

The Open Meeting Law

Minnesota Statutes, Chapter 13D



Information Policy
Analysis Division

Presentation Outline

- Purposes of the Open Meeting Law
- Public bodies
- Types of meetings
- Meeting notices
- Closing meetings
- Penalties

Open Meeting Law (OML)

Minnesota Statutes, Chapter 13D

- With limited exceptions, all meetings of public bodies must be open to the public
 - Minnesota Statute section 13D.01
- The public has a right to attend open meetings

Purposes of the OML

Minnesota Supreme Court interpretation

- Prohibit “secret meetings”
 - *Prior Lake American v. Mader*, 642 N.W.2d 729 (Minn. 2002).
- Ensure the public’s right to be informed
 - *St. Cloud Newspapers, Inc. v. Dist. 742 Community Schools*, 332 N.W.2d 1 (Minn. 1983).
- Allow members of the public to be present at open meetings

What governing bodies are subject to the OML? Minn. Stat. § 13D.01, subd. 1

- State: agencies, boards, commissions, and departments
- Local: school district, county, unorganized territory, city, town, or other public body
 - Any committees, subcommittees, boards, departments, and commissions of local public bodies
- Committee governing the statewide or local public pension plan

What does the OML exempt?

Minn. Stat. § 13D.01, subd. 2

- Meetings of the Commissioner of Corrections
- State agencies, boards, or commissions that are exercising a quasi-judicial function in disciplinary proceedings
- Public bodies exempted by another law

What is a *public body*?

- Not defined; courts have broadly interpreted
 - *Star Tribune Company v. University of Minnesota Board of Regents*, 683 N.W.2d 274 (Minn. 2004).
- Possible exclusions:
 - Certain ad hoc advisory committees
 - *Minnesota Daily v. University of Minnesota*, 438 N.W.2d 189 (Minn. App. 1988).
 - When there is less than a quorum of a public body that does not have decision-making powers
 - *Sovereign v. Dunn*, 498 N.W.2d 62 (Minn. App. 1993).

What is a *meeting* of a public body?

- Not defined in the OML
- MN Supreme Court's definition
 - “Quorum rule” – *Moberg v. Independent School District No. 281*, 336 N.W.2d 510, 518 (Minn. 1983).
 - Gathering of a quorum of the public body, or a quorum of a committee, subcommittee, etc.
 - Transacting public business
- Chance or social gatherings are not meetings
 - *St. Cloud Newspapers v. District 742 Community Schools*, 332 N.W.2d 1, 7 (Minn. 1983).

What are *serial* meetings?

- Not discussed in OML; yet to be definitively decided by the courts
 - “... serial meetings in groups of less than a quorum for the purposes of avoiding public hearings or fashioning an agreement on an issue may also be found to be a violation of the statute” *Moberg v. Independent School District No. 281*, 336 N.W.2d 510, 518 (Minn. 1983).

Is an *email* meeting subject to the OML?

- OML is silent on the issue, courts have yet to definitively decide
- Consider Advisory Opinion 09-020
 - OML violated when quorum of an advisory board commented and provided direction on a matter relating to the board's official business via email
 - One-way communication between a chair and members of a public body seems permissible if there is no discussion or decision-making

Can public bodies meet using interactive TV?

Minn. Stat. § 13D.02

- Yes, if:
 - All public body members can see and hear one another
 - The public can see and hear all discussion, testimony, and votes
 - At least one member is physically at regular meeting location
 - Each location where a member is present is open and accessible to the public

Can public bodies meet by telephone or other electronic means?

- Yes, if there is a health pandemic or declared emergency under Chapter 12
 - Minn. Stat. § 13D.021
 - Votes are by roll call; other conditions apply.
- Yes, if it is a meeting of a **state-level** body
 - Minn. Stat. § 13D.015
 - All members can hear one another
 - Members of the Public at the regular meeting location are able to participate in testimony
 - One member is physically at regular meeting location
 - Votes are by roll call
 - Notice must be posted

How must a state-level body give notice of telephone meetings? Minn. Stat. § 13D.015 subd. 5

- Notice must include:
 - The regular meeting location
 - That some members may participate by telephone/electronically
 - Remote monitoring requirements for the public
- In addition to regular, special, or emergency meeting notice requirements, the body must also post notice on its website 10 days before the meeting

How must a public body give notice for a *regular* meeting? Minn. Stat. § 13D.04, subd. 1

- Keep a schedule of regular meetings on file at the public body's primary office
- No additional notice requirement
- Additional notice required for change in date, time, or place of regular meeting

How must a public body give notice for a *special* meeting? Minn. Stat. § 13D.04, subd. 2

- Three days before a special meeting:
 - Post written notice on principal bulletin board or usual meeting room door
- Notice must include date, time, place, and meeting purpose
 - Purpose should include specific topics
 - Advisory Opinions 04-004 and 06-020

What is required if someone requests personal notice of a *special* meeting? Minn. Stat. § 13D.04, subd. 2(b)-(f)

- Three days before the special meeting:
 - Mail/deliver notice to requestors, or publish notice in official or qualified newspaper
- Personal notice must include date, time, place, and purpose of the meeting
- Personal notice requests may expire
- Personal notice requests may be limited to specific topic areas

What is an *emergency* meeting?

Minn. Stat. § 13D.04, subd. 3 (e)

- An emergency meeting is:
 - A special meeting
 - Called because of circumstances that require immediate consideration
- Calling an emergency meeting is within the judgment of the public body
- *Emergency* is not defined
 - Advisory Opinion 04-004

How must a public body give notice for an *emergency* meeting? Minn. Stat. § 13D.04, subd. 3

- Notify members of the public body by telephone or any other method
- Good faith effort to notify media if:
 - Media has made written request for notice
 - Provided a telephone number
 - Notice is provided as soon as reasonably practicable
- Posted or published notice not required

What are the notice requirements for *closed* meetings? Minn. Stat. § 13D.04, subd. 5

- The same notice requirements for open meetings apply to closed meetings
 - Closed *regular meeting* – regular meeting schedule
 - Minn. Stat. § 13D.04, subd. 1
 - Closed *special meeting* – posted notice
 - Minn. Stat. § 13D.04, subd. 2
 - If requested, mailed or delivered notice
 - Closed *emergency meeting* – notice to news media if requested in writing
 - Minn. Stat. § 13D.04, subd. 3

What must a public body do before closing a meeting? Minn. Stat. § 13D.04, subd. 5

- Before closing a meeting, a public body must make a statement on the record that:
 - Provides the specific grounds that permit a closed meeting (i.e. statute citation)
 - Describes the subject to be discussed
 - *Free Press v. County of Blue Earth*, 677 N.W.2d 471, 477 (Minn. App. 2004).
- All closed meetings, except those closed by attorney-client privilege, must be recorded

What meetings *must* be closed?

Minn. Stat. § 13D.05, subd. 2(a)

- Meetings that discuss:
 - Alleged victims or reporters of:
 - Criminal sexual conduct
 - Domestic violence
 - Maltreatment of minors or vulnerable adults
 - Active criminal investigations
 - Law enforcement officer misconduct

What other meetings *must* be closed?

Minn. Stat. § 13D.05, subd. 2(a)(3) and subd. 2(b)

- Meetings that discuss
 - Not public education data (Minn. Stat. § 13.32)
 - Not public health data (Minn. Stat. § 13.3805)
 - Not public medical data (Minn. Stat. § 13.384)
 - Not public welfare or mental health data (Minn. Stat. § 13.46, subd. 2 or subd. 7)
- Meetings that discuss
 - An individual's medical records under Minn. Stat. § § 144.291-144.298
 - Preliminary consideration of allegations or charges of an employee
 - Meeting must be open at employee's request

What meetings *may* be closed?

- Meetings that discuss:
 - Labor negotiations
 - Minn. Stat. § 13D.03
 - Employee performance evaluations
 - Minn. Stat. § 13D.05, subd. 3 (a)
 - Certain property transactions
 - Minn. Stat. § 13D.05, subd. 3 (c)
 - Asking price for property
 - Review of confidential appraisals
 - Develop offers or counteroffers
 - Certain security matters
 - Minn. Stat. § 13D.05, subd. 3 (d)

What other meetings *may* be closed?

Minn. Stat. § 13D.05, subd. 3(b)

- Closure expressly authorized by statute
- Permitted by the attorney-client privilege
 - OML doesn't describe scope of using privilege
 - Some guidance from MN Supreme Court
 - "... employed or invoked cautiously and seldom in situations other than in relation to threatened or pending litigation."
Minneapolis Star and Tribune Co. v. H.R.A., 246 N.W.2d 448, 454 (Minn. 1976).
 - "... applies when the balancing of the purposes served by the attorney-client privilege against those served by the Open Meeting Law dictates the need for absolute confidentiality."
Prior Lake American v. Mader, 642 N.W.2d 729, 737 (Minn. 2002).

Are there penalties for violating the OML?

Minn. Stat. § 13D.06

- Intentional violation
 - Personal liability - \$300 fine
- Three intentional violations
 - Forfeit office
- Court may award reasonable costs, disbursements, attorneys fees up to \$13,000
- No reversal of public body actions for OML violation
 - *Sullivan v. Credit River Township*, 217 N.W.2d 502, 507 (Minn. 1974).
 - *In the Matter of the Petitions of: D & A Truck Line, Inc.*, 524 N.W.2d 1, 6 (Minn. App. 1994).

How does the OML interact with the Data Practices Act?

- Not public data can be discussed at open meetings
 - Minn. Stat. § 13D.05, subd. 1
 - No liability
 - Must be necessary to conduct public business
- Not public data discussed at an open meeting retain not public classification, but a record of meeting is public
 - Minn. Stat. § 13D.05, subd. 1(c)

What are some common misconceptions about the OML?

- No requirement to post notice of regular meetings
 - Minn. Stat. § 13D.04, subd. 1
 - Advisory Opinion 07-018
- The OML doesn't require Robert's Rules of Order
 - Advisory Opinion 04-004
- The OML doesn't give the public a right to speak at open meetings
- The OML doesn't require minutes and agendas
 - Other statutes or ordinances may require minutes or agendas

Other statutes with meeting requirements

Applies to some local public bodies

- Minutes/record of meetings requirements
 - Counties (Minn. Stat. § 384.09)
 - Statutory Cities (Minn. Stat. § 412.151, subd. 1)
 - Towns (Minn. Stat. § 367.11)
 - School Districts (Minn. Stat. § 123B.09, subd. 10)
 - Soil/Water Conservation Districts (Minn. Stat. § 103C.325, subd. 1)
 - Watershed Districts (Minn. Stat. § 103D.315, subd. 5)
- Publication/posting requirements
 - Counties (Minn. Stat. § 375.12 subd. 1)
 - Statutory Cities (Minn. Stat. § 412.191, subd. 3)
 - School Districts (Minn. Stat. § 123B.09, subd. 10 and 11)
 - Towns (Minn. Stat. § 366.01, subd. 8)

Other statutes with meeting requirements

Applies to some local public bodies, cont.

- Requirements for calling meetings
 - Counties (Minn. Stat. § 375.07)
 - Statutory Cities (Minn. Stat. § 412.191, subd. 2)
 - Towns (Minn. Stat. § 365.52)
 - School Districts (Minn. Stat. § 123B.09, subd. 6)
 - Watershed Districts (Minn. Stat. § 103D.315, subd. 10)
- Required hearings
 - Municipalities (Minn. Stat. § 462.357, subd. 3; § 429.031, subd. 1(a); § 414.033, subd. 2(b); § 444.18, subd. 3; § 462.358, subd. 3b)
 - Statutory Cities (Minn. Stat. § 412.851)

For more information & questions

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