

Plan Commissioners
as
Local Officials

Richland Center, WI
June 22, 2004

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Coverage

- Open Meetings Law basics & issues
- Note on Public Records Law
- Ethics & conflicts of interest
- Making Fair Decisions
 - Policymaking (plans, ordinances)
 - Applying the law (permits, approvals)

Open Meetings Law

- “Governmental Bodies” covered
 - Local governing body
 - Committees, boards, commissions
 - E.g., *plan commission*, BOA
- Members covered by OML include citizen members

When There's a Meeting

- Numbers test
 - 1/2 of body present--meeting presumed
 - if number can determine outcome
 - “walking quorum”
- Purpose test
 - information gathering,
 - discussion or
 - voting

Notice Required

- 24 hour notice required
- 2 hours minimum for good cause
- Plus any notice required by statute (e.g., for a public hearing)
- Posting in 3 public places
- Notice to media requesting notice
- Notice to official paper; if none, to medium likely to inform public
- Separate notice for each meeting

Notice Contents

- Time, date, place & subject matter
- Specific enough to let people know what's being covered
- Notice anticipated closed session
- May consider only noticed items

Public Participation

- No right to participate at a meeting (in contrast to a public hearing), although it may be allowed
- May include public comment on agenda
- Meetings must be open to public (except for closed sessions) and must allow taping and photographing, if they do not interfere

Closed Sessions

- If anticipated, must be noticed
- May close only for statutory purposes
- Presumption of openness applies; closing is the exception
- Procedure to close
 - Convene first in open session
 - Presiding officer announces topic & statutory provision allowing closure
 - Motion to close and recorded vote

- May consider only items for which session was closed
- May not reconvene in open within 12 hours, unless previously noticed
- Actions must be recorded & treated as public records

Voting & Records

- Member may require recording of individual votes
- Motion to go into closed session & individual votes must be recorded
- All motions & votes must be recorded, preserved & made available to the extent prescribed under the Public Records Law

Open Meetings Issues

- Avoid unintended & illegal meetings
 - When tests are met
 - Presence at another body's meeting
 - Telephone calls
 - Walking quorums
 - Use of email
 - Unnoticed items & improper closed session
 - Adequate room for crowd expected
- Protect yourself

Site Visits

(permits & applications)

- If a “meeting”
 - Notice
 - Open to public
- *Ex parte* problems
- Limit discussion; place evidence in the record
- Alternatives?
 - Good record
 - Diagrams, videotapes, photographs

OML Penalties

- \$25--\$300 personal liability for forfeiture;
no reimbursement
- Action can be voided

Note on Public Records Law

- This law applies to plan commissions
- Voting records discussed above under Open Meetings Law
- The secretary or clerk should be the designated custodian to maintain commission records & respond to requests
- Commission records generally open to public inspection & copying, unless statute, common law or application of balancing test allows closure
- Reference: Secs. 19.21—19.37, *Wis. Stats.*; go to <http://www.uwex.edu/lgc/> , then “Publications” for Fact Sheet #7.

Ethics & Conflicts of Interest

- Code of Ethics for Local Officials (secs. 19.42, 19.48, 19.52, *Wis. Stats.*)
- Private interests in public contracts (sec. 946.13, *Wis. Stats.*)

Code of Ethics for Local Officials
ch. 19, Wis. Stats.
General Prohibition

- “Local public official” can’t use office to obtain private gain for...
 - his/her own benefit
 - benefit of “immediate family” member, or
 - benefit of an “organization” with which he/she or such family member is “associated”

Accepting Gifts

- Can't accept gifts given to you because you're a public official, unless of insubstantial value
- Can receive gifts unrelated to public office
- Best to politely refuse & explain
- Insubstantial" value not defined in statutes

Business Meals

- Should not accept free meals from potential contractors or others dining you because of your public office.
- If it's for the unit's business, you can pay & seek reimbursement from the unit under its guidelines.
- Don't vote on your own voucher for reimbursement.

Conferences

- If attending a conference as a local official, you may accept refreshment & entertainment approved by sponsor.
- It's not proper to accept refreshments & entertainment in hospitality suites not part of the conference.

Transportation & Services

- Code of ethics prohibits receiving, if of more than nominal value
- It's a felony to accept free or discounted
 - transportation
 - traveling accommodation
 - or communication services
 - for which the supplier would normally charge

Contracts

- Selling goods, equipment, land, services to the local unit ...
 - is permissible
 - but must abstain (no official involvement)
 - & beware of \$15,000 limit
- \$15,000 limit is from felony statute (sec. 946.13)
 - You may have a private interest in public contracts, if you abstain &
 - total annual receipts & disbursements under all contracts can't exceed \$15,000

Sec. 946.13--Private Interests in Public Contracts

- May be violated even if you abstain!
- By having official authority re contract, private action to bid or enter into contract will violate statute
- Unless an exception applies--e.g., \$15,000 annual limit on total contract amounts

Providing Services to Local Unit

- You may be an independent contractor with your local unit--supply own tools, equipment & exercise responsibility over work
- Must abstain from official involvement
- Beware \$15,000 limit

Contracts Involving Family & Organizations

- Can't vote or act officially on contracts involving your immediate family & organization with which you or they are associated
- Lots of cracks due to definitions
- May abstain based on appearances
- Beware \$15,000 limit if you have any interest

Making Fair Decisions

- Developing policy
- Applying the law

Developing Policy

- Developing & amending
 - Plans
 - Ordinances
 - Other policies
- Should be rational, objective, informed & made with public involvement

- Applicability of code of ethics for local officials & other statutes may be unclear
- Common law may prohibit official involvement by a body member on a policy matter if
 - The member has a personal interest not shared by others similarly situated, or if
 - The effect of the action is significantly different for the member than on others affected

- Rezoning example

- Rezonings are in a grey area.

- Plan commission member would not vote on next door neighbor's rezoning.

- But if rezoning is for a major project, and commission member is a member of a similarly-affected class, voting is probably o.k.

Applying the Law

(permit & approvals)

- Known as “quasi-judicial”
 - When general law is applied to specific fact situations by a body
- Examples
 - Conditional use permits
 - Land divisions
 - Rezoning?

- Ethics & contracts laws (above) provide a threshold
- Due process & fairness also apply—stricter standards
- Abstain if you have a conflict based on
 - Personal interest
 - Interest of a family member
 - Interest of a business or organization you're associated with

- Abstain if you are not impartial with regard to
 - The applicant or
 - The issue
- Make decisions based on applicable legal standards & evidence in the record
- Avoid trying to “get” someone
- Avoid comments showing bias
- Avoid *ex parte* contacts
- Note: there are lots of grey areas. Therefore, anticipate these issues and prepare in advance.

Ex Parte (outside) Contacts

- Personal contact: politely
 - explain problem
 - ask to submit for record
 - ask to appear at public hearing
- Receipt of information
 - place in the record
 - decide if need to abstain

To abstain or not?

- Anticipate & look into the issue; get necessary advice
- If minor & plan to proceed
 - note for record
 - see if objection by party or anyone present
 - problem: absent persons can appeal to court
- Abstain if you keep wondering

Abstentions/“Recusals”

- If abstain
 - It’s more than just not voting
 - Also means not acting in *official* capacity by
 - providing information
 - discussing the matter
 - sitting at commission table
- Minutes must reflect
 - Absence or
 - abstention/recusal

Liability Protection

- Notice of claim for damages cases under state law required
- Liability limits
 - \$50,000 per cause of action for damages
 - \$250,000—if motor vehicle involved

- Immunities
 - quasi-legislative
 - quasi-judicial
 - civil rights-limited
 - for public policy reasons

- Indemnification for damages
 - Official covered if acting within scope of duty
 - Legal representation covered
 - Official must inform local unit & cooperate