



Open Meetings Law FAQs

Q. What is the open meetings law?

A. The open meetings law refers to Wis. Stat. §§ 19.81-19.98. The purpose of the open meetings law is to increase transparency and openness in government. The open meetings law requires that all meetings of governmental bodies be preceded by public notice and held in places that are open and reasonably accessible to the public.

Q. Who is subject to the open meetings law?

A. Every meeting of a governmental body is subject to the open meetings law. A governmental body includes any “state or local agency, board, commission, committee, council, department, or public body corporate and politic created by constitution, statute, ordinance, rule or order...” See Wis. Stat. § 19.81(1). This would include town boards as well as their committees, commissions, boards, and sub-units.

Q. What constitutes a “meeting” of a governmental body?

A. Pursuant to Wis. Stat. § 19.82(2) a 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.” The Wisconsin courts provide a two-part test to determine whether a meeting has taken place. Both tests must be met for a meeting to be taking place. Firstly, the purpose test is met when members of a governmental body meet to conduct government business. If there is information gathering, discussion, or decision-making taking place, then the group is meeting for the purpose of conducting government business. The second test is the numbers test. The numbers test is met when there are enough members of the governmental body present to determine the outcome of an action. Under the open meetings law, if a majority of the governmental body is present, there is a presumption that a meeting is taking place. See § 19.82(2). However, there are some decisions (e.x. the town board voting to amend the budget) that require a two-thirds vote of a body to pass. Therefore, if just two members of a five person board, for example, were to privately discuss opposing a proposed budget amendment, they could determine the outcome of such a vote with less than a majority of the governing body. This is referred to as a “negative quorum” which would also violate the open meetings law.

Q. How is notice provided for a meeting of a governmental body?

A. Wis. Stat. § 19.84 requires that the governing body’s chief presiding officer or their designee provide separate notice for each of the body’s meetings. The notice must be provided at least 24 hours in advance of the meeting. In the event of an emergency, there is a good cause exception where a notice may be provided no less than 2 hours in advance of a meeting if a 24 hour notice is impossible or impractical. Notice must be provided to (1) the public; (2) any news media who have made a written request for your notices, *and* (3) either your town’s official newspaper or, if your town does not have an official newspaper, to at least one news medium likely to give notice to people in your area. Please note that the newspaper does not have to print the notice and you do not have to pay to publish the notice, but you must send the notice to the newspaper or other news source (whether they publish it or not). All three notice requirements must be met for every meeting of

the governmental body for there to be proper notice. State statutes should always be reviewed to ensure that all notice requirements are met.

Q. How does our town provide notice to the public?

Towns may provide notice to the public by either (1) posting in three public places; (2) posting in one public place and on the governmental body's website; or (3) by paid publication in a news medium likely to give notice to persons affected. See Wis. Stat. § 19.84(1)(b).

Q. How can we share information about upcoming matters or arrange meetings if we can only ever talk to each other at a properly noticed board meeting?

A. Please note that *one-way* communications like voicemail messages, letters, emails, etc. which do not involve back and forth conversations can often be used without violation of the open meetings law. For example, the chair might send out an email asking the board members to read an attachment prior to the next meeting so that an informed discussion can be had at that later time. It is good practice to preface such one-way communications with a reminder to the recipient not to respond so as to avoid the potential for an open meetings violation. Board members might also contact each other about purely administrative matters without violating the law. For example, inquiring whether a fellow board member is available for a special meeting on a certain date and simply responding with one's availability would not violate the law as no substantive town board business is being discussed.

Q. A quorum of our town board goes to the same church service every Sunday morning. Are we in violation of the open meetings law if we go to the same service?

A. Not necessarily as the purpose test may not be met. Chance gatherings are fine so long as town board members do NOT discuss government business. Remember, if a majority of the town board is present, there is a presumption that a government meeting is taking place.

Q. Do members of a governmental body have to be physically present for a meeting to be taking place?

A. No, there is no requirement that members of a governmental body be physically present for a "meeting" to be taking place. Phone calls, emails, social media, video conferencing, and text messages may also be considered "meetings" and be subject to the open meetings law. Members of governmental bodies should be cautious to not violate the open meetings law through electronic communications or through phone calls.

Q. How much detail are we required to provide on the meeting notice?

A. The meeting notice must be "reasonably likely to apprise members of the public" about what is going to be discussed and/or acted upon at the meeting. See Wis. Stat. § 19.84(2). It must also indicate if the governing body is planning to convene into closed session. Open ended agenda items, like "chairperson's report" or "other business", do not give the public any notice about what will actually be discussed. Instead, the town board should include specific topics such as an update on a road project or correspondence from a resident, etc. Anyone who is planning to give a report at a meeting should inform the person that is preparing the agenda with the specific topics that will be discussed in the report so that those items can be listed on the agenda. Providing proper notice is important because only items included on the notice can be discussed/acted upon. The meeting notice must also include the date, time, and place of the meeting. If the meeting is being held remotely, the notice must include instructions pertaining to how the public can attend electronically including call-in numbers, URLs, etc.