

# THE WISCONSIN OPEN MEETINGS LAW

**Wisconsin Department of Justice  
Office of the Attorney General  
Office of Open Government**

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# Introduction



# Wisconsin Open Meetings Law

- Wis. Stat. §§ 19.81 to 19.98
- Generally, the open meetings law requires that all meetings of governmental bodies:
  - must be preceded by **public notice**;
  - AND
  - must be held in a place that is **open** and **reasonably accessible** to all members of the public;
  - except in limited situations in which a **closed session** is specifically authorized.



# Public Policy

“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. § 19.81(1)



# Public Policy, continued

- The open meetings law is to be broadly interpreted to promote the policy of openness. See Wis. Stat. § 19.81(4).
- On close questions, courts will prefer an interpretation of the law that favors open government.
- Courts disfavor any interpretation that would facilitate evasion of the policy of openness.



# When Does the Open Meetings Law Apply?

- It applies to **meetings of governmental bodies.**
- The key terms, “governmental body” and “meeting,” are defined in Wis. Stat. § 19.82.



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# Governmental Bodies



# Governmental Body

- “‘Governmental body’ means a state or local agency, board, commission, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order . . . .” Wis. Stat. § 19.82(1).
- Translation:
  - Any kind of collective governmental entity (state or local level).
  - Created by constitution, statute, ordinance, rule or order.
  - Without regard to what that entity is called (*i.e.*, a board, commission, committee, council, etc.).





# Governmental Bodies Created by Order

- An order can include any directive—whether formal or informal—that creates a body and assigns it some governmental responsibilities. See 78 Op. Att'y Gen. 67 (1989).
- Such a directive may be issued by any governmental official or entity that has the power to delegate the governmental responsibilities in question.
- **Warning:**
  - This is a very fact-specific standard, so there are no bright-line rules.
  - DOJ's *Wisconsin Open Meetings Law Compliance Guide* contains lists of some of the kinds of entities that DOJ has advised are created by constitution, statute, ordinance, rule, or order.



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# Meetings



# 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.” Wis. Stat. § 19.82(1).



# Meetings | Key Concepts:

## The *Showers* Test

- The Wisconsin Supreme Court has established a two-part test, encompassing two requirements:
  - the **purpose** requirement
  - AND
  - the **numbers** requirement.
- *State ex rel. Newspapers v. Showers*, 135 Wis. 2d 77, 398 N.W.2d 154 (1987).



# Meetings | Key Concepts:

## The *Showers* Test, continued

- A meeting occurs whenever:
  - Members convene for the **purpose** of conducting governmental business,
- AND
- The **number** of members present is sufficient to determine the body's course of action.



# Meetings | Key Concepts:

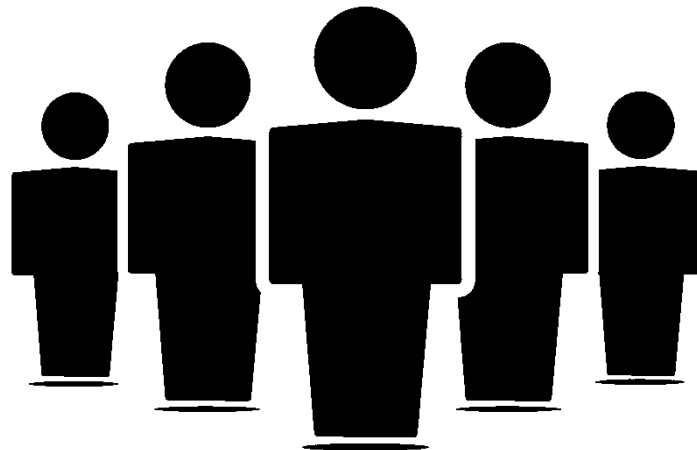
## “Purpose” Requirement

- “Conducting governmental business” is an expansive concept that is not limited to formal or final decision making.
- “Conducting governmental business” includes:
  - preliminary decisions
  - discussion
  - information gathering
  - interaction among members is **not** required
- *State ex rel. Badke v. Greendale Vill. Bd.*, 173 Wis. 2d 553, 494 N.W.2d 408 (1993).



# Meetings | Key Concepts: “Numbers” Requirement

- **Q:** How many members must gather to constitute a meeting?
- **A:** A sufficient number to determine a body’s course of action.
- **WARNING:** This number is not necessarily equal to a majority of the membership or to a quorum of the body.



# Meetings | Key Concepts:

## “Numbers” Requirement, continued

- A sufficient number of members to determine a body’s course of action can refer to either:
  - the affirmative power to pass an action
  - OR
  - the negative power to defeat an action.
- Sometimes referred to as a “**negative quorum.**”





# Meetings | Key Concepts: “Convening” of Members

- Members must convene for there to be a meeting.
- Not limited to face-to-face gatherings or physical presence together.
- Includes situations in which members are able to effectively communicate with each other and exercise the body’s authority.
- If members communicate without physically gathering together, the key question is:
  - To what extent do their communications resemble a face-to-face exchange?



# Meetings | Key Concepts:

## “Convening” of Members, continued

### ■ Written correspondence

- Circulation of one or more written documents among members of a body
- Generally, a “one-way” communication
- Any responses are spread out over time
- Courts are unlikely to find such written communication to be a “convening” of members.



# Meetings | Key Concepts: “Convening” of Members, continued

- Telephone conference calls, video conferences, etc.
  - Permit instantaneous verbal interaction among members
  - For practical purposes, equivalent to a physical gathering
  - If it passes the purpose and numbers tests, then it is a “meeting.” 69 Op. Att’y Gen. 143 (1980).



# Meetings | Key Concepts:

## “Convening” of Members, continued

- Other forms of electronic messaging

- Email, electronic discussion boards, instant messaging, social networking
- May or may not implicate the open meetings law
  - Depends on how they are used
- Technology creates a risk of private communications that should be conducted at public meetings.
  - Therefore, **caution** is advised.



# Meetings | Key Concepts:

## “Convening” of Members, continued

- Other forms of electronic messaging, continued

- Courts will likely consider:

- Number of participants

- Number of communications

- Time frame

- Extent of conversation-like interaction

- To minimize the risk of violations:

- Use only for one-way transmissions

- Do not send replies or minimize their content and distribution



# Meetings | Key Concepts: Serial or “Walking” Quorum

- A “meeting” can sometimes result from a series of gatherings among members of a body.
  - When this occurs, it is known as a serial or “walking” quorum.
- Elements of a “walking” quorum:
  - A series of gatherings among groups of members
  - Each smaller in size than a quorum
  - Agreement to act uniformly
  - In sufficient number to control the body



# Meetings | Key Concepts:

## Serial or “Walking” Quorum, continued

- The “walking” quorum concept is intended to prevent:
  - circumvention of the law through the use of an agent or surrogate to obtain collective agreements of members outside a public meeting.
- **Practical Tips:**
  - “Walking” quorum issues are complex and fact-specific.
  - Be prepared to consult with your legal counsel.



# Meetings | Key Concepts: Social or Chance Gathering

- A “meeting” does not include a **social or chance gathering** of members of a body, unless the gathering is intended to avoid compliance with the law. Wis. Stat. § 19.82(2).
- If one-half or more of the members are present at a gathering, they have the burden to prove that the gathering was social or chance and was not for the purpose of conducting governmental business. Wis. Stat. § 19.82(2).

