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News For School and Municipal Clients

Agenda Items and “Walking Quorums”

The open meetings law applies to every “meeting” of a governmental body. By definition, a “meeting” occurs whenever members of a governmental body convene for the purpose of exercising the duties delegated to the body. The requirements of the open meetings law, however, also extend to walking quorums. A “walking quorum” occurs when there is a series of gatherings (each less than a quorum in size) among separate groups of members of a governmental body, and these groups effectively agree to act together on an issue in sufficient number to reach a quorum.

Board members and administrators often raise questions regarding when a “walking quorum” will be formed. Two recent letters from the Wisconsin Department of Justice address this issue. Such informal letters are not statements of the law, but instead are interpretations of the law by the Department. However, because the Department enforces the open meetings law, these interpretations provide important guidance.

One letter addressed an alleged open meetings law violation by the Board of Trustees of the Village of Howard. The village had an ordinance that allowed members of the board to jointly request additions to meeting agendas. Specifically, the ordinance stated that if a sufficient number of members sign a

form requesting the addition of an agenda item, and the form is delivered to the village clerk, the requested item must appear on the board agenda. Four of the members of the board signed a form requesting the addition of agenda items that proposed discussion and action on votes of confidence or no-confidence motions regarding two village officials. A fifth member of the board (who did not sign the form) transmitted the signed request to the clerk’s office by email.

The Department of Justice concluded that the facts did not describe a walking quorum because the element of agreement was missing. According to the Department, even if a quorum of members sign a document one after another, a walking quorum does not occur unless the members (1) have engaged in discussion and debate outside the context of a properly noticed meeting, and (2) have agreed with each other to act in some uniform fashion. In this case, the four board members who signed the request form were never alleged to have engaged in any discussion beyond the indication of support for having the items placed on the agenda. Further, there was no allegation that emails were in any way used to conduct a back-and-forth exchange of views among members of the body about the proposed agenda items. Without more, no open meetings law violation occurred.

A second letter involved an alleged open meetings law violation by the Monroe County Board. According to the letter, thirteen of Monroe County's twenty-four county board supervisors signed a petition to bring a resolution to the board for consideration. A county board rule allowed this procedure if a petition was signed by at least five county board members. The resolution proposed a number of changes, including restructuring the personnel department and eliminating the position of personnel director. One board supervisor carried the resolution and petition to the twelve supervisors, each who signed the petition, and then delivered the resolution and petition to the clerk.

The Department of Justice concluded that the supervisors in Monroe County did not violate the open meetings law. Similar to the situation in Village of Howard, there was no allegation that any of the thirteen supervisors who signed the petition reached any agreement to act uniformly for or against the proposed resolution. In addition, there was no allegation that any of the thirteen members engaged in substantive discussion about the resolution. According to the letter, the only uniformity reflected by the thirteen signatures was a shared view that the substantive issues presented by the resolution should be considered by the full board membership at a duly noticed meeting. An agreement that a subject should be considered is not the same as

an agreement about what course of action is to be taken and, therefore, does not violate the open meetings law.

These letters serve as reminders that members of governmental bodies subject themselves to close scrutiny and possible prosecution whenever a majority is involved in any action connected to government business that takes place outside the context of a duly noticed meeting. Although these letters show that board members will likely not violate the law merely by agreeing to include an issue on the board agenda, the outcomes may have been very different if the board members had engaged in any discussion or email exchanges concerning the substantive issues on the agenda.

As a result, it is advisable for board members to avoid any conduct involving governmental business outside of meetings. In both letters, the Department of Justice advised that a better method for submitting agenda requests would be for a single member to send such a request to the administrator, who could then provide all other members with written notice that they could independently communicate their support of that request directly to the office of the administrator. Such a procedure minimizes inter-member communications and, as a result, reduces any possible appearance of impropriety.

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