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Minnesota's Open Meeting Law: An Overview

Office of General Counsel
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Open Meeting Law

Minn. Stat. Ch. 13D

- Governs public bodies in Minnesota unless otherwise provided.
- Presumption is that meetings of the body will be open to public, with narrow exceptions.
- Board of Trustees is subject to the law.
 - Also applies to board committees, subcommittees.
 - Unless meeting with trustees, law does not apply to Chancellor, presidents, staff.



Purpose of the Open Meeting Law

- Ensure the public's right to be informed.
- Allow members of the public to be present at open meetings and hear discussion, observe the voting process.
- Prohibit actions taken at “secret” meetings.



Regular Meetings

- Regular meetings: Board establishes its regular meeting schedule, kept on file at main office.
 - Board staff notify mailing list of regular meeting schedule.
 - Board meeting calendar and materials are on Board Web page.
- If time or place changes are made to regular meeting schedule, meeting is treated as a special meeting and requires special notice.



Special Meetings

- Notice of special meeting must be posted at least three days prior to meeting. Notice must include:
 - Date, time, place
 - Specific agenda items to be discussed
 - Case law, opinions indicate that ONLY published agenda items may be discussed.
- Notice of special meeting must be sent to those requesting.
- Members of the public may request notice of meetings about specific topics.



Emergency Meetings

- Emergency meeting is a “special meeting called because of circumstances that, in the judgment of the public body, require immediate consideration by the public body.”
- Requires notice to each news medium that has requested notice.
- Notice is provided to public—system uses e-mail.
- Notice must identify the subject of the meeting.
 - If matters not directed related to the emergency are discussed or decided, the minutes shall include specific description of the matters.



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What Is a “Meeting”?

- Quorum of board, committee
- Study sessions
- Board retreats
- E-mail discussions (not allowed)
- Serial discussions (not allowed)



What is NOT a Meeting?

- Social gatherings –where no business-related discussion occurs.
- Discussions between a board member and Chancellor or staff.
- Discussions between individual board members.
 - Unless serial in nature.



Record Keeping

- Journal of Board actions required.
- Tape recordings must be maintained for specified period of time.
- Elections may not be by secret ballot; votes must be recorded.



Board Materials

- Public must have access at the meeting to view memos, e-mails, other documents related to an agenda item provided to, or by, board members.
- Copies of Board materials are made available to public at each meeting.



Meeting Locations

- Meeting must be held in location accessible by the public.
- Meetings are to take place within the state.
- When considering alternative locations, consideration should be given to:
 - Ensuring sufficient space for public to attend.
 - Handicap access.
 - Unlocked door access.



Access by Public

- Public is entitled to notice of meetings, but not participation.
- Public must be able to hear, see discussion of the governing body.
- Body determines whether, when, and how long public will be allowed to speak at a meeting.
- Public hearing is required if proposing campus closure.
- Board of Trustees voluntarily holds occasional hearings on tuition and other topics
 - Designed specifically to hear from public, not for Board action.



Meetings by Telephone or Other Electronic Means

- Allowed for State Entities if:
 - All board members can hear all members, and hear public discussion or testimony.
 - Public present at regular meeting location can hear all discussion and votes and, if public comment is taken, participate in testimony.
 - At least one member is at regular meeting location.
 - All votes are conducted by roll call and each member's vote recorded.



Public Access to Telephone, Other Electronic Meeting

- To the extent practical, public must be allowed to monitor meeting electronically from remote location.
- Meeting notice must state that some members may participate electronically and how public may monitor remotely.
 - Public participant can be required to pay actual marginal cost of their participation.



Closed Meetings

- Board is permitted to close meetings for certain purposes.
- Closed meetings are subject to same notice requirements as open meetings.
- Before closing a meeting, must announce:
 - specific purpose of closing the meeting, and
 - statutory authority for closing the meeting.
- Closed meetings must be electronically recorded.
 - Recording is not required for meetings closed for attorney/client privileged discussion.
- Board decides who is allowed to attend closed meeting.



When Meeting Must Be Closed

- Must be closed if discussing certain types of data.
 - E.g., educational data, medical data, criminal sexual conduct victims.
 - Preliminary consideration of charges against an individual subject to the Board's authority (unless individual requests that meeting is open).
 - Subsequent meetings must be open.
 - No history of such items coming before the Board.
- However, cannot close meeting for discussion of other nonpublic data unless specified in statute.
 - Nonpublic data discussed in Board meeting retains classification of nonpublic.
 - Not available to the public even if discussed in meeting.



When Meeting Can Be Closed: Evaluations

- To evaluate the performance of person subject to Board's authority (i.e., Chancellor).
 - Must identify the individual to be evaluated prior to closing meeting.
 - At next open meeting, Board must summarize in detail the conclusions of the evaluation.
 - Individual may request that meeting is open.



When Meeting Can Be Closed: Labor Negotiations Strategy

- May close meeting to consider strategy for labor negotiations, developments or discussion and review of labor negotiation proposals conducted under PELRA.
- Must keep written roll of attendees, available to public after meeting.
- Closed meeting must be tape-recorded.
 - Public can access recordings after all contracts are signed.



When Meeting Can Be Closed: Miscellaneous

- Attorney/client privileged discussions on litigation strategy, etc.
 - But can't be closed for general advice.
- Real estate: review appraisal data, determine asking price for property being sold by government, offers/counter-offers.
 - Approval of actual purchase or sale must be in open meeting after price is public data.
- Security briefings and reports.



Remedies, Penalties for Violations of the Open Meeting Law

- Violation does not void the public body's action.
- Public official has personal liability for \$300 fine for intentional violation.
 - Public body cannot pay.
- Forfeit office for three violations.
- Court may award costs and attorney fees up to \$13,000.
 - Public body may, but not required to, pay.



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Some Common Parliamentary Procedure Issues



Committees

- Committee chairs are allowed to participate in discussion, make motions, etc.
- All trustees have full voice on all committees, but can vote only if a member of the committee.
- Committee recommendations brought to Board for approval do not require second.
 - At Board meeting, committee chair makes the recommended motion.
 - Board chair then asks for discussion, vote.



Quorum

- No action can be taken in absence of a quorum. Board Policy 1A.2, Part 6, Subp. B.
- Try to reach quorum by locating absent members of the committee.
- If quorum is not available, assess whether it is possible to postpone the meeting.
- If still no quorum, the committee chair may convene the meeting if there are exceptional reasons to do so:
 - Can only hear reports, receive information.
 - Provide summary when quorum is present.



Determining a Majority Vote

- Votes must be more than half of those voting (do not count blanks or abstentions)
 - If 15 votes are cast, a majority is 8.
 - If 14 votes are cast, a majority is 8.
 - If 13 votes are cast and there is one abstention, a majority is 7.
- Super majority vote of $\frac{2}{3}$ requires exactly $\frac{2}{3}$ of votes (do not count abstentions).
 - If 15 votes are cast, 10 are needed to pass by super majority.



Reports to Committees, Board

- In most instances, no action to “receive” or “accept” the report is in order.
 - Report is received by its delivery.
 - Motion to adopt a report means the board adopts every word—may not be intended by the board.