

Closed Session Meetings

Wisconsin's Open Meetings Law spells out a specific process to meet in closed session. Notice must be given of a contemplated closed session. The notice must describe the subject matter and specify the specific statutory exemption(s) allowing the closed session. The notice of the subject matter of a closed session must be specific enough to allow the members voting on a motion for closed session and the public to discern whether the subject is authorized for closed session under Wis. Stat. §19.85(1).

Some subjects if discussed in an open meeting could actually be adverse to the public interest. Consider if the meeting subject is purchasing a parcel of real estate the municipality needs, and the board wants to consider acceptable terms to authorize for negotiation. Typically, an administrator or staff person is given an acceptable range of prices to use in negotiation, but if the possible terms and prices are discussed in open session, bargaining power will be compromised as the seller will know the highest price the county has authorized. To avoid possible harm to the public interest, the Open Meetings Law sets forth specific exceptions that permit conducting business on limited subject matter in a closed session.

A closed session may be held for one or more of 11 specified exemptions in the statutes. The following exemptions are of interest to local government bodies.

- "Case" deliberations - Wis. Stat. § 19.85(1)(a). This narrow exemption considers a "case" to be the subject of a quasi-judicial hearing that has many aspects of a court case: adversaries, witnesses, direct, and cross examination of witnesses.⁵⁰
- Employee discipline, licensing, tenure, and employee evaluation- Wis. Stat. § 19.85 (1)(b) & (c). Two open meeting exemptions involve one or more public employees. Closed sessions are permitted under Wis. Stat. § 19.85 (1)(b), when the subject is the dismissal, demotion, licensing, tenure, or discipline of a public employee. Wis. Stat. § 19.85 (1)(c), permits closed session when considering employment, promotion, compensation, or performance evaluation. These two exemptions do not include all employee related subjects, but facts and information about a specific employee(s). It does not grant an exemption when discussing policies involving a department or all employees in general. Neither can consideration of action to fill a vacancy on the governmental body or appointments to committees be in closed session. If a closed session is to consider employee dismissal, demotion, or discipline and there is

an evidentiary hearing or final action is contemplated, then the employee may demand that the hearing or meeting be in open session. Employees must be given notice of such closed hearings or sessions, and be advised of their right to have it take place in open session. However, the employee does not have the right to demand the meeting be in closed session.

- Criminal matters - Wis. Stat. §19.85(1)(d). This exemption allows closed sessions to consider strategies for crime prevention or detection. It also allows closed session to consider probation or parole, but this is not a local government function.

- Purchases and competitive bargaining - Wis. Stat. §19.85(1)(e). This is the exemption mentioned in the introduction to this segment of this chapter. Closed sessions are allowed when deliberating or negotiating the purchase of public property, investment of public funds, or other specified public business, when competitive or business reasons require a closed session. The competitive or bargaining reasons must relate to reasons benefiting the governmental body, not a private party's desire for confidentiality.

- Burial sites - Wis. Stat. § 19.85(1)(em). Deliberating on a burial site if discussing it in public would likely result in disturbance of the site.

- Damaging personal information - Wis. Stat. § 19.85(1)(f). Closed session is permitted when considering financial, medical, social or personal histories, or disciplinary data of specific persons. It also includes preliminary consideration of specific personnel problems or investigation of charges against a specific person, except when that person's right to an open meeting applies (see "Employee discipline, licensing, tenure" above). This exception

can only be used if discussion in an open meeting would have a substantial adverse effect on the reputation of the person involved. This exemption applies to "specific persons" as compared to a small classification of public employees (see "Employee discipline, licensing, tenure" above.)

- Legal consultation - Wis. Stat. § 19.85(g). Conferring with legal counsel who is giving written or oral advice about strategy to be adopted in litigation in which the governmental body is or is likely to be involved.

- Confidential ethics opinion - Wis. Stat. § 19.85(1)(h). Used to consider a request for confidential written advice from a local ethics board.