



## MEMORANDUM

**TO:** Senate Majority Leader LeMahieu  
**FROM:** Michael Gallagher, assistant chief counsel  
**DATE:** November 4, 2021  
**SUBJECT:** Application of open meetings law to subcommittees

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### Question

You have asked whether Wisconsin’s open meetings law applies to subcommittees established by a governmental body. For the reasons discussed in this memorandum, the open meetings law applies to any subcommittee that is a “formally constituted subunit” of a governmental body.

### Discussion

Wisconsin’s open meetings law requires that meetings of governmental bodies “be preceded by public notice . . . and . . . held in open session.”<sup>1</sup> A “governmental body” is “a state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order.”<sup>2</sup> A “formally constituted subunit of any of the foregoing” also constitutes a governmental body for purposes of open meetings requirements.<sup>3</sup>

While the Wisconsin courts have not discussed at any length what a “formally constituted subunit” is in the open meetings context, the Wisconsin Attorney General has provided important guidance on this issue. According to the attorney general, a “subunit” of a governmental body is “a separate, smaller body created by a parent body and composed exclusively of members of the parent body.”<sup>4</sup>

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<sup>1</sup> [Wis. Stat. § 19.83 \(1\)](#).

<sup>2</sup> [Wis. Stat. § 19.82 \(1\)](#).

<sup>3</sup> *Id.*

<sup>4</sup> Wisconsin Department of Justice, [Wisconsin Open Meetings Law Compliance Guide](#), 6 (2019); [74 Op. Att’y Gen. 38, 40 \(1985\)](#).

The attorney general’s Open Meetings Law Compliance Guide provides an example:

If, for example, a fifteen member county board appoints a committee consisting of five members of the county board, that committee would be considered a “subunit” subject to the open meetings law. This is true despite the fact that the five-person committee would be smaller than a quorum of the county board.<sup>5</sup>

Even such a committee with only two members is a subunit for purposes of the open meetings law.<sup>6</sup> Additionally, even in situations where such a committee is only advisory and “has no power to make binding decisions,” the open meetings law applies.<sup>7</sup>

Although not binding as precedent, the Wisconsin Supreme Court looks to the attorney general’s interpretation of the open meetings law as persuasive and as being of “particular importance” because “[t]he legislature has expressly charged the state attorney general with interpreting the open meetings . . . statutes.”<sup>8</sup>

## Conclusion

A subcommittee established by a governmental body that is composed solely of members of the parent body is itself a governmental body subject to the open meetings law no less than the parent body. The open meetings law applies to such a subcommittee even if the subcommittee’s members do not equal a quorum of the parent body—indeed, even if the subcommittee consists of only two members—and whether or not the subcommittee is merely advisory or is authorized by the parent body to take some action on behalf of the parent body. Its meetings must be properly noticed and open to the public.

I hope this information is helpful, but please let me know if you need additional information.

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<sup>5</sup> Wisconsin Department of Justice, [Wisconsin Open Meetings Law Compliance Guide](#), 6 (2019).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* (citing [Dziki Correspondence \(Dec. 12, 2006\)](#)).

<sup>8</sup> *State v. Beaver Dam Area Dev. Corp.*, 2008 WI 90, ¶37. Under [Wis. Stat. § 19.98](#), “Any person may request advice from the attorney general as to the applicability of [the open meetings statutes] under any circumstances.”