

The Library Board and the Open Meetings Law

This Trustee Essential covers:

- *The basics of compliance with Wisconsin's open meetings law*
- *When and how the board can legally conduct a closed session*

Wisconsin's open meetings law supports the principle that the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of government business. To this end, all meetings of all state and local government bodies (including library boards) must be held in places reasonably accessible to members of the public and must be open to the public, except as expressly provided by law. Wisconsin's open meetings law provides specific requirements for meeting notice, accessibility of meetings, the conduct of meetings, and legally holding closed sessions. Violations carry significant penalties, so careful adherence to these requirements is essential.

Meeting notice

Public notice of all library board and library board committee meetings is required at least 24 hours in advance of any meeting, except in cases of emergency, when at least two hours notice is required. Notice must be provided to the official local newspaper (if you have one) and to any news organization that has requested notice. If your municipality has no official newspaper, notice must be provided to a news organization likely to give notice in the area. The meeting notice must also be posted in at least one public place, and preferably several. Good locations might be the library, the city/village/town hall, and the post office.

The meeting notice must contain the time, date, place, and *all* subjects to be discussed and/or acted upon at the meeting. The notice should also indicate a phone number (including a TDD number if you have one) that individuals with disabilities can call if they need accommodations to attend the meeting. (See *Trustee Essential #4: Effective Board Meetings and Trustee Participation* for a sample board meeting notice and agenda.)

Location and conduct of meetings

Meetings must be held in a place reasonably accessible to the public. It is strongly recommended that you provide barrier-free access to the meeting room. The board must make a reasonable effort to accommodate any person desiring to record, film, or photograph the meeting as long as this will not interfere with the conduct of the meeting or the rights of the participants. The board may disallow recording of a closed session.

Some boards list an "other business" item on the meeting agenda to handle unforeseen issues that may arise after the agenda has been prepared. This is not advisable and can lead to open meetings law violations. Emergency items can be added to an amended meeting notice that is posted and provided to the media at least two hours in advance of the meeting; however, it is better to postpone consideration of late-arising issues until the next meeting, if possible.

Discussion and consideration of issues at a meeting must be limited to subjects listed in the public notice. However, if the meeting agenda listed a “public comment” period, the board may briefly discuss issues raised by the public during that period.

All board discussions and actions must be conducted during properly noticed meetings open to the public, except that closed sessions are allowed for specific purposes, as long as the legally required procedures have been followed to conduct a closed session.

Email, "walking quorums" and other potential open meetings violations

Email can be a time-saving communication tool and a wonderful convenience. However, the use of email to communicate among members of a library board may raise open meetings law concerns.

Under the Wisconsin open meetings law, a “meeting” of a governmental body occurs whenever: (1) there is a purpose to engage in governmental business, and (2) the number of members of the body involved in the “meeting” is sufficient to determine the body’s course of action. Based on this definition, Wisconsin courts have ruled that the open meetings law applies when a series of gatherings of groups of members of the governmental body (or “walking quorum”), each less than quorum size, agree to act together in sufficient number to reach a quorum.

Using email, it is quite possible that a quorum of a governmental body may receive a message – and therefore may receive information on a subject within the body’s jurisdiction – in an almost real-time basis, the way they would receive it in a meeting of the body. Such communications among members of a library board must take place in a legally noticed and a legally constituted meeting of the library board.

Because of the dangers posed by email, the Wisconsin Attorney General strongly discourages the members of any governmental body from using email to communicate about issues within the body’s realm of authority. (An Attorney General has published the 2003 Open Meetings Law Compliance Guide) The use of email by a library director to send information to library board members (such as a meeting agenda and other meeting materials) would not implicate the open meetings law.

An email concerning library business sent to or by a library board member (or library staff member) is subject to the requirements of the Wisconsin public records law. For more on the requirements of the Wisconsin public records law see *Trustee Essential 15: The Library Board and the Public Records Law*.

Meeting minutes

Wisconsin law requires that meeting minutes be kept and be made available to the public as required by the Public Records Law (see *Trustee Essential #15: The Library Board and the Public Records Law* for more information). At a minimum, meeting minutes must indicate the board members present, all motions that were made (except those that were withdrawn) and the result of any votes taken. Except for votes on the election of board officers, any board member can request that a roll call vote be taken on any vote, with the vote of each member recorded in the minutes.

Legal reasons for conducting a closed session

The specific statutory exemptions that may allow for a closed session are in Wisconsin Statutes Section 19.85. Wisconsin Statutes Chapter 19 is available in PDF format at <http://www.legis.state.wi.us/statutes/Stat0019.pdf>.

The most common reason for a closed session is to consider personnel-related issues. For most personnel-related issues, the relevant exemption is provided in Wisconsin Statutes Section 19.85(1)(c), which allows closed sessions when the employment, promotion, compensation, or performance evaluation data of any public employee under the jurisdiction of the particular government body is being considered.

Boards should be aware that if they will be considering the dismissal, demotion, or discipline of an employee, a closed session is possible under Section 19.85(1)(b), but the board must give the employee notice of any evidentiary hearing to be held prior to final action and to any meeting at which final action might be taken. The notice to the employee must include a statement that the employee can demand that the evidentiary hearing or meeting be held in open session.

In addition to the two personnel-related exemptions discussed above, closed sessions can be held for certain other reasons, including the following:

- Deliberating or negotiating the purchase of public properties, the investment of public funds, or the conduct of other specified public business, whenever competitive or bargaining reasons require a closed session.
- Preliminary consideration of specific personnel problems or the investigation of charges that would negatively affect the reputation of the person involved.
- Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.
- Consideration of requests for confidential written advice from an ethics board.

A closed session is *not* allowed for purposes of considering general personnel policies or general staff compensation decisions, such as the general library staff salary scale. Employee compensation discussions may be closed only when they concern a *particular* employee.

A closed session is allowed to formulate collective bargaining strategy, but board deliberations leading to approval of a tentative collective bargaining agreement, as well as the final ratification vote, must be held in open session.

Procedures for holding a closed session

The following steps are **all** required for a library board (or any other government body) to conduct a closed session legally:

1. The meeting notice **must** indicate any contemplated closed session, the subject matter of the closed session discussion, and the specific statutory provision allowing a closed session. If a closed session was not planned, a board may still go into closed session on

any subject contained in the meeting notice, whether the notice provides for a closed session or not, if the board follows the procedures below.

2. The board must first convene in open session.
3. The chief presiding officer must announce to all present at the meeting the intention of going into closed session and the purpose of the closed session.
4. The chief presiding officer must state the specific section of the law, by statute number (e.g., Section 19.85(1)(c) for a director evaluation session), which allows for the closed meeting. This announcement should be recorded in the minutes. It is good practice for library staff to prepare in advance the exact wording of the announcement to be used.
5. Going into closed session requires a motion, second, and **roll call vote** to reconvene in closed session. The vote of each board member on this motion must be recorded in the minutes and preserved. A majority vote is required to reconvene in closed session.
6. Attendance at the closed session is limited to the board, necessary staff, and any other persons whose presence is needed for the business at hand.
7. Closed session discussions must be limited to the subject announced in the meeting notice and the chief presiding officer's announcement.
8. Certain votes **may possibly** be legally taken in closed session. But it is a better practice and safer legally to take votes after reconvening into open session. At any rate, all board actions, whether taken in open or closed session, must be recorded in the minutes and be open to public inspection. Secret ballots are allowed only for the election of board officers.
9. The board may legally reconvene in open session as long as that intent was noted in the public notice of the meeting. If there was no advance public notice given that the board intended to reconvene in open session, the board is required to wait at least 12 hours after the completion of the closed session before reconvening in open session.

Avoiding legal penalties

Any library board member who knowingly attends a meeting in violation of the open meetings law will be required to forfeit, without reimbursement from the library or municipality, not less than \$25 and as much as \$300 per violation. In addition, a court may void board actions taken in an illegal closed session. You are not legally liable if you voted against those actions the board took which caused the violation. Therefore, it is recommended that if you believe the purpose stated for the motion to close a meeting is not legally sufficient you should vote against the motion. In addition, you should confirm that proper notice has been given for each board meeting.

Discussion Questions:

1. What purposes does Wisconsin's open meetings law serve?
2. Is it legal to have a meeting agenda item for "other business" or "miscellaneous business"? Why or why not?
3. How might the required recorded roll call vote to hold a closed session protect you from personal liability for an open meetings law violation?

Sources of Additional Information:

Your library system staff (see *Trustee Tool B: Library System Map and Contact Information*)

Public records / open meetings information from the Wisconsin Department of Justice (at <http://www.doj.state.wi.us/dls/goal.asp#pubrec>)

The League of Wisconsin Municipalities' very detailed discussions of Wisconsin's open meetings law available at http://www.lwm-info.org/index.asp?Type=B_BASIC&SEC={1F68D992-EE9A-4FA9-A0CC-235F6BE6C21A}.

Your municipal attorney, your district attorney, or the Wisconsin Attorney General.

This Trustee Essential provides only a general outline of the law and should not be construed as legal advice in individual or specific cases where additional facts might support a different or more qualified conclusion.

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