



## Electronic Meetings

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January 2014*

*This Fact Sheet is part of a series of publications produced by the UW-Extension's Local Government Center. More information about open government and open meetings laws, as well as a variety of other topics, can be found on our website, <http://lgc.uwex.edu>.*

### Introduction

As technology advances and becomes more economical and more accessible, local government officials consider the appropriate use of telecommunications for their participation in the meetings of local governmental bodies. Conducting meetings electronically—via phone conference, webinar, or videoconference—has many advantages. It saves money, participation is convenient, it allows for participation by those who otherwise could not attend, scheduling is easier, and the meeting can be archived with the press of a button.

Electronic meetings can present issues for participants, however. Problems with the technology that occur during the meeting could prevent meaningful participation. There may be training needed for all members to use the technology properly to allow for effective participation in the proceedings. Chairing an electronic meeting takes different skills than those needed in a face-to-face meeting. Key messages that are communicated through body language and voice intonation are lost during an electronic meeting, thus increasing the likelihood for miscommunication. Finally, participants in electronic meetings miss out on the bonding and relationship building that occurs during meetings when everyone physically attends.

### Wisconsin Open Meetings Law Implications

Beyond the advantages and disadvantages of electronic meetings, officials must also weigh the implications of Wisconsin's open meetings law on participating in meetings of governmental bodies through electronic media. The intent of the open meetings law is captured in its first two paragraphs:

*§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.<sup>1</sup>*

*§19.81(2) To implement and ensure the public policy herein expressed, all meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to*

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<sup>1</sup> Wis. Stat. §§ 19.81(1)

*members of the public and shall be open to all citizens at all times unless otherwise expressly provided by law.*<sup>2</sup>

## Attorney General's Opinions

As long ago as 1980, the Wisconsin Attorney General issued an opinion stating that teleconference calls are acceptable, but are not the most desirable way to conduct a meeting of a governmental body and should be used sparingly, while keeping in mind the intent of the open meetings law.<sup>3</sup> The opinion makes several critical points.

Just because the members of a governmental body participating in a conference call are not in the same room together, does not mean that they are not convened. The Attorney General notes that to argue otherwise would allow members of a governmental body to circumvent the law merely by conducting their business via any number of electronic media.

The opinion also states that if the public and the media can effectively monitor the proceedings, then a teleconference may be considered to provide reasonable access. Important here is that the public and media have the same access to the discussion as the members of the governmental body who are participating in the meeting. A meeting conducted via electronic equipment that did not allow for the public and the media to effectively monitor the proceedings would not be in compliance with the law.

The Attorney General identifies a number of specific kinds of meetings that would be inappropriate for teleconferences. The list includes, hearings that require public input, settings where seeing the demeanor or body language of someone giving testimony might be important, and when complex plans, drawings, and charts are displayed and explained.

This 1980 opinion also cites an earlier Attorney General opinion<sup>4</sup>, in which the Attorney General provides this broad caution: *The test to be utilized is whether the meeting place is "reasonably accessible," and that is a factual question to be determined in each case.*

Interestingly, the opinion notes that electronic meetings that are properly conducted have the potential to make meetings *more* accessible to the public than the traditional meeting held in a single location where members of the governmental body are physically present. For example, this could be the case if the meeting were conducted with multiple public listening sites.

## Guidance for Local Government

Of course, in 1980, the Attorney General could not have envisioned the advances in video-conferencing technology. The opinion only referred to meetings conducted via audio teleconference. Nevertheless, it seems clear that, no matter what technology they employ, local units of government should use electronic means only sparingly to conduct meetings, and only when the technology does not interfere with the public's right to effectively monitor the proceedings. Local government bodies who choose to meet via electronic technology should keep these points in mind.

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<sup>2</sup> Wis. Stat. §§ 19.81(2)

<sup>3</sup> 69 Op. Att'y Gen. 143-146 (1980)

<sup>4</sup> 67 Op. Att'y Gen. 126 (1978)

## Need for a Special Local Rule

Units of government anticipating that they may need to meet electronically should adopt a local rule that would authorize the body and its committees to conduct meetings electronically. Most local units of government in Wisconsin have adopted Robert's Rules of Order, Newly Revised (RONR) as their parliamentary authority. RONR does not authorize electronic meetings, unless they are authorized in the bylaws<sup>5</sup>, thus the need for the unit of government to adopt its own local rule. (Note: There is no statute that allows a member to *demand* the right to participate electronically. It is a request, subject to the established local rule.) If a governmental body adopts a local rule authorizing electronic participation in meetings, the body should also consider adopting additional rules that address member participation. Among these additional rules might be:

- How the governmental body will respond to a request of a member(s) to participate electronically in a meeting. Who responds to the request—the chair, the clerk? How far in advance of the meeting must the request be made?
- The criteria to be used to allow electronic participation. Only to be used to establish a quorum? Only one member of the body? Only emergency/special situations, or is a member who spends winter months in Arizona allowed to participate monthly?
- Any limits on electronic participation.

## Limits on Who Connects Electronically

If all members of a governmental body are in separate locations and attend a meeting via speaker phones, it is hard to imagine that a citizen attending the meeting would be able to truly monitor which governmental body member was speaking and how each voted on an issue of concern to that citizen. In this example, one could question whether the meeting was reasonably accessible to members of the public and whether the public had the fullest and most complete information regarding the affairs of government.

If only one member of the governmental body calls into the meeting and the remaining members are physically located in the same room communicating with the remote member via a speaker phone, the public could more easily monitor the proceedings. It would be clear to all attending who was speaking at the other end of the conference line. In this scenario, it is more likely that the public would have reasonable access to the proceedings.

## Meeting Management

**Need for a Physical Meeting Location.** When a meeting will be held electronically a central meeting place must also be identified where members of the governmental body and the public may gather.

**Simultaneous Participation.** The format chosen for the electronic meeting should provide for communication by all of the members at the same time, just as though all the members were present in the same room.

**Obtaining the Floor.** For small boards and committees meeting face-to-face in a single location, obtaining permission to address the body rarely becomes an issue. Members rely on

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<sup>5</sup> Robert, Henry M. *Robert's Rules of Order, Newly Revised*. (2011) 11<sup>th</sup> Edition. p 97. Philadelphia: DaCapo Press.

body language and other cues to note when another member wants to speak and when it is appropriate to speak. These cues are not apparent during electronic meetings, so the presiding officer should let the members know what they should do to obtain the floor.

**Quorum.** Business cannot be conducted during a meeting of a local governmental body unless a quorum is present. The presiding officer will need to identify ways to assure that a quorum is achieved and maintained throughout the meeting.

**Voting.** Voice votes, the most common method of voting among local units of government in Wisconsin, can be confusing when taken during a teleconference meeting. It is nearly impossible to determine if a quorum has voted. It is also difficult to determine how many votes were in favor of the motion and the number opposed. When meeting electronically, the preferred method of voting, albeit a bit slower, is the roll call vote.

**Closed Sessions.** Closed sessions present another layer of challenges. Officials who meet electronically and need to move into executive session will need to have procedures in place to ensure that unwelcome guests cannot enter or remain in the closed session. Once the body returns to open session from the closed session, non-participants must have a way of being notified that they are welcome to rejoin the meeting.

### **Choose Appropriate, Reliable Technology**

**Glitches.** Often, the local officials choose to meet electronically because it allows the body to achieve a quorum that might not otherwise have been achieved. This may occur on small boards or committees if a member suffers an injury that limits travel or a member has to leave town unexpectedly. The members of the governmental body who decide that they want to meet in this fashion will certainly want to have confidence that the equipment will operate properly throughout the meeting. They may decide that it is better to employ a tried and true technology, such as an audio conference, versus a more advanced technology, like a webinar, that without good internet access might fail during the meeting. A technology that becomes inoperable could result in a loss of a quorum when the remote member became disconnected, thereby defeating the original purpose for convening the meeting electronically. It is advisable for the governmental body to have a backup plan in place in the event that a technical problem occurs during the meeting.

**Volume.** Equipment chosen to broadcast to the public should be sufficient to make the speaker's voice heard in the rear of a crowded meeting room. Certain mobile phones may be inaudible to the public attending the meeting and thus limit their access to the proceedings.

**Visibility.** Visibility could become an issue that interferes with the public's access rights if the device in the meeting room does not display images that allow the public to monitor the proceedings. A meeting held via video conference, for example, could present a monitoring problem for the public if the size of the screen in the meeting room is too small or provides insufficient clarity.

## **Conclusion**

While the Attorney General has opined that teleconferences may be conducted in such a way as to comply with the open meetings law, local government officials would do well to use electronic

media sparingly and cautiously. Meetings of governmental bodies that connect members via teleconferences, videoconference, or webinars should be extraordinary occurrences, rather than the ordinary. At the very least, a local rule should be adopted for fair, consistent, and effective use of electronic communications for meetings.

## **Acknowledgments**

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