

**MANUAL
FOR
MEMBERS OF
LOCAL GOVERNMENT
BOARDS AND COMMISSIONS
IN THE
STATE OF WISCONSIN**

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Harry earned a B.S. in Business Administration from Marquette University and a J.D. from Marquette University Law School. He served as Adjunct Associate Professor of Law at Marquette University Law School teaching local government law and has taught courses in Municipal Law throughout Wisconsin.

Harry is admitted to practice before the United States Supreme Court, the Seventh Circuit Court of Appeals, the United States Court of Military Appeals, the Eastern and Western District Courts of Wisconsin and the Supreme Court of Wisconsin. He is a member of the State Bar of Wisconsin, former President of the Municipal Law Section of the Milwaukee Bar Association, former President of the Wauwatosa Board of Public Works and member of the City of Wauwatosa Board of Examiners & Appeals.

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Manual for Local Government Boards and Commissions

Introduction

Local governments are blessed by having many citizens who generously volunteer their time and effort as members of the many Boards and Commissions that are such an important part of governmental operations. As a member of a Board you undoubtedly have many questions about your duties and potential liability. As an assistance to give you a better understanding of your role as a Board member, we have put together this material as a guideline.

Because the duties and role of each Board differs to some extent, we will concentrate on those matters that are most general to all Boards and certainly should be of importance to every Board member. Herein we will cover such important matters as the open meeting law, public records law, local government ethics law, the fundamentals of due process that may apply to performing a quasi-judicial function, and the important issue of liability while performing your official function. These are all aspects of the law that you as a public official need to become familiar with.

General Guidelines: These guidelines are intended to provide a brief overview of the items discussed. There are sometimes exceptions and if more information or detail is desired, seek assistance from the attorney for your local government.

The Open Meeting Law: Wisconsin Statutes 19.81 through 19.97.

- All boards and commissions of the local government are considered governing bodies for purposes of the open meeting law.
- Notice shall be provided at least 24 hours before each meeting.
- The notice requires a listing of the time, date, place and subject matter in a form sufficiently specific and detailed to reasonably apprise the public and news media of what is being considered.
- Meetings are to be open to the public. There are a few important exceptions to this law.
- Anytime a majority of your board is together there is a presumption that it is a meeting. A social or chance gathering is allowed, but be careful not to discuss board business.
- A violation of this law is subject to prosecution by the Attorney General or District Attorney. The penalty can be up to \$300. It cannot be reimbursed by the local government.
- A violation of this law invalidates action taken by the board.

Meetings

- A quorum is required to conduct a meeting.
- A written record should be made of the motions made, who made and seconded it, and the vote.

Public Hearings

Fairness is the essential requirement of any public hearing. Fairness is also the essential of compliance with due process. A public hearing is intended to give the public an opportunity to be heard on a listed agenda item.

Quasi-Judicial Hearings - Some boards conduct hearings in which members are performing functions similar to a judge or jury. (Most zoning appeals are of this nature.)

- The manner in which these hearing are conducted and the resulting decisions impact upon property and liberty interests of individuals.
- It is important to realize that if the rights of the individual are violated it could result in a civil rights suit against the local governmental unit.
Remember: One person's red tape may be another person's civil right.
- The basic requirement of a due process hearing is fairness.
- Procedural due process requires that parties be given:
 - Proper notice of the hearing.
 - An opportunity to be heard before a fair and impartial board.
 - A right to be represented by an attorney at their expense.
 - A right to record the hearing at their expense.
 - A written decision based on facts presented at the hearing.
 - A right of appealing a decision. (If not specifically provided, Chapter 68 of the Wisconsin Statutes, entitled Municipal Administrative Procedure provides a review and appeal process.)

Closed Meetings (Often called an Executive Session)

The quasi-judicial hearing and all meetings should be open to the public, but important exceptions exist. Likely exceptions under 19.85 (1) Wisconsin Statutes include:

- (a) deliberating after the quasi-judicial hearing.
- (b) considering dismissal, demotion, or discipline of a governmental employee.
• But it is the employee's decision

(Most applicable to Civil Service and Police and Fire Commissions.)

- (c) considering employment, promotion, compensation, and performance evaluation data of a governmental employee.
- (e) deliberating or negotiating the purchase of public properties, the investing of public funds, or whenever competitive or bargaining reasons require a closed meeting.
- (f) considering financial, medical, social, or personnel histories which, if discussed in public would likely have a substantial adverse effect upon a person's reputation.
- (g) conferring with legal counsel on a matter in which the board is likely to be involved in litigation.

Going into Closed Session

- If a closed session is planned it must be specified in the public notice.
- To go into closed session the statutory procedure should be carefully followed:
 - Convene in open session.
 - A motion to close must be made with the reason given justifying a closed meeting.
 - The subject of discussion and or action must be stated.
 - The motion, second, and vote of each member should be recorded.
 - Attendance in the closed session should be limited to board members, and other persons necessary to conduct business.
 - The discussion in closed session is limited to the topics for which the meeting was closed.
 - Just like other actions of the board, the motions and votes taken shall be recorded and preserved. This becomes part of the public record.

The Public Record Law – 19.21 thru 19.39 Wis. Stats.

- Almost all materials which are received by the board; photos, recordings, records of the board, communications of any sort, to or from the board are public records.
- Generally, with a few exceptions, any public record is subject to inspection by any member of the public for any reason.
- The custodian of the records of each board unless otherwise specifically provided is the local governmental clerk.
- If records relate to an employee, special rules apply. Depending on the content of the records and the purpose of their creations, notice to the employee regarding

his or her right to court review of the request may be necessary. Contact the attorney for the governmental unit for advice.

- If a request for a public record inspection is made, and you believe that confidentially is justified contact the attorney for the governmental unit for advice. Time is essential and the wording of the response to the request is critical.

Ethics Law

- As a member of a board you are subject to the Wisconsin Local Government Ethics Code

This law – Wis. Stats. 19.59 reads in part:

“No local public official may use his or her public position or office to obtain financial gain or anything of *substantial value* for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated.” (Emphasis added)

- The rule of thumb is anything totaling \$25.00 or more in value is considered substantial.
- This law also prohibits accepting anything of value if it could reasonably be expected to influence your official action.
- Conditioning your actions based on contributions to political campaigns is prohibited.
- A violation of this law carries a potential \$1,000.00 penalty and a reviewing court has the authority under certain circumstances to order additional forfeitures.

Conflict of Interest

- As a taxpayer, parent, member of a civic organization, church member, or concerned citizen you cannot avoid all conflicts of interest with your board duties. Minor conflicts of interest are acceptable. Judgment and common sense should be your guide.
- If a board member has a personal interest in a matter before the board, if it involves a friend, relative or for other reason that creates a bias or appearance of impropriety, it is advisable for the board member to refrain from participating in that matter. Exercise your judgment and good common sense.
- Wis. Stat. 946.13 – the Conflict of Interest Statute prohibits significant private interests in public contracts. This type of conflict would be rather obvious, but its violation is serious and a felony.

Personal Liability

- The local governmental unit is statutorily obligated to defend any board member who is sued for a wrongful civil act alleged to have occurred while performing official duties. (Wis. Stat. 895.46, 62.115, & 895.35)
- If judgment is entered against a board member as a result of an official act performed within the scope of official duties, the governmental unit is obligated to pay the judgment. (Wis. Stat. 895.46)
- If suit is commenced against you, there is a duty to immediately notify the attorney for the governmental unit so that it may be defended.
- An exception to the governmental unit's obligation is if the action complained of is outside the scope of official duties.
- As previously noted, the law prohibits the governmental unit from reimbursing a board member for a penalty imposed for a violation of the open meeting law.
- Likewise, the governmental unit would not reimburse for a penalty imposed for an ethics law or conflict of interest violation.

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