



Open Meeting Laws Cheat Sheet

Is it a meeting?

State ex rel. Newspapers v. Showers, 135 Wis. 2d 77 (1987), says a “meeting” occurs when a governmental body **convenes** with the **purpose** to engage in governmental business, and in sufficient **number** of members present to determine the body’s course of action.

Convene

Meetings are not limited to face-to-face or physical gatherings—meetings include situations in which members can communicate with each other and exercise the body’s authority. Telephone and video conference calls, virtual meetings, emails, and texts/electronic messaging could all meet this standard.

Purpose

“Governmental business” refers to any formal or informal action, including discussion, decision, or information gathering, on matters within the governmental body’s realm of authority. Purpose (to engage in governmental business) was:

- **Satisfied** in *Badke* when a quorum of a village board regularly attended each plan commission meeting to observe the commission’s proceedings on a development plan that was within its authority.
- **Not satisfied** in *Paulton* when a quorum of school board members attended a gathering of town residents but did not collect information on a subject the school board had the potential to decide.

Numbers

“Sufficient to determine the body’s course of action” could be the **affirmative power** to pass a proposal or the **negative power** to defeat a proposal.

- **Affirmative power** = “a quorum.” A quorum is the minimum number of members of a body that must be present at any of its meetings to make the proceedings of that meeting valid. Most bodies operate with simple majority (half plus one). **Note:** Check your bylaws to see if quorum is defined. If not, it’s a simple majority.
- **Negative power** = “negative quorum.” If your body defines a quorum as more than a simple majority, a negative quorum is a group sufficient in size to defeat an action. Consult the Office of Legal Counsel if your body has a higher threshold for a quorum.

Walking Quorum

A “meeting” is not limited to situations in which members are simultaneously gathered in the same location. If the members can effectively communicate and exercise their authority, a meeting has occurred even if they are not physically present together. This means that telephone conference calls, emails, or electronic messaging between members could amount to a meeting.

A “walking quorum” is a “meeting” resulting from a series of gatherings among body members. A walking quorum consists of the following elements:

- A series of gatherings among body members that are each smaller in size than a quorum.
- Where an agreement to act uniformly is implied or expressly reached.
- In sufficient number to control the body.

If a body engages in governmental business over a series of smaller meetings and reaches a consensus, they have violated the OML. Even though each individual meeting might not amount to a “meeting” legally speaking, the cumulative effect is that a “meeting occurred” in violation of OML. In *State ex rel. Zecchino v. Dane Cty. Bd. of Supervisors*, 2018 WI App 19, the Wisconsin Court of Appeals held that a county supervisor individually emailing less than a negative quorum of county board members to track votes on an issue did not amount to a prohibited walking quorum. However, if the county supervisor in *State ex rel. Zecchino* had individually polled a quorum of board members, it likely would have amounted to a walking quorum. See [DoJ Correspondence with Herbst](#) (July 16, 2008).

Quorum Not Present at a Noticed Meeting

Most bodies require at least a quorum be present to conduct business. If a meeting is noticed and convenes with fewer members than a quorum, consider adjourning and rescheduling until a future meeting when a quorum is present. See *Board of Supervisors of Oconto County v. Hall*, 47 Wis. 208, 213 (1879) (stating the general rule that any action taken by a governmental body at a meeting without a quorum is null and void).