin

Towns

Association

Atty. Lee Turonie Bakke Norman Municipal Seminar October 3, 2013

#### **Open Meetings Law**

• A very broad policy and legal interpretations:

"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." Wis. Stat. s. 19.81(1).

• "This subchapter shall be liberally construed to achieve the purposes set forth in this section...." s. 19.81(4).

#### **Open Meetings Law**

• Whenever you have:

(1) A "governmental body"

+ (2) having a "meeting"

= it must be properly noticed in advance.

### Governmental Body

- "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; a governmental or quasi-governmental corporation ... or a formally constituted subunit of any of the foregoing, but excludes any such body or committee or subunit of such body which is formed for or meeting for the purpose of collective bargaining ...." s. 19.82(1).
- I.e., if it is created by government, or walks and talks like a government, open meetings law applies.

### Meeting

- "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. If one-half or more of the members of a governmental body are present, the meeting is rebuttably 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 include any social or chance gathering or conference which is not intended to avoid this subchapter...." s. 19.81(2).
- Court and Attorney General interpretations have made this even more restrictive due to "liberally construing" open meetings law.

### Governmental Body + Meeting

- Two elements = open meetings law applies:
  - (1) Engaging in governmental business, including actions as well as only discussion; and
  - (2) A number of body members present that is sufficient to determine the outcome.
- Watch out: walking quorums, negative quorums, informational meetings, telephones, emails, etc.
- One-way information distribution is ok though.

### Noticing the Meeting

- Time, date, place and subject matter.
- Done by chief presiding officer or his or her designee.
- "All items listed for discussion and possible action."
- Err on the side of being more descriptive.
- According to open meetings law AND as required by any other statutes.

### Noticing the Meeting

- There are THREE (3) elements:
  - (1) Notice to the public.
    - Newspaper advertisement or post in at least three places in the municipality.
  - (2) News media filed written requests.
  - (3) To the official newspaper, or if none, then to a news medium that may cover the area.
- You must do all three every time!
- At least 24 hours in advance, or if "for good cause such notice is impossible or impractical" no less than 2 hours.

### Chapter 985, etc.

- Sundays and legal holidays do not count for calculating the 24 hours.
- Shoppers and web sites are not newspapers.
- Affidavits of notice are recommended.
- Most towns and villages are not required to have an "official newspaper" designated.
  - If you do, that's the one you use is all.
  - The word "publish" usually means "post or publish" for these governments.
  - When the newspaper makes a mistake: it's your problem.

### **Closed Session**

- You are never required to use closed session.
- Members of the body are entitled to attend.
- The body may invite in anyone else.
- Minutes are taken in closed session.
- You may only use closed session if the subject matter fits an exemption listed under s. 19.85(1).
  - Exemptions are narrowly construed.

### **Closed Session**

- Procedure:
  - (1) Properly noticed agenda with both the specific subject matter and applicable exemption per s.
    19.85(1).
  - Chair announces both the subject matter and the exemption for a roll-call vote to go into closed session.
  - If the vote passes, closed session begins.
- Meeting agenda should state whether the body will adjourn in closed session or return to open session for additional matters.

### Enforcement

- Complaints are made to the county district attorney. Then wait at least 20 days.
  - Can file complaint with state attorney general. AG enforcement is very rare.
  - A party can bring its own lawsuit (not uncommon).
  - Legal standard: you are guilty till proven innocent.
- Guilty parties will pay a forfeiture of \$25-300 outof-pocket. Voiding of body action is possible.
- Ensure that proper notice was made before conducting the meeting!

## THE END

- Resources:
  - UW-Extension Local Government Center
    - http://lgc.uwex.edu/publications/publs.html
  - Department of Justice
    - http://www.doj.state.wi.us/dls/open-government
  - Your Municipal Association
    - Wisconsin Towns Association <a href="http://wisctowns.com">http://wisctowns.com</a>
    - League of Wisconsin Municipalities <u>http://www.lwm-info.org</u>
    - Wisconsin Counties Association <u>http://www.wicounties.org</u>
  - Your Municipal Attorney
- Questions?