

COVID-19
AND THE
OPEN
MEETINGS
LAW

Wisconsin Department of Justice

Office of Open Government

University of Wisconsin-Madison, Division of Extension

May 12, 2020

Effective Virtual Public Meetings During the Covid-19
Pandemic Webinar

PURPOSE OF THE OPEN MEETINGS LAW

- “Transparency and oversight are essential to honest, ethical governance.” *John K. MacIver Inst. for Pub. Policy, Inc. v. Erpenbach*, 2014 WI App 49, ¶ 32, 354 Wis. 2d 61, 848 N.W.2d 862
- **Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98**
 - The purpose of the open meetings law is to ensure openness
 - Only a few limited exemptions permit confidentiality
 - The open meetings law is to be broadly interpreted to promote openness
- Wis. Stat. § 19.81(1)
 - “In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that **the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.**”



ESSENTIALS

- Generally, the open meetings law requires that all meetings of governmental bodies:
 - Must be preceded by public notice and
 - Must be held in a place that is open and reasonably accessible to all members of the public
 - Except in limited situations in which a closed session is specifically authorized



DOJ GUIDANCE ON REMOTE MEETINGS

- DOJ's past guidance on remote meetings stated that telephone conference calls and video conferences were acceptable means of conducting meetings.
- However, past guidance envisioned a physical place where members of the public could go to hear the telephone conference call or view the video conference.
 - The current public health situation and guidance on social distancing have made this challenging.
- As the public health situation developed and various orders were issued by the government, DOJ began receiving questions regarding the application of the open meetings law during the public health emergency.
- OOG issued guidance to address the inquiries.
 - Two advisories:
 - March 16, 2020 – provided key guidance on holding remote meetings
 - March 20, 2020 – offered additional information addressing technological and practical issues
 - Tips on holding open meetings posted on DOJ Office of Open Government website.



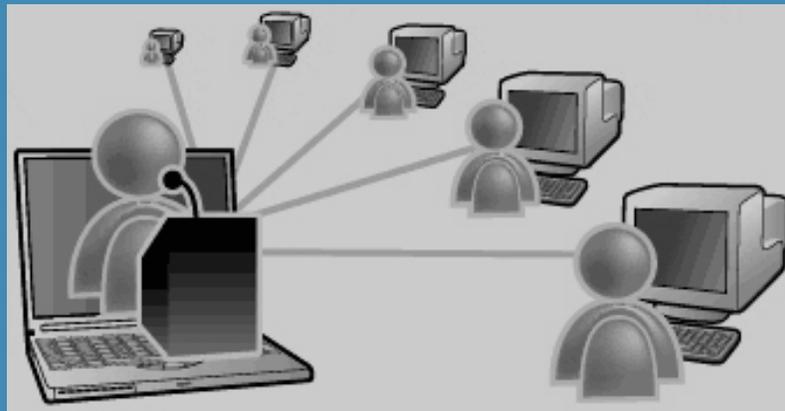
COVID-19 ADVISORIES

- The law requires meetings to be held in places “**reasonably accessible**” to the members of the public and open to all citizens at all times unless otherwise provided by law. Wis. Stat. § 19.81(2).
 - Under the present circumstances, governmental bodies can typically meet their open meetings law obligations while practicing social distancing by conducting meetings via **telephone or video conference calls**.
 - However, the **public must be provided an effective way to monitor the calls**.
- A governmental body must provide the public with the **information on how to join the meeting remotely**.
 - **Notices** should include instructions on how to attend, including any required call-in number and/or log-in information.



COVID-19 ADVISORIES, CONTINUED

- Bodies should be mindful that it may be burdensome or infeasible for some members of the public to attend remotely.
 - Bodies should facilitate reasonable access to meetings for such individuals.
- Bodies that conduct meetings via videoconference should strongly consider including an alternate telephone option for those without internet access.



COVID-19 ADVISORIES, CONTINUED

- For certain types of meetings, only providing remote access may not always be permissible.
 - For example:
 - Telephone conferences involving complex plans, drawings, or charts
 - When the demeanor of a witness is significant
- The type of access that constitutes **reasonable access** in the present circumstances may be different from the type of access required in other circumstances.
 - Ultimately, whether a meeting is “reasonably accessible” is a factual question that must be determined on a case-by-case basis.



COVID-19 ADVISORIES, CONTINUED

- The body chair should encourage body members to identify themselves before speaking.
- Body members should refrain from speaking over one another.
- Bodies should post a recording of a meeting on its website as soon as practicable after a meeting concludes.
- **Bottom line**: Bodies that meet remotely can and should consider steps to ensure that their meetings remain open and accessible to the public.



INQUIRIES RECEIVED BY THE OOG

- Over the past two months, the number of calls to the OOG's Public Records-Open Meetings (PROM) help line are approximately double the average number.
 - Majority of calls are related to open meetings and COVID-19.
- Initial calls:
 - Most questions sought information on whether bodies could meet remotely, and if so, how.
- More recent calls:
 - Increase in concerns over bodies holding physical meetings.
 - No options permitting the public to attend remotely.
 - There have been some concerns about public comment periods.
 - Some in which only in-person attendees have been permitted to participate.



BEST PRACTICES

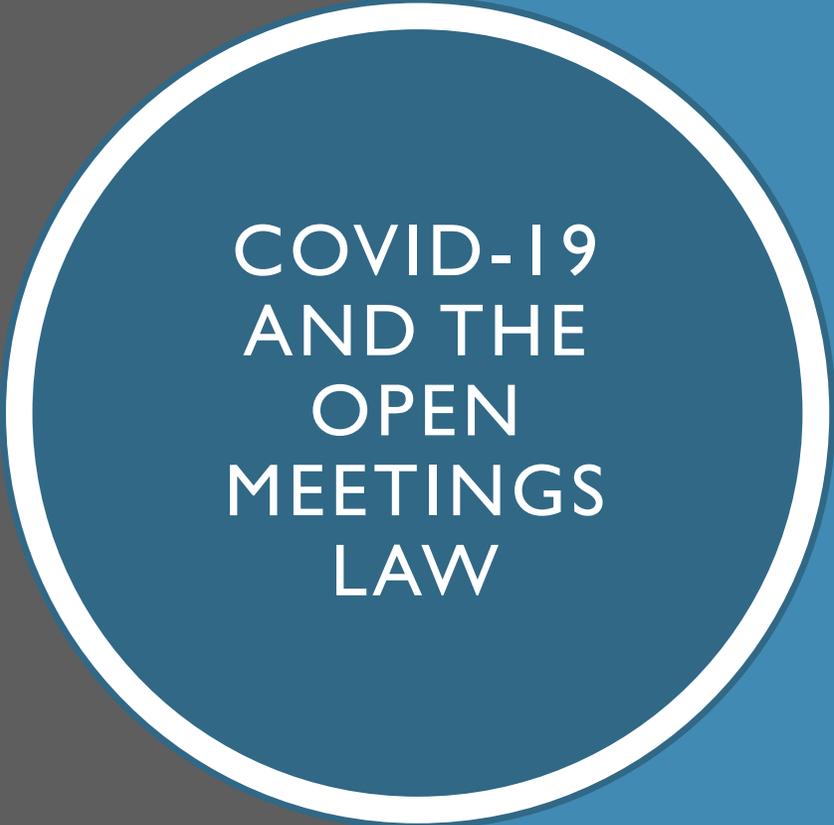
- It is advisable for bodies to keep the public health situation, government guidance, and health concerns of the public in mind when making decisions regarding conducting open meetings.
- Considerations:
 - Is the governmental business to be discussed related to an essential government function?
 - Is it feasible to postpone nonessential governmental business?
 - What accommodations can be made to facilitate reasonable access for individuals who wish to observe the meeting?
- **Bottom line:** It is important to focus on the purpose of the open meetings law—to ensure government openness and transparency—during this public health emergency.



FURTHER INFORMATION

- DOJ Office of Open Government – Open Government Resources During COVID-19:
<https://www.doj.state.wi.us/office-open-government/office-open-government>
- DOJ Compliance Guides and other resources are also available via the DOJ Office of Open Government webpage.
- Contact the Office of Open Government:
 - Write: Office of Open Government
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857
 - Tel: (608) 267-2220
 - Email: fergusonpm@doj.state.wi.us





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