Successfully Navigating Open Meetings

County Board Meetings
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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

• 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

Which Meetings?

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

• OML applies to informational gatherings, such as:
  o Retreats
  o Executive sessions
  o Public hearings
  o 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

Hypothetical

• Each spring, the county board, the county administrator and the county engineer take a road tour throughout the county.
• During the tour, the county engineer points out coming projects, discusses completed and ongoing projects, and answers questions as they arise.
• The local newspaper wants to send a reporter on the road tour.
• What is your response?
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

Hypothetical

- The county administrator is getting married.
- The entire county board is invited to the wedding reception.
- All of the commissioners plan to attend.
- *Is this a problem?*
Hypothetical continued

- At the wedding reception, the commissioners are seated at the same table for dinner.
- *Is this a problem? If so, how do you handle it?*
- The bride’s uncle (a county resident) approaches the table to discuss an issue he has with the county’s land use ordinance.
- *Is this a problem? If so, how do you handle it?*

Serial Meetings

- Serial meetings must not be used to build a consensus outside of a public meeting
- Includes telephone conversations, e-mails, 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 the 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 a problem?
Meeting Types

Open Meeting Law

- 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
Public Participation at County Board Meetings

Public Comment Period at Board Meetings

• Not required by law
• Discretion of the county
• Typically at either beginning or ending of meeting
• Consistency
Establish Rules

• Rules help manage the process successfully
• Limitations on types of rules that can be enacted

First Amendment

• Ability to regulate speech depends on the type of forum created
• Types of forums:
  o Traditional public forum
  o Designated public forum
  o Limited public forum
  o Nonpublic forum
Traditional Public and Designated Public Forums

• May only establish content-neutral restrictions related to:
  o Time
  o Place
  o Manner
• Narrowly tailored to serve a compelling government interest
• Leave open alternate channels for public communication

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
• 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
Hypothetical

Eagle County Board plans to conduct a personnel evaluation of the county coordinator.

• Does the county coordinator have to know about the evaluation?
• May the board close the meeting?
• What if the county coordinator objects to closing the meeting?

Hypothetical

• Sparrow County has decided to terminate an employee for poor performance.
• Prior to doing so, however, the board would like to consult with the county attorney in a closed session.
• Is this permissible under the Open Meeting Law?
Procedures for Closing a Meeting

Open Meeting Law

Closing a Meeting

• A motion to close the meeting must be made in open session:
  o Reference applicable statutory provision
  o 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
Using Technology to Meet

- Interactive television?
  - Yes, if comply with statute provisions
- Telephone or other electronic means?
  - Usually no.
  - **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
  - Must comply with statute provisions

Practice Point

Minnesota Statutes, Section 13D.015 permitting telephone meetings applies only to a state agency, board, commission or department and a statewide public pension plan.
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 his/her 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
  - Department of Administration’s website: MN.gov/admin/data-practices
  - MCIT website: MCIT.org/resource/ (select “Open Meeting Law” category)
Discussion
Ask Questions and Share Experiences