

Public Broadcasting of County Proceedings

WCA Annual Conference
September 28, 2021

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Agenda

- Overview of the Open Meetings Law
- Practical Considerations
 - Notice
 - Meeting Management
- Legal Considerations
 - Public Records Law
 - Accessibility Concerns



Start From the Top – the Purpose of OML

- “Transparency and oversight are essential to honest, ethical governance.” *John K. MacIver Inst. for Pub. Policy v. Erpenbach*, 2014 WI App 49, ¶ 32.
- 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.”



The Basics

From the Attorney General's Compliance Guide:

The two most basic requirements of the OML are that a governmental body:

1. Give advance public notice of each of its meetings, and
2. Conduct all of its business in open session, unless an exemption to the open session requirement applies.



Remote Meetings

- DOJ's past guidance on remote meetings stated that telephone conference calls and video conferences were acceptable means of conducting meetings.
- BUT, this guidance envisioned a physical place where members of the public could monitor a call or video.



Updated (i.e., COVID) DOJ Guidance

- DOJ's OOG issued three advisories:
 - March 16, 2020 – holding remote meetings
 - March 20, 2020 – information regarding technology
 - March 15, 2021 – continue best practices as the pandemic subsides



Some Practical Pointers - Overview

- Notice of the Meeting
 - The notice should explicitly provide the option for the public to access the remote means of communication and the access should be of similar quality to that of the body. In other words, if a body is meeting by video conference, a telephone line only option for the public may not suffice.
 - Provision should be made for members of the public who, for whatever reason, cannot access the remote means.
 - If the body will meet in person, the public should also be allowed to attend in person. If, however, the body decides not to allow the public to attend for safety reasons, the public must be provided the opportunity to monitor the entire meeting by virtual means in real time.



Practical Pointers – Running the Meeting

- Advise members of the body to mute/unmute at appropriate times.
- Proceed SLOWLY – avoid talking over one another.
- Use headsets if available or in a non-private space.
- Ask permission of the chair to exit the meeting to ensure quorum and meeting voting requirements.
- Avoid using chat function. Speak up to be acknowledged/raise hand.
- Chair has discretion to use technology features to ensure that all members have a fair chance to speak.



Some Practical Pointers – Closed Session

- Designate a person to monitor the meeting and the technology.
- If using a video conference, ensure that the cameras are “on” so as to allow for easy identification of the participants.
- If using a telephone conference, ask participants to verify that they are alone and that nobody other than authorized participants are able to hear the meeting.
- Avoid recording the closed session part of the meeting – this may become a public record.



Legal Considerations



Public Records Law

From the top (again) – Wis. Stat. § 19.31:

“[I]t is declared to be the public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them.”



What is a “Record?”

Wis. Stat. § 19.32(2):

“Record” means any material on which written, drawn, printed, spoken, visual, or electromagnetic information or electronically generated or stored data is recorded or preserved, regardless of physical form or characteristics, that has been created or is being kept by an authority. “Record” includes, but is not limited to, handwritten, typed, or printed pages, maps, charts, photographs, films, recordings, tapes, optical discs, and any other medium on which electronically generated or stored data is recorded or preserved. ...



From the Attorney General's Public Records Compliance Guide

- Examples of electronic records within the Wis. Stat. § 19.32(2) definition can include word processing documents, database files, email correspondence, web-based information, PowerPoint presentations, and audio and video recordings, although access may be restricted pursuant to statutory or court-recognized exceptions.
- Electronic records include content posted by or on behalf of authorities to social media sites, such as Facebook and Twitter, to the extent that the content relates to government business. If an authority uses social media, the content must be produced if it is responsive to a public records request. This includes not only currently “live” content, but also past content.



Website and Video Accessibility Concerns

- Title II of the ADA prohibits a “public entity” from discriminating against “a qualified individual with a disability,” because of the individual’s disability.
- The implementing regulations provide “a public entity shall take the appropriate steps to ensure that communications with ... members of the public with disabilities are as effective as communications with others.” 28 C.F.R. § 35.160(a).
- Aids and services may include qualified interpreters, real-time closed captioning and closed caption decoders. 28 C.F.R. § 35.104.



Accessibility vs. Accommodation

- Unlike a typical ADA analysis, the issue is not one of “accommodation.” The issue is a threshold issue of “accessibility.”
- According to advocates, disabled persons desire and deserve the opportunity to participate in the digital world the same as nondisabled persons.
- “Accessibility” lawsuits are on the rise – especially given the prevalence of online usage over the past 18 months.



The Allegations...

- A county is not legally required to livestream its board/committee meetings on its website or through a service, BUT...
- The county needs to do so to maintain appropriate health and safety protocols during the pandemic, BUT...
- The county has not made appropriate arrangements to accommodate qualified individuals with a disability, SO...

WHAT IS A COUNTY TO DO??



Some Considerations...

- Speak with your IT Department about accessibility. There are resources available to assist in determining compliance with Title II.
 - Search for consultants with experience in the World Wide Web Consortium's Web Content Accessibility Guidelines (WCAG)
- Review and, if necessary, enhance the accommodation and accessibility language in your meeting notices.
- Consult with Corporation Counsel regarding compliance.



Accommodation and Accessibility Language

- If you are in need of an accommodation to attend this meeting, whether in-person or by remote means, please contact [NAME] at [CONTACT INFO]
- If you experience any difficulties in accessing information contained within this [WEBSITE/VIDEO], please contact [NAME] at [CONTACT INFO]

****DISCLAIMER** Neither the existence nor content of the statements above will provide a guaranteed defense to a Title II claim. The best course is to ensure accessibility.**





**Thank you for your service
to county government!**

