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WISCONSIN'S OPEN MEETINGS LAWS: OPEN, BUT NOT THAT OPEN

Wisconsin's open meetings laws, generally codified in sections 19.81 to 19.98 of the state statutes, clearly established a framework under which the vast majority of all local governmental discussions and decisions occur in meetings that are open to the public. At the same time, though, the fact that the public is allowed—and, in fact, invited—to observe and scrutinize the process by which its local governmental bodies operate does not translate into any general right for the public to directly participate in this process. Instead, consistent with the concept of governance via a representative democracy, Wisconsin's statutory framework generally proscribes direct political participation by the public, at least outside the context of annual town meetings or those certain situations in which specific statutes require a public *hearing* (note, not public *approval*) before certain governmental actions may be taken.

Notwithstanding the above, however, many local governing bodies have chosen to afford the public an opportunity to be heard during their regularly scheduled meetings. Just as no such public comment period is statutorily required, there is also no statutory prohibition on a municipality's authority to do so. The following, therefore, are some "frequently asked questions" that may be helpful to municipal officials considering whether, and to what extent, they should allow public commentary during their municipal meetings:

Q: Must the public comment period be indicated on the municipality's meeting notice?

A: Yes. Section 19.84(2) of the Wisconsin Statutes provides as follows:

(2) Every public notice of a meeting of a governmental body shall set forth the time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session, in such form as is reasonably likely to apprise members of the public and the news media thereof. The public notice of a meeting of a governmental body may provide for a period of public comment, during which the body may receive information from members of the public.

Again, allowing public comment at a meeting is not required. However, if the municipality *does* decide to allow public comment at a meeting, the public meeting notice must indicate that a period of public commentary will occur.

Q. May members of the municipality's board use a public comment period to raise issues that are not on the meeting agenda?

A. No. The public comment period is intended as an opportunity for municipal officials to receive feedback from the public, not as a mechanism for municipal officials to circumvent the public notice requirements of the state's open meeting laws.

Q. Is the municipality's board allowed to discuss matters that are not on the agenda if such matters are raised by a member of the public during a time of public comment?

A. Yes. Section 19.83(2), Wis. Stats., directly addresses this as follows:

During a period of public comment under s. 19.84(2), a governmental body may discuss any matter raised by the public (emphasis added).

Q. May the municipality limit comments made during a period of public comment to only those subjects appearing on the municipality agenda?

A. Yes. The municipality may adopt rules governing the use of the public comment period by the public to only permit comments relating to matters on the agenda.

Q. If the municipality allows public comments on matters that are not on the meeting agenda, may the municipality's board take substantive action as to such topics later during the meeting?

A. No. If the municipality were to take action on a non-agenda item that was raised during the meeting's public comment period, members of the public who were not in attendance at the meeting would have no notice that the municipality would be taking such action. Such a situation would undermine both the language and the spirit of section 19.84, Wis. Stats., which requires that the public be given notice of those items a municipal government is considering acting upon. If, after receiving public commentary on a given topic, the board wishes to take some action thereon, the board should have the topic added to the agenda of its next meeting.

Q. What are the municipality's options with respect to when, during the meeting, public comment will be permitted?

A. The municipality has broad discretion as to when public comment may be permitted during a municipal meeting. Most municipalities choose one of the following three options:

1. The public comment period is held near the beginning of the meeting.
2. A public comment period is permitted as each agenda item is taken up by the municipality.
3. A public comment period is held at the end of the meeting.

Practically speaking, many municipalities find that holding the public comment period early in the meeting is best, as it allows those members of the public who have no interest in any actual agenda items to leave the meeting after they have had their say. Alternatively, other municipalities find it unworkable to "cut the public off" after an early public commentary period, as members of the public

may not understand why they are not then allowed to comment on each and every agenda item as it comes up. Again, each municipality is free to schedule its public comment period at the time that the municipality finds works best for it.

Of course, if a municipality chooses to allow a period of public comment during its meetings, it may also impose such reasonable limitations as are necessary to retain control of the meeting and allow the governmental body to complete its work. For example, a municipality may limit repetitive public comments, may place time restrictions on the length of comments, and may limit the duration of the entire public comment period so as to minimize the overall length of the meetings. And if a municipality finds that, even with appropriate limitations, a public comment period is simply unworkable, the municipality is free to eliminate the public comment period altogether. Therefore, while no public comment period is statutorily required, many municipalities have found such periods to be flexible and functional tools by which to increase the level of citizen participation in local government.

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