



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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March 14, 2016

Daniel J. Mallin
Staff Counsel
Wisconsin Association of School Boards
122 W. Washington Ave., Suite 400
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Dear Mr. Mallin:

The Department of Justice (DOJ) is in receipt of your November 30, 2015 correspondence to Wisconsin Attorney General Brad Schimel in which you seek a response to two related questions concerning the notice provisions of the Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98.

First, you ask, "Assuming that the Attorney General would advise school boards and other governmental bodies of a public school district that posting otherwise-compliant meeting notices in one public place and electronically on a website maintained by the school district is sufficient to meet the public notice requirements of . . . the Open Meetings Law, is that method of giving notice also seen as a recommended/advisable approach (i.e., one that is likely to be at least as effective as traditional physical posting in 3 locations)?"

Second, you ask, "Should governmental bodies continue to consider the electronic placement of a meeting notice on an official website to be merely a "supplement" to other methods of providing public notice . . . or can such electronic placement also be relied upon as (1) substantive, and, (2) at least in some circumstances, independently sufficient, means of directly satisfying the requirement of giving notice of meetings 'to the public' . . . ?"

Under the Open Meetings Law, public notice of all meetings of a governmental body must be given by communication from the governmental body's chief presiding officer or his or her designee to the following: (1) the public; (2) to news media who have filed a written request for such notice; and (3) to the official newspaper (designated under Wis. Stat. §§ 985.04, 985.05 and 985.06) or, if there is

no such paper, to a news medium likely to give notice in the area. Wis. Stat. § 19.84(1)(b).¹ Your questions concern notice to the public.

In addition to the Open Meeting Law's notice requirements, other statutes may also set forth the type of notice required for a meeting of a governmental body. Wis. Stat. § 19.84(1)(a). Thus, in order to comply with the notice requirements of the Open Meetings Law, a governmental body must provide notice to the public, news media who have filed a written request for such notice, the official newspaper (or, if there is no such paper, to a news medium likely to give notice in the area), *and* fulfill the notice requirements of any other relevant statutes.

As stated in DOJ's "Wisconsin Open Meetings Law Compliance Guide" (revised in November 2015), the Attorney General recommends posting notice at three different locations within the jurisdiction served by the governmental body in order to comply with the law's public notice requirement. This recommendation is informed by the notice requirements of Wis. Stat. § 985.02(2)(a). While notice requirements found in other statutes are distinct from those of the Open Meetings Law, nonetheless, they can be instructive in providing examples of appropriate notice methods.

The amendment to Wis. Stat. § 985.02(2)(a) permits posting in at least one public place *and* electronically on the municipality's website. Posting in public is still required under the amendment, but only in one location, not three. Nothing in the Open Meetings Law prohibits posting in one location only; thus, posting in one physical location and on a body's website may be sufficient to meet the public notice requirements of the Open Meetings Law.

However, ultimately, notice under the Open Meetings Law must be reasonable under the circumstances. Posting at three different locations is more likely to be considered reasonable than simply posting in one location. As a result, the Attorney General continues to recommend that a body post notice in three locations. This recommendation helps to ensure compliance with the Open Meetings Law's public notice requirements. Such notice may also be posted on a governmental body's website as a supplement to other public notices. Posting on a website should not be used as a substitute for other methods of notice.

¹ It is important to note that notice to the public and notice to a news medium are separate requirements. A governmental body is not required to pay for, and the news medium is not required to publish, notice provided to the news medium. However, if a governmental body seeks to satisfy the public notice requirement by paid publication in a news medium, the chief presiding officer must ensure that the notice is published.

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The Open Meetings Law was enacted in 1976 and some aspects are outdated. For example, the law does not address many of the technological advances in how government business—and business in general—is conducted. As a result, there are many issues that need to be addressed. In July 2015, the Attorney General held an open government summit in which members of the government, attorneys, media, and general public met to discuss some of these challenges. The Attorney General and DOJ's Office of Open Government continue to discuss these issues, and we remain committed to finding ways to address them. At this time, the compliance guide continues to accurately reflect our advice on the issue you describe in your correspondence.

The Attorney General and DOJ's Office of Open Government are committed to increasing government openness and transparency, and DOJ endeavors to educate and offer guidance to ensure openness and transparency. There are several open government resources available through the Wisconsin Department of Justice Office of Open Government website (<https://www.doj.state.wi.us/office-open-government/office-open-government-resources>). DOJ provides the full Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98, maintains the Open Meetings Law Compliance Guide, and provides a recorded webinar and associated presentation documentation.

DOJ appreciates your concern. We are dedicated to the work necessary to preserve Wisconsin's proud tradition of open government. Thank you for your correspondence.

The information provided in this letter does not constitute an informal or formal opinion of the Attorney General pursuant to Wis. Stat. § 165.015(1).

Sincerely,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government

cc: Attorney Carol Nawrocki, Assistant Director of the Wisconsin Towns Association

