

WAUKESHA COUNTY BOARD/COMMITTEE MEMBER COMMUNICATION STANDARDS IN AND OUTSIDE OF OPEN MEETINGS

Per an email received from Waukesha County Corporation Counsel on February 7, 2025, all open meetings are being required to share the following information and to abide by the standards within. This would also apply to staff members who are members of various committees/boards.

The Court of Appeals recently issued a published decision regarding an open meetings law issue. In the decision, a school board had members submit candidate preferences to the chair via email during open session (condensed version of the facts). The Court of Appeals ultimately concluded this violated the open meetings law as it consisted of official business that was done in the “dark” and not readily available to the public attending the meeting. The school board will likely have to pay all the legal fees associated with this case.

Effective immediately, the following standards for communication during and outside of open meetings should be adhered to:

- Members that are participating in a meeting subject to the Wisconsin Open Meetings Law should refrain from holding any discussions about official business with other members of the meeting via email, chat, text, or other direct communication forms other than oral discussion within the meeting. Such discussions could be as simple as emailing another member to vocalize displeasure or disagreement with what someone else in the meeting stated.
- If an email, chat, text, or other direct communication occurs that is not provided orally, it should then be read word-for-word in the open session. The best practice is to refrain from engaging in these types of communications during a meeting.
- This also includes passing notes that are not read word-for-word at the open session.
- Members should also refrain from engaging in these types of communications outside of open sessions with other members. For example, if you have a board of 7 and have an email/text chain (regardless of if done with your personal device) with those board members, staff would be violating the open meetings law. This of course would not include conveying your famous meatloaf recipe with other members (the example the Court of Appeals used) although it could open members up to questions as to what else they may be communicating about.

- If the purpose of the email is to just communicate/remind of an upcoming date, etc., that does not wade into the official business of the body and that does not elicit a back-and-forth discussion, such a communication can go to the whole body of the committee without running afoul of Open Meetings.
- Brochures, flyers, etc., should be made available at the actual committee meetings where the public would have an opportunity to also review the item. Ideally, those items will not be sent by email. However, if you do, the best practice would be to send them prior to the meeting in which they will be discussed, do not allow any type of reply/discussion via email in response to the sent document, then note in the committee meeting that “this [document] was emailed to members prior to the meeting and copies of this [document] are available to the public for inspection.” Any discussion/thoughts regarding the document should occur in open session at the meeting.
- In terms of “follow-up conversations” between individuals, as there would not be enough members (quorum) engaged in that discussion, such a discussion would likely not be subject to the open meetings. Now, if the intent is that one person will just bounce back and forth between single conversations to avoid having a quorum, that will run afoul. Similarly, if two members have an email conversation about something, then that conversation is forwarded to several people meeting quorum, it likely runs afoul.
- As for someone engaging in other conduct on their computers during a meeting, there is not anything that prevents that. However, engaging in other work while representing the County could, and very likely does, give off a negative appearance if the public feels a committee member is not appropriately engaged or is not taking the committee purpose seriously. The recommendation is that any County employee representing Waukesha County on a committee refrain from engaging in work unrelated to the committee’s purpose during the meeting.
- Individuals that violate the Wisconsin Open Meetings Law could be subject to fines of not less than \$25 and not more than \$300 per violation.