



OPEN MEETING LAW FOR COUNTY COMMISSIONERS

New Commissioner Training

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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

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

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

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



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:
 - Traditional public forum
 - Designated public forum
 - Limited public forum
 - Nonpublic forum

Traditional Public and Designated Public Forums

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



Closing Meetings

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

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



Using Technology to Meet

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.

Statutes Permitting Remote Meetings



Minn. Stat. § 13D.02: Other Entity Meetings by Interactive Technology

- Can be used at any time
- Interactive technology (video):
Must be able to both **hear and see**
all discussion, testimony and votes
at all board member locations



Minn. Stat. § 13D.021: Meetings During Pandemic or Chapter 12 Emergency

- Can be used when in-person meeting or a meeting conducted under 13D.02 is not practical or prudent because of a **health pandemic or an Chapter 12 emergency**
- Can be telephone or interactive technology

Determining Quorum and Participating



Minn. Stat. § 13D.02: Other Entity Meetings by Interactive Technology

- Each board member participating in a meeting by interactive technology is considered present at the meeting for purposes of determining a quorum and participating in all proceedings



Minn. Stat. § 13D.021: Meetings During Pandemic or Chapter 12 Emergency

- Each board member participating in a meeting by telephone or interactive technology is considered present at the meeting for purposes of determining a quorum and participating in all proceedings

Minn. Stat. § 13D.02: Other Entity Meetings by Interactive Technology



Requirements:

- All members of the body participating in the meeting, wherever their physical location, can **hear and see** one another and all discussion and testimony presented at any location at which at least one member is present.
- Members of the public present at the regular meeting location of the body can **hear and see** all discussion and testimony and all votes of all members of the body.
- **At least one member of the body is physically present at the regular meeting location.**

Section 13D.02: Additional Requirements



Requirements:

- All votes are conducted by roll call.
- **Each location at which a member of the body is present must be open and accessible to the public, unless an exception is met.**

Open, Accessible Requirement, Exceptions



Minn. Stat. § 13D.02: Other Entity Meetings by Interactive Technology

- **Each location at which a board member is present must be open and accessible to the public, *unless***
 - Board member is serving in the military and at a required drill, deployed or on active duty; or
 - Board member has been advised by a health care professional against being in a public place for personal or family medical reasons *during a state of emergency declared under Minnesota Statutes, Section 12.31 or within 60 days of its expiration*
- ***Limited to 3 times per calendar year***

Notice Under Section 13D.02



Entities must give:

- Notice of the regular meeting location AND
- Notice of any site location where a board member will be via interactive technology
 - **Except** for locations that do not need to be open and accessible to the public
- Generally, the notice:
 - Must be posted on the principal bulletin board (or on the door of its usual meeting room if there is no principal bulletin board) and
 - Mailed or otherwise delivered to each person who has filed a written request for special meeting notices
- **At least three days before the date of the meeting**

Section 13D.02: Monitoring and Minutes



- To the extent practical, the government entity must allow a person to monitor the meeting electronically from a remote location.
- The minutes for a meeting conducted under Section 13D.02 must reflect:
 - the names of any board members appearing by interactive technology *and*
 - state the reason or reasons for the appearance by interactive technology.



Minn. Stat. § 13D.021: Meetings During Pandemic or Chapter 12 Emergency

- The presiding officer, chief legal counsel or chief administrative officer for the governing body determines that **an in-person meeting or a meeting conducted under Section 13D.02 is not practical or prudent because of a health pandemic or an emergency declared under Chapter 12.**
 - May depend on the particular circumstances of the governing body.
 - May take local public health conditions into account, as well as state and federal guidance.



Section 13D.021 Requirements

- All members of the body participating in the meeting, wherever their physical location, can **hear** one another and can **hear** all discussion and testimony.
- Members of the public present at the regular meeting location of the body can **hear** all discussion and testimony and all votes of the members of the body, unless attendance at the regular meeting location is not feasible due to the health pandemic or emergency declaration.
- At least one member of the body, chief legal counsel or chief administrative officer is physically present at the regular meeting location, unless unfeasible due to the health pandemic or emergency declaration.
- All votes are conducted by roll call.



Section 13D.021 Notice

Entities must give:

- Notice of the regular meeting location AND
- The fact that some board members may be participating by telephone or interactive technology AND
- The ability for the public to monitor the meeting electronically
- Generally, the notice:
 - Must be posted on the principal bulletin board (or on the door of its usual meeting room if there is no principal bulletin board) and
 - Mailed or otherwise delivered to each person who has filed a written request for special meeting notices
 - **At least three days before the date of the meeting**



Monitoring Requirement

Minn. Stat. § 13D.021: Meetings During Pandemic or Chapter 12
Emergency

- No requirement for remote locations to be open and accessible to the public
- To the extent practical, the government entity must allow a person to monitor the meeting electronically from a remote location.



Public Comment Period

Minn. Stat. § 13D.021: Meetings During Pandemic or Chapter 12
Emergency

- If attendance at the regular meeting location is not feasible due to the health pandemic or emergency declaration and the public body's practice is to offer a public comment period at in-person meetings, members of the public shall be permitted to comment from a remote location during the public comment period of the meeting to the extent practical.



Enforcement, Penalties and Coverage

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