

The Open Meetings Law for Legislative Committee Chairpersons

DAN SCHMIDT

WISCONSIN LEGISLATIVE COUNCIL

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What We Will Cover:



1. How a meeting is defined by law and what this means for legislative committees
2. What constitutes a quorum and related prohibitions
3. What constitutes adequate notice for a meeting
4. Member and public attendance issues
5. Exceptions to the law

Declaration of Policy

- ▶ In conformance with article IV, section 10, of the constitution, which states that the doors of each house shall remain open, except when the public welfare requires secrecy, ***it is declared to be the intent of the legislature to comply to the fullest extent with this subchapter.*** {The Open Meetings Law} [s. 19.31 (3), Stats.]

Meeting Defined Part I:

Meeting means the convening of members of a governmental body [legislative committee] for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. [s. 19.82 (2), Stats.]

What does this mean...

Any formal or informal action of the governmental body, including **discussion, decision** or **information gathering**, on matters within the body's realm of authority. [*Showers*, 135 Wis. 2d 77, 102 (1987).]

...for a Legislative Committee?

- ▶ Taking testimony or gathering information
- ▶ Discussing policy or legislation
- ▶ Taking action on legislation
- ▶ Just about anything else that is in the purview of the committee

Meeting Defined Part II:



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.

Meaning...

A sufficient number of individuals are present to determine the governmental body's course of action is present *AND* there is a purpose to engage in government business. [*Showers*, 135 Wis. 2d at 102.]

...for a Legislative Committee?

If a majority of committee members are present and engaging in business within the purview of the committee, it is a meeting.

If the discussion did not relate to committee business, it is **arguable** before the court that a meeting of the committee did not take place (burden of proof is on committee members).

Meeting Defined Part III:

The term **meeting** does not include a social or chance gathering or a conference which is not intended to avoid this subchapter...

Meaning...

Social gatherings and conferences are not considered meetings unless they are specifically used to avoid the Open Meetings Law.

...Legislatively?

A committee majority, or even full membership, can attend a gathering or conference without violating the law provided they are not seeking to evade the Open Meetings law.

Quorum, Generally:

Quorum = A majority of members of a governmental body

- ▶ Example: 5 members of a 9-member Assembly committee

Also applies to a formally constituted sub-unit of a committee (subcommittees)

Negative Quorum:

Negative Quorum = The number of members that it would take to control the action of a governmental body

Example: 5 members of a 10-member Assembly committee – motions fail on a tie vote – thus, a 6-member majority is not required to block committee action

Walking Quorum:

Walking Quorum = a series of gatherings among separate groups of members of a governmental body, each less than quorum size, who agree, tacitly or explicitly, to act uniformly in sufficient number to reach a quorum. [*Conta*, 71 Wis. 2d 662, 687 (1976).]

Example: An Assembly committee member travels from committee member office to office (or via telephone, email or in writing) to discuss and ensure majority support for an amendment that will be voted on in committee executive session the next day.

Public Notice:

All meetings of a governmental body must be noticed publicly and include the following:

- ▶ Date
- ▶ Time
- ▶ Location
- ▶ Subject matter

Notice must be conducted in such a manner as is reasonably likely to apprise members of the public and the news media thereof. [s.19.84, Stats.]

Public Notice:

DATE & TIME:

- ▶ Notice must generally be given at least 24 hours prior to the commencement of the meeting [s. 19.84 (3), Stats.]
- ▶ Sundays and legal holidays must be excluded, but posting may be done on Saturdays if the posting location is open on Saturday [s. 990.001 (4) (a), Stats.]
- ▶ If for “good cause,” the posting of a meeting is impossible or impractical, shorter notice may be given provided it is at least 2 hours prior to commencement of the meeting [s. 19.84 (3), Stats.] (Senate req. prior Sen. Org. Approval – SR 25 (1)(b))

Public Notice:

LOCATION:

- ▶ Must indicate the location of the meeting [s. 19.84 (2), Stats.]
- ▶ Notice any change of location ASAP, as needed
- ▶ The location must generally be accessible to the public, including those with disabilities, except as otherwise provided by law [s. 19.81 (2), Stats.]

Public Notice:

SUBJECT MATTER:

- ▶ Notice should include the number, author and relating clause of any legislation to be considered [AR 14 (2) & SR 25 (1) (c)]
- ▶ Notice should be as specific to agenda items as is possible; generic terms such as “old business” and “new business” are inadequate
- ▶ Action items, such as executive sessions, should be specifically referenced in the notice if they are likely to occur
- ▶ Limit committee discussion or consideration to matters referenced in the notice

Public Notice:



Closed Meetings:

- ▶ Limited exceptions exist, but closed sessions must be noticed as such prior to the meeting, specifically citing the authorizing statute:
 - Considering employment-related issues of a public employee over which the body has jurisdiction or exercises responsibility [s. 19.85 (1) (c), Stats.]
 - Certain investigations which may have an adverse effect on a person's reputation [s. 19.84 (1) (f), Stats.]
 - Caucus Meetings held in closed session [s. 19.87 (3), Stats., Senate Rule 99 (53m), Assembly Rule 95 (53m)]

Member Attendance:

ASSEMBLY:

- ▶ Generally, must vote in the presence of the committee [AR 11 (4)]
- ▶ Votes must be held open for 30 minutes after adjournment of the committee or until 5 PM, whichever is **earlier**. [AR 11 (5) (a)]
 - Note: Absent member must vote in the committee room where the meeting was held

Member Attendance:

SENATE:

- ▶ With the consent of the chairperson, may participate by telephone or by other means of telecommunication or electronic communication [SR 24]
- ▶ May vote by paper ballot, if noticed [SR 25 (4) (am) & (b)]
- ▶ A member may vote by poll, if the member was present at any time during the exec. [SR 25 (4) (a) 1.]
- ▶ May poll a member not present at an exec in an emergency if the chair determines it was necessary to preserve public peace, health, safety or welfare [SR 25 (4) (a) 2.]

Public Attendance:

Some General Guidelines:

- ▶ A legislative committee meeting may generally be considered a limited public forum, thus only content-neutral restrictions on time, place and manner may be exercised by the committee chairperson
- ▶ Signs are permissible speech as long as they do not infringe upon others' right to be present and observe
- ▶ Recording of committee meetings is generally permitted [s. 19.90, Stats.] (Senate req. permission from Sen. Org. – SR 11 (7))

Legislative Exceptions:

Section 19.87 (2) & (3), Stats.:

- ▶ No provision of the Open Meetings Law which conflicts with a rule of the legislature (Assembly, Senate or Joint) shall apply to a meeting conducted in compliance with the rule
- ▶ No provision of the Open Meetings Law shall apply to any *partisan caucus* of the Senate or the Assembly, except as provided by rule

Legislative Exceptions:



Definition of Partisan Caucus:

A conference convened by 2 or more members of a political party to discuss business related to the organization or agenda of that party within the legislature or to discuss any matter pending in or proposed for introduction in the legislature.

Legislative Exceptions:

Senate:

To facilitate bipartisan cooperation, the ***members who convened the conference may permit members of another political party to attend.*** [SR 99 (53m)]

- ▶ Basically any legislator may attend

Legislative Exceptions:

Assembly:

To facilitate bipartisan leadership meetings, a partisan caucus may also include a conference convened by the ***members of the elected leadership of one political party with the members of the elected leadership of another political party.*** [AR 95 (53m)]

- ▶ Limited to leadership to leadership contact between political parties

Legislative Exceptions:

Separation of Powers:

Stitt & Ozanne Cases:

- ▶ The legislature's adherence to the rules or statutes prescribing procedure is a matter entirely within legislative control and discretion, not subject to judicial review unless the legislative procedure is mandated by the constitution. [*Stitt*, 114 Wis.2d 358, 365 (1983)]
- ▶ The failure to follow procedural rules amounts to an implied ad hoc repeal of such rules [*Stitt*, 114 Wis.2d at 365]
- ▶ **Ozanne** later confirmed these principles specifically apply to the Open Meetings Law



Questions?