

Mark Shepard, Legislative Analyst  
296-5051

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## Open Meeting Law

The Open Meeting Law (OML) requires that meetings of governmental bodies generally be open to the public. This information brief discusses the groups covered by the Open Meeting Law, and then briefly reviews the requirements of and exceptions to the law, and the penalties for its violation.

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### Groups and meetings governed by the open meeting law

#### Units of Government Covered

The OML (Minnesota Statutes, section 471.705) applies to state agencies, boards, commissions and departments. It also covers the governing body of any school district, unorganized territory, county, city, town, or other public body.

The list of groups covered by the open meeting law does not refer to nonprofit corporations, even those created by the Legislature. However, the law creating the Greater Minnesota Corporation and certain other nonprofit corporations specifies that those corporations are subject to the open meeting law.

A 1986 Attorney General opinion stated that the Open Meeting Law does not apply to nonprofit corporations, even if they are funded primarily with public money, are appointed by public officials, and perform services exclusively for governmental units (The nonprofit corporation involved in this opinion was organized by several counties to operate a mental health service program for the counties. This opinion clearly would not apply to nonprofit corporations that the Legislature has stated are covered by the OML.) Opin.Atty.Gen. 92a-30, January 29, 1986.

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In 1990 the Legislature passed a law, separate from the OML, requiring that all legislative meetings be open to the public. Each house of the Legislature must adopt rules to implement this requirement. (Minnesota Statutes, section 3.055)

### **Subcommittees and Other Subgroups**

The OML applies to committees, subcommittees, boards, departments or commissions of local public bodies. The text of the law does not clearly apply to committees and subcommittees of state agencies. However, an Attorney General opinion stated that the law does apply to subgroups of state agencies, as well as to subgroups of local government (Opin.Atty.Gen. 10-b, July 3, 1975).

### **Informational Meetings**

The Minnesota Supreme Court has held that the OML applies to all gatherings of members of a governing body, regardless of whether or not action is taken or contemplated. Thus informational seminars for members of public bodies must be conducted openly. St. Cloud Newspapers, Inc. v. District 742, Community Schools, 332 N.W.2d 1 (Minn.1983)

### **Gatherings of Less than a Quorum of a Public Body**

The Minnesota Supreme Court has held that the OML applies only to a quorum or more of members of the governing body or committee. Moberg v. Independent School District 281, 336 N.W.2d 510. (Minn. 1983).

### **Chance or Social Gatherings**

The OML does not apply to chance or social gatherings of members of a public body. St. Cloud Newspapers, Inc. v. District 742, Community Schools, 332 N.W.2d 1 (Minn. 1983). However, a quorum of a public body may not, as a group, discuss or receive information on official business in any setting under the guise of a private social gathering. Moberg v. Independent School District 281, 336 N.W.2d, 510 (Minn. 1983).

### **Advisory Groups**

The Minnesota Court of Appeals has held that the Open Meeting Law does not apply to certain types of advisory groups. Minnesota Daily v. University of Minnesota, 432 N.W.2d 189 (Minn. App. 1988) In that case, a presidential search advisory committee to the Board of Regents was held not to be a committee of the governing body (the University Board of Regents) for purposes of the OML. In reaching its holding, the court pointed out that no regents were on the search committee, and that the committee had no power to set policy or make a final decision. It is not clear if a court would reach the same result if members of the governing body were also on the advisory committee. Depending on the number of members of the governing body involved, a court might consider the advisory committee to be a committee of the governing body.

## Requirements of the open meeting law

The primary requirement of the Open Meeting Law is that meetings be open to the public. The law also requires that votes in open meetings be recorded in a journal, and that the journal be open to the public. The vote of each member must be recorded on appropriations of money, except for payments of judgments and claims and amounts fixed by statute.

### **Notice**

The Supreme Court has held that failure to give notice of a meeting is a violation of the OML. Sullivan v. Credit River Township, 217 N.W.2d 502 (1974). It is also a violation of the OML to conduct business before the time publicly announced for a meeting. Merz v. Leitch, 342 N.W.2d 141 (Minn. 1984).

The OML requires public bodies to keep schedules of regular meetings on file at their offices.

For special meetings (meetings held at a time or place different for regular meetings), public bodies must post notice on their principal bulletin board. The public body must also either mail notice to people who have requested such mailings, or publish notice in the official newspaper, at least three days before the meetings.

For emergency meetings (special meetings called because of circumstances that require immediate consideration), the public body must make good faith efforts to notify news media.

For state agencies, publication requirements can be satisfied by publishing notice in the State Register.

### **Copies of materials**

The OML requires that for open meetings, at least one copy of any printed material prepared by the public body and distributed or available to all members of the public body also be available in the meeting room for inspection by the public. This requirement does not apply to materials that are classified as private under the Data Practices Act.

## Exceptions to the open meeting law

### **Pardons and Corrections; Disciplinary Hearings**

The OML does not apply to the Board of Pardons or to the Commissioner of Corrections.

The OML also does not apply to any state agency, board, or commission when exercising quasi-judicial functions involving disciplinary hearings. The Supreme Court has stated that the OML does apply to disciplinary hearings conducted by local government. Annandale Advocate v. City of

Annandale, 435 N.W.2d 24 (Minn. 1989). However, statutes other than the OML may permit or require closed meetings for certain local governmental bodies to conduct specific kinds of disciplinary hearings. For example, school board hearings held to discharge or demote a teacher are private unless the affected teacher wants a public hearing (Minn. Stat. sec. 125.17, subd. 7).

### **Labor Negotiations**

The OML permits a public body to hold a closed meeting to discuss strategy and proposals for labor negotiations. The statute specifies procedures for tape recording of these meetings, and for the recordings to become public when negotiations are completed. Another law permits the Commissioner of Mediation Services to close negotiations and mediation sessions between public employers and public employees. These negotiations are public meetings, unless the commissioner closes them (Minn. Stat. sec. 179A.15, subd. 3).

### **Attorney-Client Privilege**

The Minnesota Supreme Court has held that there is a limited exception, based on the attorney-client privilege, for meetings to discuss strategy for active litigation. This exception does not apply to a mere request for general legal advice. Minneapolis Star and Tribune Co. v. Housing and Redevelopment Authority, 310 Minn. 313, 251 N.W.2d 620 (1976). The exception to the OML does not apply when a governing body seeks to discuss the strengths and weaknesses of a proposed enactment that may lead to future lawsuits. Northwest Publications, Inc. v. City of St. Paul, 435 N.W.2d 64 (Minn.App. 1989).

### **Data Practices Act**

Except as specifically provided, public meetings may not be closed to discuss data that are not public data under the Data Practices Act. However, during open meetings public bodies must make reasonable efforts to protect from disclosure data that are not public data.

A portion of a meeting must be closed if the following data are discussed:

- Data that would identify alleged victims or reporters of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults;
- Active investigative data collected by a law enforcement agency, or internal affairs data relating to alleged misconduct by law enforcement personnel; or
- Certain types of educational, health, medical, welfare or mental health data that are not public data.

A public body must also close a meeting for preliminary consideration of allegations or charges against an individual subject to its authority. If the members of the public body conclude that discipline may be warranted, further meetings or hearings must be open. Meetings must also be open at the request of the individual who is the subject of the meeting.

A public body may close a meeting to evaluate the performance of an individual who is subject to its authority. The public body must summarize the conclusions of the evaluation at its next open meeting.

## **Penalties**

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The OML provides a civil penalty of \$100 for a person who violates the requirement that meetings of public bodies be open to the public. A person who violates the law three times forfeits the right to serve on the public body for a time equal to the term of office the person was serving. There is also a civil penalty of \$100 for intentionally violating the provisions requiring materials to be available in the meeting room to the public.