Minnesota Open Meeting Law

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PRESENTED BY

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The information contained in this document is intended for general information purposes only and does not constitute legal or coverage advice on any specific matter.
The Minnesota Open Meeting Law

• Found in Minnesota Statutes Chapter 13D
• Presumes all meetings of a public entity’s governing body are open to the public unless the governing body has the statutory authority to close the meeting
Purpose of the Open Meeting Law

- Prohibit actions from being taken at a secret meeting where it is impossible for the public to become fully informed about a public body’s decision or to detect improper influences

- To assure the public’s right to be informed
- To afford the public an opportunity to present its views to the public body
Application

Open Meeting Law
Applies to Meetings of the Governing Body of:

- School district however organized
- Unorganized territory
- County
- Statutory or home rule charter city
- Town
- Other public body
Which Meetings?

• All meetings of the public body as a whole
• Committees or subcommittees if:
  • Public body members comprise a quorum of the committee or subcommittee; or
  • Public body delegated authority to the committee or subcommittee
Informational Gatherings

- OML applies to informational gatherings, such as:
  - Retreats
  - Executive sessions
  - Public hearings
  - Work sessions on matters currently facing or that might come before the body

- Minnesota Attorney General: Attendance at training programs designed for board members or officials in general does not violate the law if the members do not discuss specific municipal business
Social Gatherings

• OML does not apply to a quorum that comes together by chance or at a social gathering

• The quorum **may not** discuss or receive information about official business
Serial Meetings

• Serial meetings must not be used to build a consensus outside of a public meeting
• Includes telephone conversations, e-mails, and texting
Hypothetical

A highly contentious land use issue is on the agenda at the next County Board meeting. Commissioner Doe has a unique, but potentially controversial solution. However, he does not want to propose it if he doesn’t have the votes to get his motion passed. Can he sound out the other commissioners on his proposal prior to the meeting?
Hypothetical

After interviews in an open meeting, the County Board voted to authorize the HR Director to offer the county administrator position to their top candidate.

The candidate turned down the offer. The next board meeting is not scheduled for two weeks.

The HR Director contacted each of the commissioners individually to see if he should offer the position to the second candidate. They all agree.

Is this an Open Meeting Law violation?
Use of social media: The use of social media by members of a public body does not violate this chapter so long as the social media use is limited to exchanges with all members of the general public. For purposes of this section, e-mail is not considered a type of social media.
Meeting Types

Open Meeting Law
Meeting Types

• Regular meetings
• Special meetings
• Emergency meetings
• Recessed and continued meetings
Regular Meetings

- Conducted routinely or on a prescribed schedule
- Schedule of the board’s regular meetings must be kept on file at its primary office and include times and locations

- If a meeting is at a time or location inconsistent with the schedule, must give notice of the changes in the same manner as a special meeting
Special Meetings

• Meetings not conducted as part of the normal routine but planned far enough in advance to be scheduled
Special Meeting Notice

• Posted with the date, time, place and purpose of the meeting on the principal bulletin board or door of its usual meeting room, and

• Mailed or delivered to people who have filed a written request for special meeting notices

• Posted and mailed/delivered at least three days before the meeting

• Alternative to mailing: may publish notice in the official newspaper three days prior to the special meeting
Emergency Meetings

• Meetings called because of circumstances that require immediate attention in the public body’s judgment
Emergency Meeting Notice

• Must make good faith effort to provide notice to news media that have filed a written request with telephone number

• Notice must include date, time, place and explanation of subject of the meeting

• Must also give notice by telephone or other reasonable method to members of the public body
Recessed and Continued Meetings

• No published or mailed notice is necessary if:
  • The time and place of the meeting was established during the previous meeting and
  • It was recorded in the minutes of that meeting
Using Technology to Meet Open Meeting Law
Using Technology to Meet

• Interactive television? - Yes, if certain conditions are met

• Telephone or other electronic means? – Usually no, except in rare circumstances and when certain conditions are met.
Four Conditions for Meeting via Interactive Television – Minn. Stat. §13.02

• All members of the body participating in the meeting, wherever their physical location, can hear and see one another as well as hear and see all discussion occurring at any location at which at least one member is present;

• Members of the public present at the regular meeting location can hear and see all discussions, testimony and votes of the public body;

• At least one member of the public body is physically present at the regular meeting location; and

• Each location at which a member of the public body is present is open and accessible to the public
Other Requirements for Meeting via Interactive Television

• Must give notice of meeting location and any site where a board member will be participating in the meeting by interactive television

• To the extent practical, a public body shall allow a person to monitor the meeting electronically from a remote location
Limited Ability to Meet by Telephone or Other Electronic Means - Minn. Stat. §13D.021

• Used only when an in-person meeting or a meeting conducted under the interactive television provision is not practical or prudent because of:
  • A health pandemic
  • An emergency declared under Minnesota Statutes Chapter 12

• Board must comply with statutory conditions when holding a meeting by telephone

NOTE: Minn. Stat. § 13D.015 only applies to a state agency, board, commission, or department, and a statewide public pension plan.
Closing Meetings

Open Meeting Law
Must Be Closed

- Preliminary consideration of allegations or charges against an individual subject to the board’s authority:
  - Must be open if the individual who is the subject of the allegations/charges requests it to be
  - If body concludes that discipline may be warranted as a result, further meetings relating to the specific allegations/charges held after that conclusion is reached must be open
Must Be Closed

• Data identifying alleged victims or reporters of:
  • Criminal sexual conduct
  • Domestic abuse
  • Maltreatment of minors or vulnerable adults
Must Be Closed

• Active criminal investigation data as defined in Minnesota Statutes, Section 13.82, Subdivision 7 or
• Internal affairs data relating to allegations of law enforcement personnel
Must Be Closed

• Certain not public data under MGDPA for:
  • Education (Minn. Stat. § 13.32)
  • Health (Minn. Stat. § 13.3805, subd. 1)
  • Medical (Minn. Stat. § 13.384)
  • Welfare (Minn. Stat. § 13.46, subd. 7)
  • Mental health (Minn. Stat. § 13.46, subd. 2)

• Medical records governed by Minnesota Statutes, Sections 144.291 to 144.298

• Expressly required by other law
May Be Closed

• Labor negotiations
• Performance evaluations: Must be open upon request of employee being evaluated
• Attorney-client privilege
May Be Closed

• To determine the asking price for real or personal property to be sold by the entity
• To review confidential or protected nonpublic appraisal data under Minnesota Statutes, Section 13.44, Subdivision 3
• To develop or consider offers or counteroffers for the purchase or sale of property
May Be Closed

• Security briefings and reports
• Issues related to security systems
• Security deficiencies in or recommendations regarding public services, infrastructure and facilities
• Emergency response procedures
Open Meeting and Not Public Data

• Unless required to be closed, not public data may be discussed at an open meeting if the disclosure:
  • Relates to a matter within the scope of the public body’s authority
  • Is reasonably necessary to conduct the business or agenda item before the public body

• Any data discussed retains its original classification
Procedures for Closing a Meeting

Open Meeting Law
Closing a Meeting

• A motion to close the meeting must be made in open session:
  • Reference applicable statutory provision
  • Describe subject to be discussed
• Discussion in the closed meeting should be limited to the subject of the closing
• Withhold any materials discussed in closed session from public
Recording Closed Meetings

• Closed meetings must be recorded
• Does not apply to meetings closed under attorney-client privilege
• Recordings must be preserved for at least three years, unless another period is provided by an existing law
Enforcement, Penalties and Coverage

Open Meeting Law
Penalties

• Board member(s) may be personally fined up to $300 for each violation if a court finds intentional violation of the OML

• Fines may not be paid by the public body

• If a board member is found to have intentionally violated the law in three or more separate and unrelated actions, the board member may forfeit their further right to serve on the board
Penalties

• Board member(s) may be ordered to pay costs, disbursements and attorney fees up to $13,000 to claimant

• Public body may choose to indemnify the board member(s) for these expenses

• Monetary penalties and attorney fees awarded only if intent to violate is found
MCIT Coverage

• Pays defense attorney fees and defense costs associated with defending an OML claim:
  • Excludes fines imposed under the OML
  • Excludes costs, disbursements and attorney fees awarded to a claimant
When in Doubt

• Notice the meeting and comply with other Open Meeting Law requirements
If Questions Arise

• Consult with legal counsel
• Seek an opinion from the commissioner of the Department of Administration with the assistance of legal counsel
• Check resources available on the Dept. of Administration’s website: mn.gov/admin/data-practices or the MCIT website: mcit.org
Discussion

Ask Questions and Share Experiences