

## LEGAL NOTES

**Wisconsin Law: A Policy of Openness.** Library Board members must conduct their collective works as members of the Library Board in public and only after notice of their meetings or other gatherings. If six (6) Library Board members are together to discuss Library matters, whether together physically, by telephone or by a series of e-mail communications, they are presumptively meeting for purposes of the Open Meeting Law and must stop the discussion until a proper public notice and public location for the meeting can be established.

**Governmental Bodies.** A governmental body includes the Library Board and any “agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order” including any formally constituted subunit thereof. § 19.82(1), Wis. Stats.

**Meeting.** A meeting is 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.”

§ 19.82(2), Wis. Stats. If one-half or more members are present (The Library Board has a 6 member quorum), there is a rebuttable presumption that the gathering is a “meeting.” Even less than half of the members can constitute a “meeting.” A “negative quorum” is the number of members required to defeat an item scheduled to come before the governmental body. Even a series of meetings, phone calls, or e-mails between members to discuss board business, if involving as few as three (3) members, is a potential violation of the Open Meeting Law. The Open Meeting Law does provide an exception for social or chance gatherings not intended to avoid the Open Meeting Law. However, please advise the Library Director if you think there is the appearance of a violation at a social gathering so the Director can consider the matter and issue a public notice if warranted.

**Public Notice.** Public notice is provided to inform the public of the meeting topic and location and allow an opportunity to attend and observe as desired any meeting of a public body. Even if the public body has a lawful reason for entering closed session, it must notice the meeting, commence in open session and only then follow the statutory procedure to move into closed session. A few standards related to public notice are as follows:

- “Every meeting of a governmental body shall be preceded by public notice...” § 19.83(1), Wis. Stats.
- Notice must be provided to news media at least 24 hours before meeting, UNLESS, for “*good cause such notice is impossible or impractical,*” then at least 2 hours’ notice must be provided.
- Notice need not be published. It may be given verbally or in writing, although written notice is the normal and better practice. Notice is also posted in City Hall and other public places. Notice must contain “time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session.” (If subject matter is not included, it cannot be discussed.) § 19.84(2), Wis. Stats.

- Notice must “reasonably apprise” the public of the subject of any closed session with greater notice required in matters of heightened public interest, *State ex rel. Buswell v. Tomah Area School Dist*, 2007 WI 71, 732 N.W.2d 804.
- A government body cannot commence a meeting which must always be in open session, convene in closed session and then reconvene in open session within 12 hours thereafter, unless advance public notice is provided. § 19.85(2), Wis. Stats.

**Closed Session.** Meetings are to be held in open session, except as otherwise explicitly provided by the Open Meeting Law. § 19.83, Wis. Stats. Exemptions include those stated in § 19.85, Wis. Stats. including the following, which are most often used:

- Considering employment matters regarding a public employee over which the board exercises responsibility. § 19.85(1)(c), Wis. Stats.
- Negotiating purchase of property or whenever competitive or bargaining reasons otherwise require confidentiality. § 19.85(1)(e), Wis. Stats.
- Conferring with legal counsel with respect to litigation in which it is or is likely to become involved. § 19.85(1)(g), Wis. Stat.

The following procedures are used to move into closed session:

- Presiding officer announces the nature of the closed session by reading the public notice and statutory justification for closed session.
- Upon motion and second, a majority roll call vote is necessary to proceed to closed session. (Unanimous consent acceptable, but not preferred. *Schaeve*, 370 N.W.2d 271).

Voting in closed session is not expressly authorized by state statute and therefore discouraged, but according to Attorney General Opinion may occur when “clearly an integral part of the deliberations authorized to be conducted in closed sessions.”

Minutes of closed session record attendance, any votes taken and the time the session begins and ends. As with open session minutes, they are not a verbatim transcription.

- Notice is required to return to open session, as boards cannot meet in open session, convene in closed session and re-convene in open session within 12 hours thereafter.
- Some meetings must remain in open session (e.g., Board of Review, exchange of initial labor negotiation proposals, or action to ratify a collective bargaining agreement)

**Enforcement and Penalty.** Enforcement of the Open Meeting Law is through the office of the Attorney General or by the district attorney upon a verified complaint. § 19.97(1), Wis. Stats. If a person files a verified complaint and the district attorney does not take action within 20 days, the person may commence the action and recover costs and fees, including attorney fees, if he/she prevails. § 19.97(4), Wis. Stats. A judge may void action taken by the governmental body in violation of the Open Meeting Law. § 19.97(3), Wis. Stats. Each member in violation is subject to a penalty of \$25 to \$300. § 19.96, Wis. Stats.

**Advice.** The Library should contact the City Attorney regarding interpretation of the Open Meeting Law. The City Attorney may also consult with the Wisconsin Attorney General's office that provides opinions on the Open meeting Law to state agencies and municipalities.

*"All meetings of...local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times unless otherwise expressly provided by law." § 19.81(2), Wis. Stats.*

**Saving Library Board E-mails.** From a memo from the Eau Claire City Attorney's office: "The Public Records Law requires that authorities maintain and generally allow public access to its records. §19.31, et seq. Records include electronic documents and communications such as e-mails. §19.32(2). Records, however, do not include drafts, notes, preliminary computations, and like materials. §19.32(2). Records also do not include materials which are purely the personal property of the custodian and have no relation to his or her office. §19.32(2). Yet note that a preliminary document that is shared with others is not necessarily still considered a draft but may then constitute a record. *Journal/Sentinel v. Shorewood School Board*, 521 N.W.2d 165 (Ct. App. 1994).

E-mails that are drafts, brief notes, preliminary computations, scheduling inquiries or of a purely personal nature do not need to be archived or printed. Employees should realize that such e-mails remain subject to review.

Recipients of e-mails do not need to retain copies of e-mails they receive. Recipients of City-related e-mail from an outside originator (sender) that meets the above definition for archiving or printing should either respond to that e-mail and then save that original message and response as stated above or, if no response is necessary, save the original message."

For official Library email business, please use this general Library Board e-mail account: [libboard@eauclaire.lib.wi.us](mailto:libboard@eauclaire.lib.wi.us) to serve as a repository for this mail. Library Board members should include this address as a recipient when sending pertinent e-mail. It may be entered in either the TO, CC, or BC field. If you do this, e-mails are automatically saved in the library's electronic archives.