

m DEPARTMENT OF ADMINISTRATION

Open Meeting Law Workshop


September 2021

1

Who we are and what we do

Data Practices Office

- Informal advice/technical assistance
- Commissioner of Administration advisory opinions
- Website and informational materials: <https://mn.gov/admin/data-practices/>
- Listserv and newsletters
- Legislative assistance
- Training



2

Agenda

9:00	Welcome and Introductions
9:15	Open Meeting Law Overview
10:30	Break
10:45	Scenario Breakout Session 1
11:15	Scenario Breakout Session 2
11:45	Wrap-up, Final Questions, and Evaluations

3

Today's Objectives

- Identify key requirements of the OML
 - Types of meetings & applicable notices
 - Closing meetings
 - Other considerations (remote meetings, data practices)
- Apply OML requirements to meetings of different public bodies

4

Open Meeting Law

With limited exceptions, all meetings of public bodies must be open to the public.

Minnesota Supreme Court stated three purposes:

- To prohibit actions taken at secret meetings
- To assure the public's right to be informed
- To give the public an opportunity to present its views to the public body
 - The law is silent on whether people can speak at a meeting

5

What is a "meeting" subject to the law?

- The "quorum" rule
 - *Moberg v. Independent School District No. 281*, 336 N.W.2d 510 (Minn. 1983).
- Two parts to the rule
 1. Quorum (majority) or more of full public body, or quorum of any of the public body's committees, subcommittees, etc. – and
 2. Quorum (majority) discusses, decides, or receives information as a group on issues relating to its official business

6

Gatherings not covered by the law

- Gatherings of less than a quorum of members
- Chance or social gatherings (banquets, parties, etc.)
 - *St. Cloud Newspapers v. District 742 Community Schools*, 332 N.W.2d 1 (Minn. 1983).
- Trainings/team building
 - Attorney General opinion 63a-5, Feb. 5, 1975
 - Advisory Opinion 16-006

7

Serial meetings

- Meetings of groups of less than a quorum
- With the intent to avoid public hearings or reach agreement on an issue
- Might be a violation depending on specific circumstances
 - *Mankato Free Press v. City of N. Mankato*, 563 NW 2d 291 (Minn. App. 1997)

8

Types of meetings

- Regularly scheduled meetings (Minn. Stat. § 13D.04, subd. 1)
- Special meetings (Minn. Stat. § 13D.04, subd. 2)
 - Any meeting not on the regular schedule
- Emergency meetings (Minn. Stat. § 13D.04, subd. 3)
 - Special meetings called because circumstances don't allow for a 3-day prior notice

9

Regular meeting notice

- Keep a schedule of regular meetings on file at primary office (Minn. Stat. § 13D.04, subd. 1)
 - Exception – change in date, time, or place of regular meeting
 - List any interactive technology locations
- Additional advance notice or posting the notice is not required

10

Special meeting notice

- At least three days before the meeting:
 - Post written notice on principal bulletin board or usual meeting room door (Minn. Stat. § 13D.04, subd. 2(a))
 - Provide notice to those who made a written request or publish notice in official newspaper (Minn. Stat. § 13D.04, subd. 2(b), (c))
- Notice must include date, time, place, and meeting purpose (Minn. Stat. § 13D.04, subd. 2(a))

11

True or false

- You must move your regular meeting from Tuesday to Friday. It is ok to list "re-scheduled regular meeting" as the "purpose" in the notice.

12

Emergency meeting notice

- Emergency is not defined – calling the meeting is discretionary
 - Example: dealing with the aftermath of a natural disaster such as a tornado or flood
- Good faith effort to notify media who have requested notice (Minn. Stat. § 13D.04, subd. 3)
 - Posted or published notice not required
- Minutes required if matters not directly related to the emergency are discussed (Minn. Stat. § 13D.04, subd. 3(f))



13

State public bodies and notice

- Ch. 13D notice requirements apply only if not specified in enabling statute
- Schedule of regular meetings
 - On file at primary offices, or
 - Posted on website
- Special or Emergency meetings
 - Publish notice in State Register, or
 - Post notice on website



14

True or false

- “We are closing this meeting for personnel issues” is a sufficient statement before closing a meeting:

15

Closing meetings

- Meetings may be closed only if required or permitted by law
- Statement on the record before closing a meeting
 - Legal authority to close the meeting
 - Describe what will be discussed
- Must be recorded, and retained for 3 years unless otherwise specified
- No general “personnel exception” to close a meeting

16

Meetings *must* be closed to discuss

(Minn. Stat. section 13D.05, subd. 2)

- | | |
|---|--|
| <ul style="list-style-type: none"> • Alleged victims or mandated reporters of certain offenses • Active criminal investigations • Law enforcement officer misconduct • Private education data | <ul style="list-style-type: none"> • Certain other not public data • Medical records • Preliminary consideration of allegations or charges about an individual subject to the body’s authority* |
|---|--|



17

Meetings *may* be closed to discuss

(Minn. Stat. sections 13D.03 and 13D.05, subd. 3)

- Certain labor negotiations
- Performance evaluations of individuals subject to the public body’s authority*
- Certain property transactions
 - Asking price for property
 - Review of appraisals
 - Offers or counteroffers for property
- Certain security matters



18

Meetings *may* be closed, cont'd.

- Meetings may also be closed if:
 - Required by another law (Minn. Stat. § 13D.05, subd. 2)
 - Permitted by the attorney-client privilege (Minn. Stat. § 13D.05, subd. 3(b))
 - Narrower application (balancing of considerations)
 - *Minneapolis Star and Tribune Co. v. H.R.A.*, 246 N.W.2d 448 (Minn. 1976).
 - *Prior Lake American v. Mader*, 642 N.W.2d 729 (Minn. 2002).
 - Advisory Opinion 14-017 – public body as plaintiff

19

Remote meetings, generally

- Sections 13D.015, 13D.02, and 13D.021 permit public body members to attend remotely so long as all conditions are met
 - Requirements apply only when **public body members** attend meeting remotely
 - Requirements do not apply when broadcasting meeting or guests join remotely
- Interactive technology (section 13D.001, subd. 2)
 - “A device, software program, or other application that allows individuals in different physical locations to **see and hear** one another.”

20

Telephone & interactive technology meetings

State-level public bodies - Section 13D.015

- **State-level** public bodies may hold meetings by telephone or interactive technology at **any time** if conditions are met
- Requirements:
 - All members can hear one another and testimony
 - Public can hear discussion, votes, testimony
 - One member “of the entity” is physically in the regular meeting room
 - Votes taken by roll call
- Public may monitor from remote site, if practicable
- Notice that members may participate remotely
- 10 days in advance web-posting requirement



21

Interactive technology meetings

Local public bodies - Minn. Stat. §13D.02

- **Local public bodies** can meet by interactive technology if certain conditions are met
- **Requirements:**
 - All members can see and hear one another
 - Members of the public can see and hear all discussion
 - One member must be physically present in regular location
 - Votes conducted by roll call
 - Each location is open to the public, except:
 - Active military members can attend up to 3 meetings from a not public location while on duty
 - A member can attend up to 3 meetings from a not public location if advised by healthcare profession against being in public & within 60 days of Ch. 12 state of emergency ending
- Notice must include locations of member participating via interactive technology, with exceptions
- Meeting minutes must reflect names and reasons for appearing via interactive technology



22

Meetings by telephone or interactive technology

Pandemic or state of emergency - Section 13D.021

- Any public body may hold meetings by telephone or interactive technology if:
 - Presiding officer, chief legal counsel, or chief admin officer determines in-person meeting is not practical or prudent due to a health pandemic or emergency declared under Ch. 12
- **Meeting requirements:**
 - All members can hear one another and testimony
 - Public can hear discussion, votes, testimony at regular meeting room, unless not feasible
 - One member "of the entity" in the regular meeting room, unless unfeasible
 - Votes taken by roll call
- Public may monitor from remote site, if practicable
- Notice that members may participate remotely
- Public comment period
- Advisory Opinion 21-003 – must be less than a quorum of members in attendance



23

Other considerations

- **Journal of votes** (section 13D.01, subd. 4)
 - Separate journal or meeting minutes
- **Members' materials** (section 13D.01, subd. 6)
- **Use of email**
 - Avoid discussions or votes
 - Advisory Opinion 09-020
- **Meeting locations**

24

Social media

- 13D.065 Use of social media

- A member may communicate with the public via social media
 - OML still applies
 - Forum fully open to public
- Does not include email



25

Penalties

- Intentional violation (Minn. Stat. § 13D.06, subd. 1)
 - Personal liability – \$300 fine
- Three intentional violations (Minn. Stat. § 13D.06, subd. 3)
 - Forfeit office
 - *Funk, et al. v. O'Connor, et al.*, 916 N.W.2d 319 (Minn. 2018)
- Reasonable costs, disbursements, attorney fees (Minn. Stat. § 13D.06, subd. 4)
- No reversal of public body actions taken while in violation of the law

26

Open meetings & data practices

- Public bodies may discuss not public data in an open meeting without liability when:
 - The disclosure relates to a matter within the scope of the public body's authority and
 - Is reasonably necessary to conduct the business or agenda item before the body
- Data retain original classification
 - However, a "record of the meeting" is public
 - Advisory Opinion 21-002
- Section 13.601
 - Correspondence
 - Public body members employees?

27

True or false

- The Open Meeting Law requires meeting minutes for regular meetings.

28

Additional duties of local public bodies

- Duties in addition to those in the Open Meeting Law
 - Minutes/record of meetings
 - Posting
 - Publishing
 - Notices
 - Calling special meetings
 - Others?

29



What questions do you have for us?

30