
FOR YOUR INFORMATION

March 2008

News For School and Municipal Clients

Considerations For Meetings Convened In Closed Session

School board members and administrators often raise questions regarding the rules and procedures for meeting in closed session under the Wisconsin Open Meetings Law. Questions often concern whether the board has the authority to convene a part of its meeting in closed session, whether the board may vote in closed session, and whether the board must keep minutes of the closed session. This FYI is intended to address these questions.

Authority to Convene in Closed. At the outset, it is important to note that the Open Meetings Law does not *require* that a board convene in closed session to discuss certain subject matters. Instead, the law *authorizes* a board to meet in closed session if the board deems it appropriate and follows all procedural requirements, including public notice, and if the subject matter discussed falls within one of the thirteen exemptions to the requirement that business be conducted in open session.

The exemptions include, among others, considering various employment matters, conducting public business with competitive or bargaining implications, and conferring with legal counsel concerning litigation. The exemptions must be strictly construed. If there is any doubt about whether the subject matter of a meeting satisfies an exemption, it is advisable to hold the meeting in open session.

Notice for Closed Session. The notice for a closed session may not be any less specific than the notice for an open session. It should

contain a description of the subject matter of the closed session in such a form that it is reasonably likely to apprise members of the public and the media about the matter that will be discussed, and should include the statutory provision that authorizes the governmental body to hold a closed session.

Motion To Close The Meeting. A school board must always begin a meeting in open session, even if the only agenda item will be discussed in closed session. In order to convene in closed session, a motion must be made to close the meeting, and this motion must pass by a majority vote. The vote of each school board member must be taken and recorded in the minutes.

Before any motion to move into closed session, the chief presiding officer must first announce in open session the nature of the business to be discussed in closed session and the specific statutory exemption(s) which authorizes the closed session. This announcement must also be entered into the minutes. It is not sufficient for the chief presiding officer to simply state the statutory citation as the basis for the closed session. Instead, he or she must describe the subject matter to be discussed in closed session with specificity in order to give the members of the governmental body the ability to vote intelligently on the motion.

Voting in Closed Session. School boards are authorized to vote in closed session, but only on matters that are the legitimate subject of

consideration or deliberation in closed session. The attorney general has advised, however, that a board should vote in open session unless doing so would compromise the need for the closed session. In this respect, a school board may want to err on the side of caution and notice the meeting so that the board may convene in open after the closed session so that it may take action on any item discussed in closed session, if necessary.

State statutes do not prohibit adjournment in closed session; however, school boards should not adjourn in closed session if the public notice specifies that the board will reconvene in open session. State statutes require specific notice to reconvene in open session following a closed session.

Recording of Minutes. The Wisconsin Open Meetings Law only requires, for both open and closed sessions, that motions and roll call votes be recorded, preserved, and open to public inspection to the extent it is prescribed in the state's public records law. Other than this requirement, the Open Meetings Law does not require that the school board keep minutes of the discussion during closed session of a meeting governed by the law. Other statutes may place requirements on the school board to keep such minutes in special circumstances, but the Open Meetings Law does not require it.

Publication of Minutes. The minutes of a school board meeting must also be published. In particular, state statutes require that the "proceedings" of a school board meeting must be published within 45 days after the meeting as a class I notice in a newspaper published in the district or by a district-wide distribution

prepared and directed by the school board and paid out of school funds. For purposes of publication, the "proceedings" must include the substance of every official action taken by the board and a statement of receipts and expenditures in the aggregate.

The Attorney General has taken the position that these publication requirements apply to proceedings conducted in closed, as well as open, sessions. However, according to the Attorney General, the board should keep any portion of the recorded proceedings of the closed session confidential, if the public interest demands continued confidential treatment.

Disclosure of Minutes. Minutes of school board meetings, open or closed, are public records which must generally be provided to members of the public upon request. Minutes from a closed session meeting are not exempt from this requirement simply because the meeting was a valid closed session meeting. Instead, the custodian of the minutes must weigh the competing interests involved and determine whether permitting inspection is required.

The records custodian may refuse to permit the inspection of records of closed sessions if the need for secrecy continues and if sufficient reason is given consistent with the law. In many cases, the need to keep confidential the minutes of a closed session may not extend past the closed meeting itself. In other cases, confidentiality may be required indefinitely, such as in the case of minutes which refer to pupil records.

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