AGENDA
ORGANIZATIONAL COMMON COUNCIL MEETING
CITY OF BERLIN, WISCONSIN
TUESDAY, APRIL 15, 2025 – 5:00 p.m.
COUNCIL CHAMBERS, BERLIN CITY HALL, 2ND FLOOR
MEETING IS OPEN TO THE PUBLIC & CITY HALL IS HANDICAPPED ACCESSIBLE
CITY MEETINGS CAN BE WATCHED LIVE OR RECORDED
ON THE CITY OF BERLIN YOUTUBE PAGE @CITYOFBERLIN5623

1. Call to Order/Roll Call

2. Ceremonial swearing in of Mayor and Alderpersons

3. Alderperson orientation. RECOMMENDATION: Listen to City Attorney and staff presentations on open meetings law, public records, ethics law, quasi-judicial actions and other duties and responsibilities of the Common Council. Ask questions as needed.

4. Election of Council President

5. Mayoral appointments with Council Confirmation RECOMMENDATION: Motion to approve Mayoral Appointments as presented.

6. Alderperson vacancy appointment process. RECOMMENDATION: Per Policy on Filling Mayor and Common Council Vacancies, the Council will appoint a person to fill the vacant alderperson position until the position is filled following a special election (Ward 6 race will be on the Spring 2026 ballot, and then on the Spring 2027 ballot as well, as even numbered ward races are normally held in odd numbered years). Determine appointment process per Policy on Filling Mayor and Common Council Vacancies to include submission of Board, Committee, Commission & Common Council Application Form and resume by qualified persons to the City Administrator (by email, mail or in person) by a date to be determined by the Council; Common Council interviews of qualified applicants to be held at the Nomination Meeting (date to be set by the Council). Determine interview questions to be asked of the applicants by the Council at the Nomination Meeting.

7. Adjourn.

CITY OF BERLIN
COMMON COUNCIL ORGANIZATION MEEETING
STAFF REPORT

TO: Common Council
FROM: Jessi Balcom, City Administrator
AGENDA ITEM: All
MEETING DATE: **April 15, 2025 at 5PM**

Ceremonial swearing in of Mayor and Alderpersons
Please come to City Hall between Wednesday, April 2 and Friday, April 11 during regular hours (7:30AM-4:30PM) to be officially sworn in.

Alderperson orientation
City Attorney Eric Larson of Municipal Law & Litigation Group will present on several topics, including open meetings law, public records, ethics law and quasi-judicial actions. Please let me know if you have any specific questions regarding the duties and responsibilities of Common Council members.

Election of Council President
Section 2-44 of the Municipal Code states: "At its first meeting subsequent to the regular election and qualification of new members, the common council shall, after organization, annually choose from its members a president, who shall be elected for a one-year term of office, and who, in the absence of the mayor, shall preside at meetings of the common council and, during the absence or inability of the mayor, shall have the powers and duties of the mayor, except that he shall not have power to approve an act of the common council which the mayor has disapproved, by filing objections with the clerk-treasurer. When so officiating, he shall be entitled "acting mayor.""

(An) Alderperson(s) will nominate (an) alder(s) to be the Council President. Following nominations, the Council will vote for the Council President to serve for one year.

Mayoral appointments with Council Confirmation
The 2025 Mayoral Appointments table will be presented for confirmation by Common Council.

The following Officers will be appointed: City Attorney, Health Officer, Humane Officer, Building Inspector, Official News Paper, Weed Commissioner/Forester.

Please see the enclosed table for the Commission, Board and Committee positions to be appointed.

Council Liaisons will be appointed to:
BCDC
Cemetery Board
Committee on Aging
Community Development Authority (2 positions)
Library Board
Park & Recreation
Plan Commission
Police & Fire Commission
Sewer & Water Commission

Alderperson vacancy appointment process

The policy adopted by Resolution #19-01 Adopting Policy On Filling Mayor and Common Council Vacancies is attached for your reference.

Per the Policy on Filling Mayor and Common Council Vacancies, the Council will appoint a person to fill the vacant alderperson position until the position is filled following a special election.

Ward 6 is vacant, as the position of Alderperson and Mayor are not compatible (cannot be held by the same person). Because Catrina Burgess was elected to both positions and has chosen to serve as Mayor, the Ward 6 Alderperson position will need to be appointed by the Common Council.

The Ward 6 Alderperson race will be on the Spring 2026 ballot, and then on the Spring 2027 ballot as well, as even numbered ward races are normally held in odd numbered years.

Per the Policy to apply for the vacant Alderperson position, qualified persons are to submit a completed Board, Committee, Commission & Common Council Application Form and resume at least a week prior to the Nomination Meeting. I would suggest that the applications be submitted to the City Administrator (by email, mail or in person) by a date to be determined by the Council.

A notice needs to be placed in the paper requesting applications for the position and noting the date the applications are due and the date of the Nomination Meeting.

Possible dates:

- Nomination Meeting Monday May 12 at 6PM, applications due Monday May 5, notice in the paper on April 24.
- Nomination Meeting Tuesday May 13 at 5PM (before the Common Council meeting at 7PM), applications due Tuesday May 6, notice in the paper on April 24.
- Nomination Meeting Wednesday May 14 at 6PM, applications due Wednesday May 7, notice in the paper on April 24.
- Nomination Meeting Wednesday May 21 at 6PM, applications due Wednesday May 14, notice in paper on April 24.
- Nomination Meeting Monday May 26 at 6PM, applications due Wednesday May 19, notice in paper on April 24.
- Nomination Meeting Wednesday May 28 at 6PM, applications due Wednesday May 21, notice in paper on April 24.

Per the Policy the Common Council interviews of qualified applicants are to be held at the Nomination Meeting.

The interview questions that are to be asked of the applicants by the Council are to be determined ahead of time and asked of all interviewees at the Nomination Meeting. The Council should decide what questions they would like to ask of the applicants and whether there will be a maximum time for responses.

Suggested interview questions:

Why did you apply to be the Ward 6 Alderperson?
What do you see as the City's greatest challenge over the next year?
What do you see as the City's greatest strength?
What would you bring as a member of the Common Council?
What experience do you have in local government and policy making?

Attachments:
2025 Mayoral Appointments table
Policy On Filling Mayor and Common Council Vacancies

Orientation materials from City Attorney to be provided at meeting

CITY OF BERLIN
COMMON COUNCIL TRAINING

- Wisconsin Public Records Law
- Wisconsin Open Meetings Law
- Protection Against Bias
- Ethical Obligations
- Residency Appeals

Municipal LAW
& LITIGATION GROUP
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City of Berlin

Continuing Education Regarding Governing Body Code Compliance

TWENTY IMPORTANT THINGS TO KNOW ABOUT THE WISCONSIN PUBLIC RECORDS LAW

1. The public records law "shall be construed in every instance with a presumption of complete public access, consistent with the conduct of governmental business. The denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied."

2. A record is any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority.

3. Authorities must adopt, display and make available for inspection and copying at their offices information about their public records policies.

4. A requester generally may choose to inspect records or to receive copies.

5. Written requests are not necessary.

6. Magic words are not required.

7. The requestor does not need to state the purpose of the request and generally does not have to identify himself or herself.

8. Request must be reasonably specific as to subject matter and length of time.

9. Response is required, "as soon as practicable and without delay."

10. A written request requires a written response, if the request is denied in whole or in part.

11. If part of the record is disclosable, that part must be disclosed. Non-disclosable portions must be redacted.

12. Reasons for denial must be specific and sufficient.

13. Generally, only records that exist at the time of the request must be produced.

14. A useful analytic approach for responding to public records requests is: a) Does a responsive record exist?; b) Is there an absolute right of access?; c) Is access absolutely denied?; d) Apply the balancing test; e) consider whether notice is required.

15. The balancing test requires weighing the public interest in disclosure of the record against the public interest and public policies against disclosure.

16. Pre-release notice is required only regarding records information resulting from investigation into a disciplinary matter or possible employment-related violation, records obtained by subpoena or search warrant, or records prepared by an employer other than the authority; and to public officials.

17. Local public officials are entitled to pre-release notice if the record contains information pertaining to the official. The local public official has a right to augment the response that is provided to the requestor.

18. Actual, necessary and direct costs may be charged for copying, reproduction and mailing.

19. Actual, necessary and direct costs may be charged for locating responsive records, if the costs exceed $50.00.

20. Our courts have ruled that redaction costs cannot be charged.

WISCONSIN OPEN MEETINGS LAW

As your Municipal Attorney, I believe it is my obligation to advise you of your duties regarding Wisconsin's Open Meeting Law. Over the years my office has had extensive experience with this law. Our experience, regrettably, includes defense of municipalities and elected officials who have been accused of violating the law. We prefer to avoid those accusations, if it is possible to do so. Therefore, we regularly try to educate relevant personnel of the requirements of the law. With this objective in mind, I have prepared the following Memorandum. I hope that this will assist you in complying with Wisconsin's Open Meeting Law, in order to prevent inadvertent violations of the law, and to preserve good government. As always, I am available to describe these obligations in further detail, or to answer any specific questions you may have, on your request.

MEMORANDUM

The Wisconsin Open Meetings Law is found in Sections 19.81 through 19.98 of Wisconsin Statutes. In this memorandum I will discuss seven aspects of the law: (1) The general purpose of the law; (2) *Who* is subject to the law; (3) *What* is subject to the law; (4) Special rules for closed session; (5) Avoiding violations related to public comments; (6) Notice requirements; and (7) Penalties that apply for violations.

(1) The general purpose of the law.

The purpose of the law, in general, is to ensure citizens full and complete access to the affairs of government:

> "In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that *the public is entitled to the fullest and most complete information regarding the affairs of government* as is compatible with the conduct of government business." (Section 19.81(1), Stats.)

This statement of purpose is very important, as courts refer to it often. The provisions of the Open Meetings Law are required to be interpreted broadly to accomplish this purpose. (Section 19.81(4), Stats.) In furtherance of this purpose, the state legislature requires that all meetings of governmental bodies be open to the public:

> "To implement and ensure the public policy herein expressed, all meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times unless otherwise expressly provided by law." (Section 19.81(2), Stats.)

As a general rule, you ought to presume in every case that the public is entitled to receive full and complete information (including prior notice, and ability to attend) anytime a governing body engages in government business, unless a specific exception applies. I will define particular applications of this general rule in the remaining sections of this Memorandum.

(2) Who *is subject to the law.*

The law applies to all "governing bodies." This term is specifically defined in the law, and it is defined very broadly to include much more than only the primary governing body:

> "Governing Body" means any local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinances, rule or order... or a formally constituted subunit of any of the foregoing ... (Section 19.82(1), Stats.)

It also applies to any committees, park commissions, zoning boards of appeals, boards of review, and planning commissions, and you may have other committees or boards that may be subject to the law. If you have a question regarding a particular entity is a "Governing Body" that is subject to the law, please advise and I will attempt to answer that question for you. Generally, I advise municipal officers, if they appoint advisory committees such as a building committee or salary review committee, these committees are subject to the law also because they are created by order of the Chief Presiding Officer and/or Governing Body.

(3) What *is subject to the law.*

The law applies to "meetings" of governing bodies. This also is a term that is defined in the law, and is defined very broadly. This term includes the kind of activity that you normally think of as meetings, such as your regular meetings, but it also can include much more, as I will discuss below. The definition is:

> "Meeting" means the convening of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. If one- half or more of the members of the governmental body are present, the meeting is rebuttably presumed to be for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. The term does not include any social or chance gathering or conference which is not intended to avoid this Subchapter
>
> ... (Section 19.82(2), Stats.)

Wisconsin courts have interpreted this definition as having two components, one related to purpose, and the second related to number. First the *purpose* of the gathering must be to engage in government business, be it discussion, decision or information gathering. Second, a sufficient *number* of members of the body must be present to determine the outcome of the matter in consideration. *(Newspapers Inc. v. Showers,* 135 Wis.2d 77 (1987).) If the purpose and number requirements are met, it is a meeting that is subject to the open meetings law.

Before I analyze this further, note first that this definition contains a presumption that any time one-half or more of the members of a governmental body are present, they are presumed to be meeting for the purpose of exercising their governmental duties. This means that, if the governing body's activity were challenged, the person making the challenge only needs to allege that more than half of the governing body is present; upon that allegation (assuming one half or more were actually there) the governing body would have to try to prove to the court that it was not exercising the responsibilities, authority, power or duties of the office, at all, at the time. This is often a difficult burden to meet.

Moreover, the case law and Attorney General opinions that have interpreted the law result in even more stringent requirements for you to follow. I will discuss three such matters, regarding a "negative quorum," "walking quorum" and the applicability of these rules to telephone and e-mail conversations.

(a) Negative quorum.

In many situations, the number of members who may control the outcome of particular issues may be less than a quorum of the governing body. For example, some issues require a two-thirds vote to pass. If two thirds vote of a seven member body is required, then 5 votes are needed to pass. In that situation, three votes against would control the outcome (i.e. a "negative quorum"). Therefore, on issues that are subject to a two-thirds vote, a gathering of three members is subject to the open meetings law, if it is for the purpose of discussion, decision or information gathering related to that issue.

Likewise, as to matters that are subject to a three-fourths vote of the governing body, two members of a seven member governing body can control the outcome, because six votes are needed to pass. On those issues, communication between two members is subject to the open meetings law, if it is for the purpose of discussion, decision or information gathering related to that issue.

Some governing bodies, and numerous committees, have fewer than seven members, so the above-described analysis will need to be modified in accordance with the number of members on the Board or committee. For example, if there are only six members, then three votes against any motion would prevent passage of the motion, regardless of whether a simple majority or two-thirds vote is required. Because three votes would control the outcome, a gathering of three members would be subject to the open meetings law, if it is for the purpose of discussion, decision or information gathering related to that issue.

To complicate matters even further, in some situations, often less than the full membership of the governing body will make the final decision, as some members may be absent or may recuse themselves. This affects the numbers that apply to the negative quorum. For example, suppose a governing body consists of seven members, but one of the seven member board will not be taking part in the decision. In that situation, three members of the six who can vote on the issue can control the outcome, even if only a simple majority is required to pass. A gathering of three members is then subject to the open meetings law, if it is for the purpose of discussion, decision or information gathering related to that issue. To take this point even further, as few as four members may make the ultimate decision, because it is possible that the bare minimum will take part in any given issue, which is four of the seven member board (assuming four is a quorum, which is usually the case with a seven member board). This means that as few as two members can in fact be a controlling number of votes.

This leads to a complicated and somewhat unpredictable analysis that must be made in every case to determine whether the open meetings law applies in particular situations. As a practical matter, if you are unsure of the number of votes that may control the outcome in a particular situation, obviously the prudent course of action is to avoid discussing governmental business outside of a properly noticed meeting, even with only one other member of the governing body.

(b) Walking quorum.

It is possible that the law may also be violated by a series of gatherings, each one of which includes fewer than a controlling number of members. For example, if three persons can control the outcome of the matter, you may violate the law if you are a member of a governing body and you discuss the issue with one member, and then later discuss the issue with a third member. That series of discussions could constitute a "meeting" of three members, even though not all three were present at the same time. *(Showers,* 135 Wis.2d at 100.) The courts refer to this as a "walking quorum," and subject it to the same notice requirements that apply to other meetings of governing bodies, to ensure that the purpose of the open meetings law is not violated.

(c) Telephone.

The attorney general has given an opinion that even a telephone call that is made for the purpose of engaging in government business can be a meeting, if a controlling number of members participate in the call. The attorney general has also concluded that a series of telephone calls can result in a "walking quorum," which constitutes a meeting that is subject to open meetings law requirements. Telephone calls, therefore, are indistinguishable from face-to- face conversations.

(d) E-mail.

The technological changes that have brought e-mail into our daily lives have resulted in new concerns about whether the use of e-mail constitutes a meeting, for purposes of the Wisconsin Open Meetings Laws. This technology was certainly not contemplated when the laws were created, and therefore it is difficult to apply these laws in this context. At the same time, there is a consensus on this issue among practitioners of municipal law, guided in part by the Wisconsin Attorney General's Office, and I will turn to that emerging interpretation next. (Note that for convenience I will use the word "quorum" in the following analysis, but I mean for that to also include a "negative quorum" and a "walking quorum," as discussed above.)

(i) *Analysis of E-mail Issue.*

Two bodies of law come together in this e-mail issue. One is the Wisconsin Public Records Law, and the other is the Wisconsin Open Meetings Law. As to the first of these issues, keep in mind that e-mail messages relating in any way to governmental business are all public records. You are obligated to maintain those public records when you receive them for a period of seven years unless local ordinances have been created to establish a different retention period. You should never delete an e-mail message that relates to governmental business, therefore, unless you are sure that the retention period has lapsed.

The *open meetings* issue arises when e-mail is used more like a conversation than it is used like a letter. Frequently these conversations on e-mail will go back and forth and essentially are indistinguishable from a conversation. If such a communication involves a quorum of the governmental body, it is likely a violation of the law.

I find the Attorney General's description of these open meetings issues to be particularly persuasive, and I believe this analysis is likely to be followed by a court. In the "Wisconsin Open Meetings Law Compliance Guide" published by

the Wisconsin Department of Justice, Office of the Attorney General, the Attorney General gives the following guidance on this issue:

> *"The widespread* use *of electronic mail and other electronic message technologies creates special dangers for governmental officials trying to comply with the open meetings Jaw. Although two members of a governmental body larger than four members may discuss the body's business without violating the open meetings law, features like "forward" and "reply to all" common in electronic mail programs deprive a sender of control over the number and identity of the recipients who eventually may have access to the sender's message. Moreover, because of the electronic mail communication, it is quite possible that a quorum of a governmental body may receive the sender's* message *-- and therefore may receive information on a subject within the body's jurisdiction -- in an almost real-time basis, the way that they would receive it in a meeting of the body. Because of the dangers posed by electronic mail, the Attorney General strongly discourages the members of every governmental body from using electronic mail to communicate about issues within the body's realm of authority."*

(ii) *E-mail to a Quorum of the Governmental Body.*

I suggest, therefore, that e-mail message should not be sent back and forth among a quorum of the governmental body. The same can be said regarding copying e-mail messages to a quorum of a governing body, and forwarding e-mail messages to a quorum of a governing body.

The key issue is not whether a quorum of members have actually participated in the discussion by saying something, the issue is whether a quorum of the members have been privy to the discussion as it is taking place. If it appears to be an ongoing discourse between only two individuals, but the messages are copied to the full governing body, this can certainly have the appearance of a conversation that involves the full board. Consider this: What is the purpose of copying the other members if it is not to involve the other members in the conversation? If the purpose in fact is to involve the other members in the conversation, this should be done only at a properly noticed meeting.

(iii) *Easy Target.*

As a practical matter you need to be aware that you can easily become a target and could be exposed for violating these laws by media companies which closely watch these issues. Email leaves a trail that is easy to follow. Numerous articles have appeared in the Milwaukee Journal Sentinel from time to time, which show how use of e-mail could come back to haunt you. I hope that you never have to face the scrutiny and ridicule that can arise in that regard.

(iv) *Practical Suggestions for E-mail.*

I realize that the foregoing analysis leaves you with some rather vague rules of law. Unfortunately, that is the state of the law as it exists today. My recommendations to you are as follows:

- One-way Communication. I recommend that e-mail be used, if it is used, for one-way communication only. If you receive a one-way communication that was delivered to a quorum of the governmental body, do not "reply all" to it, and do not forward it to other governmental body members. If you have thoughts you would like to express regarding the matter, I recommend that you follow your procedures for placing that issue on an upcoming meeting agenda.

- Keep Private conversations private. From time to time you may engage in e-mail conversations back and forth with municipal staff, or a single member of the governing body. In those circumstances, you should not expand that conversation to include other members of the governing body.

- Disclaimer. When you send an email in your official capacity, I recommend that you add a disclaimer to the end which prohibits further distribution of the e-mail message. While that disclaimer might not necessarily prevent a recipient from forwarding it, if ultimately an open meetings violation occurs as a result of your email, the disclaimer may shield you from liability for having sent it initially. The disclaimer that I recommend could read substantially as follows:

  > *This message originates from._____. It contains information that may be confidential or privileged and is intended only for the individual named above. It is prohibited for anyone to disclose, copy, distribute or use the contents of this message without permission, except as allowed by the Wisconsin Public Records Laws. If this message is sent to a quorum of a governmental body, my intent is the same as though it were sent by regular mail and further distribution is prohibited. All personal messages express views solely of the sender, which are not attributed to the municipality I represent, and may not be copied or distributed without this disclaimer. If you receive this message in error, please notify me immediately.*

  You could go even further than this, for that matter. One of our clients routinely provides the following disclaimer, which I offer to you as a second example for your consideration:

  > *Open Meetings Disclaimer: The email below contains the thoughts, opinions, and commentary of the author alone. It is intended as a one-way transmission of a thought, idea, or information related to my role as municipal official or issues within the municipality, but is not intended to serve as an invitation for reply, rebuttal, discussion, debate or responsive commentary. Please do not respond to this email as it is the author's intention to utilize the informality and convenience of this electronic message while simultaneously avoiding any and all violations of the Wisconsin Open Meetings Law contained in Section 19.81 of the Wisconsin Statutes or elsewhere within Wisconsin Jaw, as applicable to this municipality as described in*

66 Op. Atty Gen. 237 (1977). Specifically, there is no intention on the part of the author to engage in or foster any "governmental business" as defined in State ex.rel.

Newspapers v. Showers, 398 N.W.2d 154 (Wis. 1987). You are specifically requested to refrain from forwarding or "replying to all" with regard to its contents, so as to avoid the possible "walking quorum" proscriptions, including those considered in State ex.rel. Lynch v. Conta, 239 N.W.2d 313 (Wis. 1976). It is the author's motive and intent to comply with the overriding policy of the open meetings Jaw - to ensure public access to information about governmental affairs. Your cooperation in accomplishing this end is most appreciated.

- Retention Policy. If you do not have a clearly established retention policy for e-mail messages, I recommend that you consider establishing one. This policy would apply to computers within the municipality, and also for any computer that you use for receipt or mailing e-mail communications relating to your official capacity. At a minimum, I suggest that all e-mail communications that you send or receive should be copied to the municipal Clerk so that the Clerk can maintain the record. If you have a particular reason why the message should not be sent to the municipal Clerk, keep in mind that you then have a larger responsibility for that record given that it will not be maintained by the Clerk. Please keep in mind that in general most public records are required to be retained for seven years, though there are exceptions, and there is a very intricate procedure to change record retention periods. You should contact us if you want to explore reduction of applicable records retention requirements.

- Use Discretion. One important difference between e-mail and an in-person discussion is that e-mail messages leave a trail which is open and available to the public. You need to keep this in mind at all times if you intend to use e-mail. The statement you may make over the telephone may not have any forethought and may be forgotten forever, but an e-mail message made without forethought can be located later, printed in the newspaper, used against you in litigation, and etc. Always keep in mind that your e-mailed messages might be broadcast to the world.

(e) Attendance at Meetings of Other Governing Bodies or Committees.

As interested and engaged community members, it is very common for members of one governing body to want to attend meetings of another governing body, to observe the proceedings or gather information. This can lead to legal complications, however, if a quorum or a negative quorum of one governing body attends the meeting of another governing body. Those attendees can constitute a meeting and trigger all of the procedural requirements of the open meetings law. For example, if a quorum of the Village Board would attend a meeting of the Plan Commission, to observe an issue that will be coming before the Council at a later date, that in all likelihood constitutes a Board meeting that occurs simultaneously with the Plan Commission meeting. If no Board meeting was noticed, this could cause a violation.

This concern was reported by media resources in the fall of 2016, involving Winnebago County. The Wisconsin Department of Justice investigated the activities of two county committees and their attendance at meetings of a Courthouse Security Committee (of which they were not members) over a period of years. Following the investigation, the Dept. of Justice and the Winnebago County Corporation Counsel found substantial cause for concern, and recommended that this practice be terminated.

It is very common for agenda notices to attempt to address this issue through boilerplate language that saying other committees may be present, but no action by the quorum of other committees will be taken. For example, the standard language may say the following:

> "It is possible that individual members of other governing bodies of the municipality may attend the above meeting. It is possible that such attendance may constitute a meeting of any such other governing body pursuant to State ex rel. Badke v. Greendale Village Board, 173 Wis. 2d 553,494 N.W. 2d 408 (1993). This notice does not authorize attendance at either the above meeting or the Badke meeting, but is given solely to comply with the notice requirements of the open meeting law. No action will be taken by any other governmental body except by the governing body noticed in the caption above."

We continue to recommend that you include that standard notice in your agendas, but be advised that this standard notice may not be sufficient. When issues arise where members of one governing body are particularly interested in the actions of another governing body, the best practice would be to provide a separate notice of the second body that may be present. For example, if a quorum or negative quorum of the Village Board is likely to attend a meeting of the Village Plan Commission, the best practice would be to provide a separate open meetings law notice of the possible quorum of the Village Board in attendance at the Village Plan Commission meeting. If that separate notice is not provided, the best practice would be for members of the secondary body to leave the meeting to avoid creating a quorum or negative quorum that was not duly noticed.

(4) Special rules for closed Session

As you know, you occasionally will have a lawful reason to meet in closed session. Closed session, however, is an exception to the general rule, which generally requires that meetings be in open session. Consider, first, therefore, what is meant by "open session":

> "'Open Session' means a meeting which is held in a place reasonably accessible to members of the public and open to all citizens at all times" (Section 19.82(3), Stats.)

The phrase "open to all citizens at all times" is an unambiguous general prohibition against holding closed, or secret meetings. However, this does not necessarily require that meetings be held at the Municipal Hall. The attorney general has stated that governmental bodies may meet in private buildings, even private homes, if the location is reasonably accessible and properly noticed. However, if a private building, such as the clerk's home is used, the public must be allowed to enter the home to observe the meeting.

Occasionally, you will face sensitive issues that you would like to discuss privately, without members of the public being present. Even so, you still must meet in open session

unless there is an applicable statutory exemption which allows you to go into closed session. Section 19.85 of the Wisconsin Statutes describes all such lawful exemptions. One exemption, for example, is for conferring with legal counsel who will advise the governing body regarding strategy to be adopted regarding current or likely litigation, namely section 19.85(1)(9).

Obviously, in that situation, the municipality would have an unfair disadvantage in the litigation if the opposing party could sit in and observe the municipality's legal strategies, and therefore the legislature created this statutory exemption to the open meetings law.

The statute contains several other specific exemptions, which arise out of similar concerns that the municipality's interests cannot reasonably be discussed or pursued in open session. Rather than attempt to summarize all of the lawful reasons for going into closed session, I merely wish to point out that there are only a few specific lawful reasons for going into closed session, which are all contained in section 19.85, Wisconsin Statutes. Whether closed session is appropriate must be considered on a case-by-case basis, often in consultation with counsel if you have questions regarding particular situations. Any doubts about whether a closed session is permitted must be resolved in favor of requiring an open session.

If you have a lawful basis for holding a closed session, the next issue is the several technical procedural requirements that apply. The governing body must first convene in open session. Thereafter, a motion may be made to go into closed session, which must then be seconded. Prior to voting on the motion, the presiding officer must publicly announce the nature of the business to be considered in closed session, and the particular statutory exemption which authorizes the closed session meeting, which must be recorded and reflected in the minutes. The motion must then be approved by a majority roll call vote, and the vote of each member must be recorded and reflected in the minutes.

Caution is warranted whenever going into closed session, in light of the case of *State ex rel. Oitzinger v. City of Marinette, et al., appeal No. 2024P51, decided 2/18/2025*, in which the court ruled the municipality failed to comply with the open meetings law. Because of this case, I recommend:

- Local Governments should review the procedures used by its boards and commissions to go into closed session in light of the *Oitzinger* decision to ensure that these procedures meet the requirements enunciated in that opinion.

- The closed session exemption under Wis. Stat. § 19.85(1)(e) is widely used by local government for bargaining and negotiation purposes. The *Oitzinger* decision may restrict the use of this exemption. There may be more challenges to the use by a local governmental body of the closed session exemption under Wis. Stat. § 19.85(1)(e) in light of the *Oitzinger* decision.

- Local Governments should carefully consider whether all or parts of topics they wish to discuss in closed session in particular matters meet the restricted applicability of the closed session exemption under Wis. Stat. § 19.85(1)(e) as interpreted in the *Oitzinger* decision.

- The opinion does not offer much guidance on how much discussion would be sufficient before a governmental body moves to go into closed session. In a footnote int the case, the court stated:

Our statement here is not intended to suggest or describe exactly what information must be provided during an open session to establish a basis for a governmental body's vote and a closed session. That issue is not before us, as no attempt was made to provide that information in open

session in either of the meetings at issue.[1]

In the face of this uncertainty, when using Wis. Stat. § 19.85(1)(e) as your authority for a closed session, I recommend you first discuss the matter in open session but reserve an ability to go into closed session for those aspects of the matter for which closed session is determined to be "required." Include in the motion one or more reasons why the governmental body is required to go into closed session on this particular matter. If you know a reason in advance, I recommend it be stated in the closed session announcement shown in the agenda.

- Finally, it is not entirely clear whether the court's discussion of the procedural requirements for going into closed session are limited solely to a closed session held under Wis. Stats. § 19.85(1)(e). The issue before the court in *Oitzinger* involved only the exemption under Wis. Stats. § 19.85(1)(e). However, the broadness of the language used by the court of appeals raises an inference that these procedural requirements might arguably apply to other exemptions in Wis. Stats. § 19.85(1).

Once the steps are followed, the governing body may then exclude all members of the public from closed session. This includes the governing body's right to exclude the clerk, treasurer, assessor, municipal employees, etc., because they are not members of the governing body. However, if the governing body is a sub-unit of a parent governing body (e.g. a sub-committee of the governing body), then members of the parent body shall not be excluded from the meeting, unless the rules of the parent body provide otherwise. §19.89, Stats. I also do not encourage the governing body to exclude the clerk because minutes of formal actions taken in closed sessions should be recorded. If the governing body feels compelled to exclude the clerk for whatever reason, one of the governing body's members should be designated to take minutes of the meeting. The closed session need not be tape recorded nor must every word said be recorded in the minutes. Formal actions in closed session should be recorded.

You need to be careful that the people who are invited into closed session do not defeat your lawful basis for the closed session. For example, if you intend to go into closed session for competitive or bargaining reasons (19.85(1)(e)) you should not have the party you are negotiating with in the closed session. The intent is to prevent the party you are negotiating with from knowing your negotiation strategy. You cannot keep the matter secret from others if you let the ones hear it which the law protects you against.

During the closed session meeting, the only issue that may be considered is the specific issue that was announced by the chief presiding officer prior to going into closed session. When consideration of that matter is complete, the governing body then has two options, depending upon the contents of the meeting notice. If the notice of the meeting advised that the governing body may reconvene in open session, then the governing body may do so and proceed in open session to consider such matters as were properly noticed. On the other hand, if the meeting notice did not give notice that the governing body would reconvene in open session, then the governing body is prohibited from doing so, and they must adjourn.

Formal voting in closed session is generally discouraged, although occasionally it may be necessary to do so. In one reported case, the Court of Appeals commented that formal votes must be made in open session. *Shaeve v. Van Lare,* 125 Wis.2d 40 (Ct. App. 1985) Since that time, however, commentators including counsel for the Wisconsin League of Municipalities, have concluded that the Court of Appeals' comment in this regard was not a

[1] *State ex rel. Oitzinger v. City of Marinette, et al,* slip opinion at Footnote 12.

necessary part of the decision, and is probably not a requirement that need be followed in every case. I believe that there are times when a vote must be taken in closed session, rather than open session, because of confidentiality or competitive reasons that are an integral part of the closed session deliberation, and in those circumstances I recommend that you vote in closed session. Also, obviously, if you are prohibited from re-convening into open session, due to failure to notice that fact, then the vote to adjourn must be in closed session.

The minutes of the closed session, and the tape of the closed session if one was made, are public records, but access to these public records should be carefully considered by the records custodian. As with all public records, when a request for a record is received, the records custodian must perform a balancing test prior to releasing the record. If the reasons which justified going into closed session are still applicable, e.g. legal counsel discussed strategy regarding litigation in closed session and the litigation is continuing at the time of a public records request, then the reasons for preventing access will probably outweigh the public's interest in the record, and the custodian will not disclose the record. Once the litigation is over, however, the public's interest in the record may outweigh the reasons to prevent disclosure, and in that event the record must be released.

You should not expect that statements made in closed session are completely private, or that nobody will ever know what was said in closed session. Our courts have allowed litigants to pursue discovery against municipalities, in some limited situations, to find out what was said in closed session, e.g. in the case of *Sands v. Whitnall School District, 754 N.W.2d 439 (2008).* The court held "we conclude that Section 19.85 does not create a privilege shielding contents of closed meetings from discovery requests." This does not mean that all closed session information must be released whenever it is requested, or that it must be released during litigation. There is ample existing case law unaffected by this case, which often times would prevent the statements made in closed session from being disclosed, depending upon the circumstances existing at the time that the request is made. Even so, it is important to remember that you are conducting governmental business in closed session and you should conduct yourself appropriately in that regard, including exercising your best judgment and maintaining proper decorum. If you do so, there is really no cause for concern if at some time in the future, when there is no longer a need for confidentiality, the statements that were made in closed session might reach the light of day.

(5) Avoiding violations related to public comments

The open meetings laws specifically allow a governing body to receive public comments at meetings. The law states, in relevant part:

> "The public notice of a meeting of a governmental body may provide for a period of public comment, during which the body may receive information from members of the public." (Section 19.84(2), Stats.)

Also, the governing body may discuss the public comments:

> "During a period of public comment under s. 19.84(2), a governmental body may discuss any matter raised by the public." (Section 19.83(2), Stats.)

Therefore, if proper notice is given, the governing body may "receive information from members of the public" and "discuss any matter raised by the public".

Several issues arise regarding this law, which I want to briefly address. First, keep the notice requirement in mind. You should not allow members of the public to speak at a meeting regarding matters that are not specifically included in the meeting notice, unless the meeting notice describes a period of public comment.

Second, you must not take action on any matters that arise during this public comment period. The law only allows you to "receive information" and "discuss" those matters, it does not allow you to take action.

Third, in my opinion, which counsel for the League of Municipalities shares, members of the governing body may not make public comments during the public comment period. By this I mean, the governing body members cannot use this public comment period as a means to bring up for discussion issues that were omitted from the meeting notice. That practice would clearly violate the intent of the open meetings law, which is to provide the public with full and complete access to the affairs of government, and also would violate the requirement that notice of the subject of a meeting be provided in advance of the meeting. Instead, all public comments during this portion of the meeting must be initiated by persons who are not members of the governing body. If the members of the governing body have issues that they would like to discuss at the meeting, they should be sure that those matters are specifically included in the agenda ahead of time, so that appropriate notice of those matters can be given.

(6) Notice requirements

One of the key components of the open meetings laws is the notice that you are required to give prior to any meeting. I will discuss three aspects of the public notice requirements, namely: (a) *How* must the notice be given; (b) *When* must the notice be given; and (c) *What* should the notice contain?

(a) *How* must the notice be given?

There are two general requirements regarding public notice. First, the open records law requires that other applicable statutory notice requirements must be met. For example, Board of Review has its own notice requirements, as stated in §70.47, and the open meetings law requires that statutory notice to be given prior to any meeting of the Board of Review. While this results in several different notice requirements being required depending upon the particular issue involved, that complexity is not due to the open meetings law itself, but is due to the particular notice requirements of other statutes. Therefore I will not discuss this first general requirement further in this context. The more complicated notice requirement that is directly related to the open meetings law, is this: each meeting must be preceded by a communication from the chief presiding officer or his or her designee to all of the following: (a) the public; (b) to those news media who have filed a written request for such notice; and (c) to the official newspaper (if one is designated) or if none exists to a news medium likely to give notice in the area. I will discuss these three communications from the chief presiding officer further, in turn.

First, the chief presiding officer or designee must communicate notice to *the public.* This may be done by posting the notice in one, or preferably several places in the municipality where it is likely to be seen by the public, or it can be done by publication. The Attorney General has suggested that it is prudent to post the meeting notice in three separate places in the municipality, and that would be my recommendation as well. Some municipalities use publication in a newspaper but this is not required if notice is posted. One of the problems with

using publication exclusively is that if a weekly newspaper is used, often the deadline is early in the week. If a matter requires a meeting on 24 hour notice, the newspaper is not published until a week later. Also, if the newspaper fails to publish the notice for some reason, the meeting cannot be held. On the other hand, the three postings can be made completely within the control of the municipal officers. State law was recently amended, moreover, to allow posting in one location and on the municipal website, which is another option in many cases.

If you provide notice to the public by posting, you need to consider what locations in the municipality are likely to give adequate notice. The Municipal Hall door is, of course, one of the most common locations. You could also post in other public places such as a municipal park or fire station, where you believe the notices are likely to be seen by the public. Posting at private businesses is also proper, including taverns. However, we would encourage the municipality to place a bulletin board outside of any such private business (especially at taverns) with the owner's permission, to avoid any improper appearance. The key to the use of three locations is to establish the locations, let the public know where they are, and use the same ones consistently so the information can be communicated to the public. The same can be said for the possible use of the municipal website, namely the key is to be consistent. It is advisable to establish your posting procedures by policy, at a minimum, or even by ordinance, to create an institutional memory that will ensure consistency.

The chief presiding officer, secondly, must communicate the notice to the *news media who have filed a written request.* As you know, many news media have a standing request to receive all meeting notices of certain governing bodies. You are required to give notice to those news media. As with the other notices you are required to give, I recommend that you provide this notice in writing.

Finally, the chief presiding officer is also required to communicate the notice to the official newspaper, or if there is none, to a news medium likely to give notice in the area. This section warrants more discussion. First, some municipalities are <u>not</u> required to designate an official newspaper, although they may do so by formal action of the governing body. Many municipalities have determined what newspaper or newspapers are likely to give notice in the area, and use that newspaper or newspapers when they publish notice, but have not taken the formal action to designate an official newspaper. This is perfectly okay under the law.

However, even if the governing body has not designated an official newspaper, the municipality still must give the notice to a news medium likely to give notice in the area. This notice is for the news media's information and is available for them to publish or broadcast if they choose to do so. This phrase in the statute does not require a paid publication.

Some municipalities have special general publication requirements, because a newspaper is published in the municipality. Special publication rules may apply to a municipality if a newspaper is published in the municipality, per Section 61.32 and 61.50, Stats. In that event, however, the newspaper that is published in the municipality is not the same as the "official newspaper", unless the designation has been made by the governing body. Therefore, the notice requirements described above are the same for all municipalities, regardless of whether a newspaper is published in the municipality.

(b) <u>*When* must the notice be given</u>?

The timing of the notice is critical. Section 19.84(3), Wisconsin Statutes requires that the public notice must be given at least 24 hours prior to commencement of such meeting with one exception. The exception applies when it is impossible or impractical to provide 24-hour notice,

in which case shorter notice may be given, but in no case less than two hours in advance of the meeting. The emergency provisions of less than 24 hours should be used only in the most extreme of situations.

Keep in mind that the 24 hour time period is measured from the time the notice is communicated to the relevant party. So, for example, it is not enough to drop the notice in the mail 24 hours prior to the meeting; instead, it must be received by the relevant person 24 hours prior to the meeting. The notice can be communicated by fax, however, and when you are faced with a short time for the notice, fax is a recommended method.

Finally, do not try to combine separate meetings into one notice. Each meeting must be preceded by a separate notice.

(c) *What* should the notice contain?

Every public notice must set forth the time, date, place and subject matter of the meeting, including the subject of any contemplated closed session, in such form as is reasonably likely to apprise members of the public and news media of the subject of the meeting. The time, date, and place are obvious in any meeting notice. However, I must encourage all municipalities to be more careful to detail the subject matter of their meeting. Each item must be stated. It is not enough to say "committee reports" or "highway report" in many cases. The Attorney General has also cautioned against including agenda items like "Staff comments" or "Chair's Comments" on the agenda, because specific notice should be given of the subject of such comments. Especially if the municipality is going to receive a report from a committee on a particular subject and take action, it should be spelled out. For example, a park committee recommendation to purchase a piece of equipment such as a truck, should state "consideration and action on purchase of truck for park purposes". On subjects relating to highway projects, the specific nature of the project should be spelled out such as "discussion and action on seal-coating Jones Road". Even when no action is to be taken, but information is gathered, or discussion is held, notice should be provided so that all interested persons can choose to attend.

In this case, the school district board held two relevant meetings, the first being a closed session, and the second being an open session meeting two weeks later. The first notice stated only "to Wis. Stat. sec. 19.85(1)(c)." The subsequent meeting notice stated "consideration and/or action on ... TEA Employee Contract Approval." At the latter meeting, the Board ratified the TEA master contract.

Our courts have faced the question of whether a meeting notice sufficiently described the subject matter, several times. In *State ex rel. Buswell v. Tomah Area School District,* 301 Wis. 2d 178 (2007) the Wisconsin Supreme Court found that an agenda item that said "consideration and/or action concerning employment/negotiations with District personnel" was insufficient to allow the Board to consider a TEA Employee contract. The Supreme Court established a three-prong test for whether a notice is adequate:

i. Consider the amount of time and effort required to assess what information should be included in the notice, keeping in mind that the demands of specificity should not 'thwart the efficient administration of governmental business'.

ii. Consider the number of interested citizens and the intensity of the interest: The greater the public interest, the greater specificity is required.

iii. Consider whether it involves routine or non-routine action that the public is not likely to anticipate. Novel issues require more specificity.

This test is a reasonableness standard, but what is reasonable will depend on the circumstances. In general, by providing a few additional words of explanation in the agenda, you can completely avoid the risk of being challenged. This is especially important when significant issues are involved.

If any item is anticipated to be considered in closed session the notice should state that the governing body may go into closed session. For example, the notice should say that the governing body may go into closed session to receive advice from counsel regarding strategy to be taken in pending litigation related to the Jones Road seal-coating project, pursuant to Section 19.85(1)(9). If the governing body intends to return into open session after the closed session, the notice must so indicate, and should also indicate the subjects of the ensuing open session.

(7) Penalties that apply for violations.

Any member of the governmental body who knowingly attends a meeting held in violation of this law could be ordered by a court to forfeit not less than $25 no more than $300 for each violation. This is not reimbursable from the municipal treasury. You are deemed to know that a violation is taking place if you act "with an awareness of the high probability" that a violation is occurring.

In addition to the personal monetary penalty, any action taken at any improperly noticed meeting may be voided by a circuit court judge. Moreover, the attorney general or the district attorney may also bring actions for injunction, mandamus and/or declaratory relief against the governing body, or members thereof.

You may have a limited ability to protect yourself, if you are concerned about whether a violation will occur in a particular situation. In some circumstances, if you vote in favor of a motion to prevent the violation from occurring, you may be exempt from liability, even though a violation later occurs. Also, if you are prosecuted for a violation, and you successfully defend against that prosecution, you may seek reimbursement for costs incurred in the defense (which the governing body may, or may not, grant).

Probably the worst effect of an open meetings law violation, though, is the public embarrassment and criticism that come with such charges of violations of the law. These charges often make the newspaper and media and become campaign issues. As with the direct penalties that may be imposed, we certainly want to avoid these less tangible consequences.

Conclusion.

I hope that this Memorandum will be useful to you as an overview of this important area of law, and also as a document that you can refer to in the future when particular issues arise. After you have had an opportunity to review this Memorandum, if you have any questions or concerns, please do not hesitate to contact me. Even more importantly, when particular issues arise in the future that cause you to question or be concerned about the applicability of the open meetings law, I urge you to contact me immediately to ensure that violations do not occur.

PROTECTION AGAINST BIAS OF DECISION MAKERS

Village Board members, Plan Commission members and Committee members ordinarily serve as legislators, making laws and legislative decisions. Sometimes, though, members serve in a more judicial capacity, that is sometimes called "quasi- judicial." When they are serving in a quasi-judicial capacity, members must comply with due process requirements, which significantly constrains the members in a number of ways that I will further describe below:

IV. Different Roles. Members of the Village Board, Plan Commission and Committees have different roles depending upon the issue:

D. Legislative Role. When new laws are proposed that have general application to the community, or new plans are proposed for the community as a whole, the members serve in a legislative capacity. As legislators, they are free to engage with the public, and to express opinions on the issues in advance of making a decision, and even if a member comes to the issue with a predetermined idea of whether the legislation should be adopted, the member is not prohibited from acting. Legislators often run for office expressing their views on what the law should be and promising to enact such laws, and when members act in a legislative capacity they have this same ability and responsibility.

E. Quasi-Judicial Capacity. Frequently the members have a role that is more like a judge than like a legislator, however. This role arises when the members apply existing laws to particular facts, to determine whether a proposed land use should be approved. This can arise in consideration of particular applications, where the members are asked to determine whether particular circumstances have been met by the applicant. Conditional uses are quasi-judicial. While ordinarily zoning ordinances are considered legislative, when the ordinance relates to a particular applicant for a particular purpose, 1 urge significant caution and generally recommend that you assume that your role is quasi-judicial, because the Village must decide the matter based on the Code, and that action will affect the interests of particular property owners. When the members act in a quasi-judicial capacity, all of the following apply:

1. The members must be impartial.

2. If a member is not impartial, or cannot be fair to both sides, or has expressed opinions publicly in favor of one side in the issue, the member should recuse himself or herself.

3. Members should not participate in communication with others outside of the public hearing process. Like a court procedure, the information that informs the decision making should all be received at the hearing, so that all parties have an opportunity to respond to the relevant information.

Ethics Roles and Responsibilities of Wisconsin Municipalities

General Duties of Public Officials

19.59 Codes of ethics for local government officials, employees and candidates.

(1)

(a) No local public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. A violation of this paragraph includes the acceptance of free or discounted admissions to a professional baseball or football game by a member of the district board of a local professional baseball park district created under subch. III of ch. 229 or a local professional football stadium district created under subch. IV of ch. 229. This paragraph does not prohibit a local public official from using the title or prestige of his or her office to obtain campaign contributions that are permitted and reported as required by ch.*11*-This paragraph does not prohibit a local public official from obtaining anything of value from the Wisconsin Economic Development Corporation or the department of tourism, as provided under s. 19.56 (3) (f).

(b) No person may offer or give to a local public official, directly or indirectly, and no local public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the local public official's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the local public official. This paragraph does not prohibit a local public official from engaging in outside employment.

(br) No local public official or candidate for local public office may, directly or by means of an agent, give, or offer or promise to give, or withhold, or offer or promise to withhold, his or her vote or influence, or promise to take or refrain from taking official action with respect to any proposed or pending matter in consideration of, or upon condition that, any other person make or refrain from making a political contribution, or provide or refrain from providing any service or other thing of value, to or for the benefit of a candidate, a political party, any committee registered under ch. 11, or any person making a communication that contains a reference to a clearly identified local public official holding an elective office or to a candidate for local public office.

(c) Except as otherwise provided in par.@, no local public official may:

1. Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.

2. Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

(d) Paragraph .(g does not prohibit a local public official from taking any action concerning the lawful payment of salaries or employee benefits or reimbursement of actual and necessary expenses, or prohibit a local public official from taking official action with respect to any proposal to modify a county or municipal ordinance.

(f) Paragraphs (a) to (c) do not apply to the members of a local committee appointed under s. 289.33 (7) (a) to negotiate with the owner or operator of, or applicant for a license to operate, a solid waste disposal or hazardous waste facility under s. 289.33, with respect to any matter contained or proposed to be contained in a written agreement between a municipality and the owner, operator or applicant or in an arbitration award or proposed award that is applicable to those parties.

(g)

1. In this paragraph:

a. "District" means a local professional baseball park district created under subch. III of ch. 229 or a local professional football stadium district created under subch. IV of ch. 229.

b. "District board member" means a member of the district board of a district.

2. No district board member may accept or retain any transportation, lodging, meals, food or beverage, or reimbursement therefor, except in accordance with this paragraph.

3. A district board member may receive and retain reimbursement or payment of actual and reasonable expenses for a published work or for the presentation of a talk or participation in a meeting related to processes, proposals and issues affecting a district if the payment or reimbursement is paid or arranged by the organizer of the event or the publisher of the work.

4. A district board member may receive and retain anything of value if the activity or occasion for which it is given is unrelated to the member's use of the time, facilities, services or supplies of the district not generally available to all residents of the district and the member can show by clear and convincing evidence that the payment or reimbursement was unrelated to and did not arise from the recipient's holding or having held a public office and was paid for a purpose unrelated to the purposes specified in subd. 3.

5. A district board member may receive and retain from the district or on behalf of the district transportation, lodging, meals, food or beverage, or reimbursement therefor or payment or reimbursement of actual and reasonable costs that the member can show by clear and convincing evidence were incurred or received on behalf of the district and primarily for the benefit of the district and not primarily for the private benefit of the member or any other person.

6. No district board member may intentionally use or disclose information gained in the course of or by reason of his or her official position or activities in any way that could result in the receipt of anything of value for himself or herself, for his or her immediate family, or for any other person, if the information has not been communicated to the public or is not public information.

7. No district board member may use or attempt to use the position held by the member to influence or gain unlawful benefits, advantages or privileges personally or for others.

8. No district board member, member of a district board member's immediate family, nor any organization with which the district board member or a member of the district board member's immediate family owns or controls at least 10 percent of the outstanding equity, voting rights, or outstanding indebtedness may enter into any contract or lease involving a payment or payments of more than $3,000 within a 12-month period, in whole or in part derived from district funds unless the district board member has first made written disclosure of the nature and extent of such relationship or interest to the commission and to the district. Any contract or lease entered into in violation of this subdivision may be voided by the district in an action commenced within 3 years of the date on which the commission, or the district, knew or should have known that a violation of this subdivision had occurred. This subdivision does not affect the application of s. 946.13.

9. No former district board member, for 12 months following the date on which he or she ceases to be a district board member, may, for compensation, on behalf of any person other than a governmental entity, make any formal or informal appearance before, or negotiate with, any officer or employee of the district with which he or she was associated as a district board member within 12 months prior to the date on which he or she ceased to be a district board member.

10. No former district board member, for 12 months following the date on which he or she ceases to be a district board member, may, for compensation, on behalf of any person other than a governmental entity, make any formal or informal appearance before, or

negotiate with, any officer or employee of a district with which he or she was associated as a district board member in connection with any judicial or quasi-judicial proceeding, application, contract, claim, or charge which might give rise to a judicial or quasi-judicial proceeding which was under the former member's responsibility as a district board member within 12 months prior to the date on which he or she ceased to be a member.

11. No former district board member may, for compensation, act on behalf of any party other than the district with which he or she was associated as a district board member in connection with any judicial or quasi-judicial proceeding, application, contract, claim, or charge which might give rise to a judicial or quasi-judicial proceeding in which the former member participated personally and substantially as a district board member.

(1m) In addition to the requirements of sub(1), any county, city, village or town may enact an ordinance establishing a code of ethics for public officials and employees of the county or municipality and candidates for county or municipal elective offices.

(2) An ordinance enacted under this section shall specify the positions to which it applies. The ordinance may apply to members of the immediate family of individuals who hold positions or who are candidates for positions to which the ordinance applies.

(3) An ordinance enacted under this section may contain any of the following provisions:

(a) A requirement for local public officials, other employees of the county or municipality and candidates for local public office to identify any of the economic interests specified in s. 19.44.

(b) A provision directing the county or municipal clerk or board of election commissioners to omit the name of any candidate from an election ballot who fails to disclose his or her economic interests in accordance with the requirements of the ordinance.

(c) A provision directing the county or municipal treasurer to withhold the payment of salaries or expenses from any local public official or other employee of the county or municipality who fails to disclose his or her economic interests in accordance with the requirements of the ordinance.

(d) A provision vesting administration and civil enforcement of the ordinance with an ethics board appointed in a manner specified in the ordinance. A board created under this paragraph may issue subpoenas, administer oaths and investigate any violation of the ordinance on its own motion or upon complaint by any person. The ordinance may empower the board to issue opinions upon request. Records of the board's opinions, opinion requests and investigations of violations of the ordinance may be closed in whole or in part to public inspection if the ordinance so provides.

(e) Provisions prescribing ethical standards of conduct and prohibiting conflicts of interest on the part of local public officials and other employees of the county or municipality or on the part of former local public officials or former employees of the county or municipality.

(f) A provision prescribing a forfeiture for violation of the ordinance in an amount not exceeding $1,000 for each offense. A minimum forfeiture not exceeding $100 for each offense may also be prescribed.

(4) This section may not be construed to limit the authority of a county, city, village or town to regulate the conduct of its officials and employees to the extent that it has authority to regulate that conduct under the constitution or other laws.

(5)

(a) Any individual, either personally or on behalf of an organization or governmental body, may request of a county or municipal ethics board, or, in the absence of a county or municipal ethics board, a county corporation counsel or attorney for a local governmental unit, an advisory opinion regarding the propriety of any matter to which the person is or may become a party. Any appointing officer, with the consent of a prospective appointee, may request of a county or municipal ethics board, or, in the absence of a county or municipal ethics board, a county corporation counsel or attorney

for a local governmental unit an advisory opinion regarding the propriety of any matter to which the prospective appointee is or may become a party. The county or municipal ethics board or the county corporation counsel or attorney shall review a request for an advisory opinion and may advise the person making the request. Advisory opinions and requests therefor shall be in writing. It is prima facie evidence of intent to comply with this section or any ordinance enacted under this section when a person refers a matter to a county or municipal ethics board or a county corporation counsel or attorney for a local governmental unit and abides by the advisory opinion, if the material facts are as stated in the opinion request. A county or municipal ethics board may authorize a county corporation counsel or attorney to act in its stead in instances where delay is of substantial inconvenience or detriment to the requesting party. Except as provided in par. .(QI, neither a county corporation counsel or attorney for a local governmental unit nor a member or agent of a county or municipal ethics board may make public the identity of an individual requesting an advisory opinion or of individuals or organizations mentioned in the opinion.

(b) A county or municipal ethics board, county corporation counsel or attorney for a local governmental unit replying to a request for an advisory opinion may make the opinion public with the consent of the individual requesting the advisory opinion or the organization or governmental body on whose behalf it is requested and may make public a summary of an advisory opinion issued under this subsection after making sufficient alterations in the summary to prevent disclosing the identities of individuals involved in the opinion. A person who makes or purports to make public the substance of or any portion of an advisory opinion requested by or on behalf of the person waives the confidentiality of the request for an advisory opinion and of any records obtained or prepared by the county or municipal ethics board, the county corporation counsel or the attorney for the local governmental unit in connection with the request for an advisory opinion.

(6) Any county corporation counsel, attorney for a local governmental unit or statewide association of local governmental units may request the commission to issue an opinion concerning the interpretation of this section. The commission shall review such a request and may advise the person making the request.

(7)

(a) Any person who violates sub. (1) may be required to forfeit not more than $1,000 for each violation, and, if the court determines that the accused has violated sub. (1) (br). the court may, in addition, order the accused to forfeit an amount equal to the amount or value of any political contribution, service, or other thing of value that was wrongfully obtained.

(b) Any person who violates sub. (1) may be required to forfeit not more than $1,000 for each violation, and, if the court determines that a local public official has violated sub. (1) (br) and no political contribution, service or other thing of value was obtained, the court may, in addition, order the accused to forfeit an amount equal to the maximum contribution authorized under s. 11.1101 (1) for the office held or sought by the official, whichever amount is greater.

(8)

(a) Subsection (1) shall be enforced in the name and on behalf of the state by action of the district attorney of any county wherein a violation may occur, upon the verified complaint of any person.

(b) In addition and supplementary to the remedy provided in sub. (7), the district attorney may commence an action, separately or in conjunction with an action brought to obtain the remedy provided in sub. (7) to obtain such other legal or equitable relief, including but not limited to mandamus, injunction or declaratory judgment, as may be appropriate under the circumstances.

(c) If the district attorney fails to commence an action to enforce sub. (1)(a), (b), or (c) to (g) within 20 days after receiving a verified complaint or if the district attorney refuses to commence such an action, the person making the complaint may petition the attorney general to act upon the complaint. The attorney general may then bring an action under par. (a) or (b), or both.

(cm) No complaint alleging a violation of sub. (1) (br) may be filed during the period beginning 120 days before a general or spring election, or during the period commencing on the date of the order of a special election under s. 8.50, and ending on the date of that election, against a candidate who files a declaration of candidacy to have his or her name appear on the ballot at that election.

(cn) If the district attorney for the county in which a violation of sub. (1) (br) is alleged to occur receives a verified complaint alleging a violation of sub. (1) (br), the district attorney shall, within 30 days after receipt of the complaint, either commence an investigation of the allegations contained in the complaint or dismiss the complaint. If the district attorney dismisses the complaint, with or without investigation, the district attorney shall notify the complainant in writing. Upon receiving notification of the dismissal, the complainant may then file the complaint with the attorney general or the district attorney for a county that is adjacent to the county in which the violation is alleged to occur. The attorney general or district attorney may then investigate the allegations contained in the complaint and commence a prosecution.

(d) If the district attorney prevails in such an action, the court shall award any forfeiture recovered together with reasonable costs to the county wherein the violation occurs. If the attorney general prevails in such an action, the court shall award any forfeiture recovered together with reasonable costs to the state.

History: 1979 c. 120; 1981 c. 149; 1981 c. 335 s. 26; 1983 a. 166 s. .1.§; 1991 a. 39, 269; 1995 a. 56, 227; 1999 a. 167; 2001 a. 109; 2003 a. 39; 2007 a. 1; 2015 a. 117; 2015 a. 118 ss. 204, 266 (10); 2017 a. 112.

946.10 Bribery of public officers and employees. Whoever does either of the following is guilty of a Class H felony:

(1) Whoever, with intent to influence the conduct of any public officer or public employee in relation to any matter which by law is pending or might come before the officer or employee in the officer's or employee's capacity as such officer or employee or with intent to induce the officer or employee to do or omit to do any act in violation of the officer's or employee's lawful duty transfers or promises to the officer or employee or on the officer's or employee's behalf any property or any personal advantage which the officer or employee is not authorized to receive; or

(2) Any public officer or public employee who directly or indirectly accepts or offers to accept any property or any personal advantage, which the officer or employee is not authorized to receive, pursuant to an understanding that the officer or employee will act in a certain manner in relation to any matter which by law is pending or might come before the officer or employee in the officer's or employee's capacity as such officer or employee or that the officer or employee will do or omit to do any act in violation of the officer's or employee's lawful duty.

History: 1977 c. 173; 1993 a. 486; 2001 a. 109.

Circumstantial evidence supported an inference that the defendant intended to influence a public official's actions. State v. Rosenfeld, 93 Wis. 2d 325,286 N.W.2d 596 (1980).

A sworn juror is a public employee under sub. (2). State v. Sammons, 141 Wis. 2d 833,417 N.W.2d 190 (Ct. App. 1987).

946.11 Special privileges from public utilities.

(1) Whoever does the following is guilty of a Class I felony:

(a) Whoever offers or gives for any purpose to any public officer or to any person at the request or for the advantage of such officer any free pass or frank, or any privilege withheld from any person, for the traveling accommodation or transportation of any person or property or for the transmission of any message or communication; or

(b) Any public officer who asks for or accepts from any person or uses in any manner or for any purpose any free pass or frank, or any privilege withheld from any person for the traveling accommodation or transportation of any person or property or for the transmission of any message or communication; or

(c) Any public utility or agent or officer thereof who offers or gives for any purpose to any public officer or to any person at the request or for the advantage of such officer, any frank or any privilege withheld from any person for any product or service produced, transmitted, delivered, furnished or rendered or to be produced, transmitted, delivered, furnished or rendered by any public utility, or any free product or service whatsoever; or

(d) Any public officer who asks for or accepts or uses in any manner or for any purpose any frank or privilege withheld from any person for any product or service produced, transmitted, delivered, furnished or rendered by any public utility.

(2) In this section:

(a) "Free pass" means any form of ticket or mileage entitling the holder to travel over any part of a railroad or other public transportation system and issued to the holder as a gift or in consideration or partial consideration of any service performed or to be performed by such holder, except that it does not include such ticket or mileage when issued to an employee of the railroad or public transportation system pursuant to a contract of employment and not in excess of the transportation rights of other employees of the same class and seniority, nor does it include free transportation to police officers or fire fighters when on duty.

(b) "Privilege" means anything of value not available to the general public, but does not include compensation or fringe benefits provided as result of employment by a public utility to a regular employee or pensioner when the following conditions are satisfied:

1. The regular employee or pensioner is not compensated specifically for services performed for a purpose related to the election or nomination for election of an individual to state or local office, the recall from or retention in office of an individual holding a state or local office, or for the purpose of payment of expenses incurred as a result of a recount at an election.

2. The regular employee or pensioner is not compensated in excess of that provided to other regular employees or pensioners of like status.

(c) "Public utility" has the meaning designated in s. 196.01 (5) and includes a telecommunications carrier, as defined in s. 196.01 (8m).

(3) This section does not apply to notaries public and regular employees or pensioners of a railroad or other public utility who hold public offices for which the annual compensation is not more than $300 to whom no passes or privileges are extended beyond those which are extended to other regular employees or pensioners of such corporation.

History: 1975 c. 93; 1977 c. 173; 1985 a. 135; 1993 a. 496; 2001 a. 109; 2015 a. 117; 2017 a. 365 s. 111.

946.12 Misconduct in public office. Any public officer or public employee who does any of the following is guilty of a Class I felony:

(1) Intentionally fails or refuses to perform a known mandatory, nondiscretionary, ministerial duty of the officer's or employee's office or employment within the time or in the manner required by law; or

(2) In the officer's or employee's capacity as such officer or employee, does an act which the officer or employee knows is in excess of the officer's or employee's lawful authority or which the officer or employee knows the officer or employee is forbidden by law to do in the officer's or employee's official capacity; or

(3) Whether by act of commission or omission, in the officer's or employee's capacity as such officer or employee exercises a discretionary power in a manner inconsistent with the duties of the officer's or employee's office or employment or the rights of others and with intent to obtain a dishonest advantage for the officer or employee or another; or

(4) In the officer's or employee's capacity as such officer or employee, makes an entry in an account or record book or return, certificate, report or statement which in a material respect the officer or employee intentionally falsifies; or

(5) Under color of the officer's or employee's office or employment, intentionally solicits or accepts for the performance of any service or duty anything of value which the officer or employee knows is greater or less than is fixed by law.

History: 1977 c. 173; 1993 a. 486; 2001 a. 109.

Sub. (5) prohibits misconduct in public office with constitutional specificity. Ryan v. State, 79 Wis. 2d 83, 255 N.W.2d 910 (1977).

Sub. (3) applies to a corrupt act under color of office and under de facto powers conferred by practice and usage. A person who is not a public officer may be charged as a party to the crime of official misconduct. State v. Tronca, 84 Wis. 2d 68,267 N.W.2d 216 {1978).

An on-duty prison guard did not violate sub. (2) by fornicating with a prisoner in a cell. State v. Schmit, 115 Wis. 2d 657, 340 N.W.2d 752 {Ct. App. 1983).

Sub. (3) is not unconstitutionally vague. It does not fail to give notice that hiring and directing staff to work on political campaigns on state time with state resources is a violation. A legislator's duty under this section may be determined by reference to a variety of sources including the Senate Policy Manual, applicable statutes, and legislative rules and guidelines. The Senate Policy Manual and senate guidelines restricted political campaigning with public resources. State v. Chvala, 2004 WI App 53, 271 Wis. 2d 115, 678 N.W.2d 880, 03-0442.
Affirmed. 2005 WI 30,279 Wis. 2d 216,693 N.W.2d 747, 03-0442.
See also State v. Jensen, 2004 WI App 89,272 Wis. 2d 707,684 N.W.2d 136, 03-0106.
Affirmed. 2005 WI 31,279 Wis. 2d 220,694 N.W.2d 56, 03-0106.

Sub. (3) regulates conduct and not speech and is not subject to an overbreadth challenge under the 1st amendment. Legislators or their employees are not prohibited from doing or saying anything related to participation in political campaigns so long as they do not use state resources for that purpose. Legitimate legislative activity is not constrained by this statute. The line between "legislative activity" and "political activity" is sufficiently clear to prevent any confusion as to what conduct is prohibited under this statute. State v. Chvala, 2004 WI App 53,271 Wis. 2d 115,678 N.W.2d 880, 03-0442.
Affirmed. 2005 WI 30,279 Wis. 2d 216,693 N.W.2d 747, 03-0442.
See also State v. Jensen, 2004 WI App 89,272 Wis. 2d 707,684 N.W.2d 136, 03-0106.
Affirmed. 2005 WI 31,279 Wis. 2d 220,694 N.W.2d 56, 03-0106.

Enforcement of sub. (3) against a legislator does not violate the separation of powers doctrine.

Enforcement does not require the courts to enforce legislative rules governing the enactment of legislation. Rather, the courts are asked to enforce a penal statute that relates to the duties of a legislator. A court may interpret an internal legislative rule to determine criminal liability if, when applied to the facts of the specific case, the rule is not ambiguous. State v. Chvala, 2004 WI App 53,271 Wis. 2d 115,678 N.W.2d 880, 03-0442. Affirmed. 2005 WI 30,279 Wis. 2d 216,693 N.W.2d 747, 03-0442.

See also State v. Jensen, 2004 WI App 89,272 Wis. 2d 707,684 N.W.2d 136, 03-0106. Affirmed. 2005 WI 31, 279 Wis. 2d 220, 694 N.W.2d 56, 03-0106.

Sub. (3) provides, as separate elements of the crime, the requirement that the conduct be inconsistent with the duties of one's office and the requirement that the conduct be done with intent to obtain a dishonest advantage. Although both elements may be proved through the same transaction, there must nevertheless be proof as to both elements. The state is required to prove beyond a reasonable doubt that the defendant exercised his or her discretionary power with the purpose to obtain a dishonest advantage. Guilt of misconduct in office does not require the defendant to have acted corruptly. State v. Jensen, 2007 WI App 256, 06-2095. See also State v. Schultz, 2007 WI App 257, 306 Wis. 2d 598, 743 N.W.2d 823, 06-2121.

946.13 Private interest in public contract prohibited.

(1) Any public officer or public employee who does any of the following is guilty of a Class I felony:

(a) In the officer's or employee's private capacity, negotiates or bids for or enters into a contract in which the officer or employee has a private pecuniary interest, direct or indirect, if at the same time the officer or employee is authorized or required by law to participate in the officer's or employee's capacity as such officer or employee in the making of that contract or to perform in regard to that contract some official function requiring the exercise of discretion on the officer's or employee's part; or

(b) In the officer's or employee's capacity as such officer or employee, participates in the making of a contract in which the officer or employee has a private pecuniary interest, direct or indirect, or performs in regard to that contract some function requiring the exercise of discretion on the officer's or employee's part.

(2) Subsection (1) does not apply to any of the following:

(a) Contracts in which any single public officer or employee is privately interested that do not involve receipts and disbursements by the state or its political subdivision aggregating more than $15,000 in any year.

(b) Contracts involving the deposit of public funds in public depositories.

(c) Contracts involving loans made pursuant to s. 67.12.

(d) Contracts for the publication of legal notices required to be published, provided such notices are published at a rate not higher than that prescribed by law.

(e) Contracts for the issuance to a public officer or employee of tax titles, tax certificates, or instruments representing an interest in, or secured by, any fund consisting in whole or in part of taxes in the process of collection, provided such titles, certificates, or instruments are issued in payment of salary or other obligations due such officer or employee.

(f) Contracts for the sale of bonds or securities issued by a political subdivision of the state; provided such bonds or securities are sold at a bona fide public sale to the highest bidder and the public officer or employee acquiring the private interest has no duty to vote upon the issuance of the bonds or securities.

(g) Contracts with, or tax credits or payments received by, public officers or employees for wildlife damage claims or abatement under s. 29.889, for farmland preservation under s. 91.13, 2007 stats., or s. 91.60 or subch. IX of ch. 71, soil and water resource management under s. 92.14, soil erosion control under s. 92.10, 1985 stats., animal waste management under s. 92.15, 1985 stats., and nonpoint source water pollution abatement under s. 281.65.

(3) A contract entered into in violation of this section is void and the state or the political subdivision in whose behalf the contract was made incurs no liability thereon.

(4) In this section "contract" includes a conveyance.

(5) Subsection (1) (b) shall not apply to a public officer or public employee by reason of his or her holding not more than 2 percent of the outstanding capital stock of a corporate body involved in such contract.

(6) Subsection (3) shall not apply to contracts creating a public debt, as defined ins. 18.01 (4), if the requirements of s. 18.14 (1) have been met. No evidence of indebtedness, as defined in s. 18.01 (3), shall be invalidated on account of a violation of this section by a public officer or public employee, but such officer or employee and the surety on the officer's or employee's official bond shall be liable to the state for any loss to it occasioned by such violation.

(7) Subsection (1) shall not apply to any public officer or public employee, who receives compensation for the officer's or employee's services as such officer or employee, exclusive of advances or reimbursements for expenses, of less than $10,000 per year,

merely by reason of his or her being a director, officer, employee, agent or attorney of or for a state or national bank, savings bank or trust company, or any holding company thereof. This subsection shall not apply to any such person whose compensation by such financial institution is directly dependent upon procuring public business. Compensation determined by longevity, general quality of work or the overall performance and condition of such financial institution shall not be deemed compensation directly dependent upon procuring public business.

(8) Subsection (1) shall not apply to contracts or transactions made or consummated or bonds issued under s. 66.1103.

(9) Subsection (1) does not apply to the member of a local committee appointed under s. 289.33 (7)

(a) acting as a member of that committee in negotiation, arbitration or ratification of agreements under s. 289.33.

(10) Subsection (1) (a) does not apply to a member of a local workforce development board established under 29 USC 2832 or to a member of the council on workforce investment established under 29 USC 2821.

(11) Subsection (1) does not apply to an individual who receives compensation for services as a public officer or public employee of less than $10,000 annually, exclusive of advances or reimbursements for expenses, merely because that individual is a partner, shareholder or employee of a law firm that serves as legal counsel to the public body that the officer or employee serves, unless one of the following applies:

(a) The individual has an interest in that law firm greater than 2 percent of its net profit or loss.

(b) The individual participates in making a contract between that public body and that law firm or exercises any official discretion with respect to a contract between them.

(c) The individual's compensation from the law firm directly depends on the individual's procurement of business with public bodies.

(12)

(a) In this subsection:

1. "Research company" means an entity engaged in commercial or nonprofit activity that is related to research conducted by an employee or officer of the system or to a product of such research.

2. "System" means the University of Wisconsin System.

(b) Subsection (1) does not apply to a contract between a research company and the system or any institution or college campus within the system for purchase of goods or services, including research, if the interest that a system employee or officer has in the research company has been evaluated and addressed in a management plan issued by the individual or body responsible for evaluating and managing potential conflicts of interest and the management plan complies with the policy adopted under par. (d).

(d) The board shall adopt a policy specifying the contents required for a management plan under par. (b).

History: 1971 C. 40 s. 93; 1973 C. 12 s. 37; 1973 C. 50, 265; 1977 C. 166, 173; 1983 a. 282; 1987 a. 344,378,399; 1989 a. 31,232; 1993 a. 486; 1995 a. 27,225,227,435; 1997 a. 35,248; 1999 a. 9, 85; 1999 a. 150 s. 672; 2001 a. 109; 2005 a. 417; 2009 a. 28; 2019 a. 36.

A county board member did not violate sub. (1) by accepting a job as airport manager while he was serving as a county board member for a county that was co-owner of the airport when he was appointed pursuant to advice and approval of the county corporation counsel. State v. Davis, 63 Wis. 2d 75,216 N.W.2d 31 (1974).

Sub. (1) (b) is a strict liability offense. It does not include the element of corrupt motive. State v. Stoehr, 134 Wis. 2d 66,396 N.W.2d 177 (1986).

The defendant could not have had a pecuniary interest in, or have negotiated in his private capacity for, a position that had not yet been posted. State v. Venema, 2002 WI App 202,257 Wis. 2d. 491, 650 N.W.2d 898, 01-2502.

A county board member employed by an engineering and survey firm may have a possible conflict of interest in public contracts. 60 Atty. Gen. 98.

A member of the Wisconsin board of vocational, technical and adult education [now Technical college] may not bid on and contract for the construction of a building project for a vocational-technical district that would entail expenditures exceeding $2,000 in any year, when availability of federal funds for use on such project is subject to his approval as a member of the board. 60 Atty. Gen. 310.

Discussion of conflicts arising from election of a school principal to the office of alderperson. 60 Atty. Gen. 367.

Appointment of counsel for indigents involves a public contract. 62 Atty. Gen. 118.

A county supervisor who is a pharmacist probably does not violate this section in furnishing prescription services to medicaid patients when the state is solely liable for payment. 64 Atty. Gen. 108.

The marital property law does not change the applicability of this section to a member of a governmental body when that body employs the member's spouse. 76 Atty. Gen. 15.

This section applies to county board or department purchases aggregating more than $5,000 from a county supervisor-owned business. 76 Atty. Gen. 178.

When the village board administers a community development block grant program, a member of the village board would violate this section if he or she obtained a loan in excess of $5,000 under the program. Acting as a private contractor, the board member would violate sub. (1) if he contracted to perform the construction work for a 3rd person who obtained a loan under the program. 76 Atty. Gen. 278.

Sub. (1) (a) may be violated by members of the Private Industry Councils when private or public entities of which they are executives, directors or board members receive benefits under the Job Training Partnership Act. 77 Atty. Gen. 306.

A municipality's zoning decision is not a contract under sub. (1) (a) and therefore the statute does not apply to an official's participation in a zoning decision. OAG 9-14.

946.14 Purchasing claims at less than full value. Any public officer or public employee who in a private capacity directly or indirectly intentionally purchases for less than full value or discounts any claim held by another against the state or a political subdivision thereof or against any public fund is guilty of a Class I felony.

History: 1977 c. 173; 2001 a. 109.

946.16 Judicial officer collecting claims. Any judicial officer who causes to be brought in a court over which the officer presides any action or proceeding upon a claim placed with the officer as agent or attorney for collection is guilty of a Class B misdemeanor.

History: 1977 c. 173.

946.17 Corrupt means to influence legislation; disclosure of interest. Any person who gives or agrees or offers to give anything of value to any person, for the service of such person or of any other person in procuring the passage or defeat of any measure before the legislature or before either house or any committee thereof, upon the contingency or condition of the passage or defeat of the measure, or who receives, or agrees to receive anything of value for such service, upon any such contingency or condition, or who, having a pecuniary or other interest, or acting as the agent or attorney of any person in procuring or attempting to procure the passage or defeat of any measure before the legislature or before either house or any committee thereof, attempts in any manner to

influence any member of the legislature for or against the measure, without first making known to the member the real and true interest he or she has in the measure, either personally or as such agent or attorney, is guilty of a class A misdemeanor.

History: 1977 c. 278 s. 1; Stats. 1977 s. 946.17; 1993 a. 213.

946.18 Misconduct sections apply to all public officers. Sections 946.1Oto 946.17 apply to public officers, whether legally constituted or exercising powers as if legally constituted.

Opinion Letter

Attendance at Groundbreaking Ceremonies, Ribbon Cuttings, Open Houses, etc.

I have recently been asked what Wisconsin's Code of Ethics for Public Officials and Employees requires concerning attendance at groundbreaking ceremonies, ribbon cuttings, open houses, etc. This letter provides general guidance concerning how to evaluate whether you should accept an invitation to these types of events.

When considering an invitation to a celebratory event, I recommend that local public officials[1] consider Wis. Stat.§ 19.59(1)(b). This section is violated when a person offers or gives "anything of value" to a local public official and when a local public official solicits or accepts (directly or indirectly), "anything of value" from any person if it could reasonably be expected to influence the local public official's vote, official action or judgment; or if it could reasonably be considered as a reward for any official action or inaction.

The term "anything of value" is defined in Wis. Stat. § 19.42(1) to include, among other things, any money, property, favor or service and to exclude government compensation or reimbursement, properly reported political contributions, and hospitality extended for a purpose *unrelated to government business by a person other than an organization.* The exclusion regarding "hospitality" is notable since, to fall within the exclusion, the hospitality must be "unrelated to government business" *and* must be provided by a person "other than an organization" (e.g. an individual). The Ethics Board has provided guidance for state officials concerning this requirement in section Eth 1.02 of the Wisconsin Administrative Code, which defines "hospitality" in terms of meals, beverages and lodging offered on premises owned and occupied by the host or his or her immediate family as their principal (or seasonal) residence and that would be extended if the recipient, or member of the recipient's immediate family, did not hold a state public office.

Although there are too many potential scenarios to address in this letter, the following questions developed by the State Ethics Board may assist you in analyzing a situation in which you are offered items or services:

I. *With respect to the item or service offered:*

   A. *Is it being offered because of my public position?*

   B. *Is it more than nominal or insignificant value?*

   C. *Is it primarily for my personal benefit rather than for the benefit of my local unit of government?*

   [If you answer 'yes" to all three questions, the State Ethics Board has opined that you may not accept the item or service.]

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[1] The term "local public official" is defined in Wisconsin's Code of Ethics for Public Officials and Employees. Subject to some exceptions, that definition includes: (a) elected officers of political subdivisions and special purpose districts of the state; (b) county administrators or administrative coordinators; (c) city or village managers; (d) individuals appointed to a position in a political subdivision or special purpose district for a specified term; and (e) individuals appointed to a position by the governing body, executive, or administrative head of a political subdivision or special purpose district and serving at the pleasure of the appointing authority.

II. *Would it be reasonable for someone to believe that the item or service is likely to influence my judgment or actions or that it is a reward for past action?*

[If you answer 'yes", *the State Ethics Board has opined that you may not accept the item or service.]*

Although this letter addresses Wisconsin's Code of Ethics for Public Officials and Employees, additional regulations may be established by local ordinance. Upon request, I will be happy to provide guidance concerning application of Wisconsin's Code of Ethics and/or local ordinances to specific questions.

Opinions of the Ethics Board

IMPROPER USE OF OFFICE; MEALS, LODGING, TRAVEL AND ENTERTAINMENT

1) Consistent with laws it administers, a legislator may participate in a charitable fundraising event that includes golf and a lunch of which the primary beneficiaries are charities with which the legislator is not associated; and

2) A legislator should not accept the offer to bring guests or to attend the awards dinner without paying the same amount as members of the public for those activities.

2003 Wis Eth Bd 1

LOBBYING LAW

A legislator should not accept compensation from an organization that employs a lobbyist even for services the legislator has provided to the organization; and

In the case of two affiliated organizations, one employing a lobbyist and the other not, a legislator may accept compensation for services from the latter only if the organization can demonstrate that it acts independently of its affiliate.

2003 Wis Eth Bd 2

FEES AND HONORARIUMS; IMPROPER USE OF OFFICE

For chairing a conference about state government issues, a state public official may accept an award sanctioned, approved, endorsed by, and presented under the auspices of the organization that is sponsoring the conference but may not accept an award from another organization.

2003 Wis Eth Bd 3

For Public Local Officials

Mitigating Conflicting Interests: Private Interest vs. Public Responsibility[2]

In a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without all personal and economic interest in the decisions and policies of government. Standards of conduct for public officials need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society and those conflicts which are substantial and material.[3] §19.59, *Wisconsin Statutes,* creates a code of ethics for local elected and appointed officials. Other laws, notably §946.13, *Wisconsin Statutes,* may also apply.

ACTING IN AN OFFICIAL CAPACITY

MAKING POLICY. When a local public official or a board, commission, or other body of which an official is a member is called upon to propose or to act on an ordinance or to promulgate or issue a general policy, the official may participate in that action, even though the action will affect the official, a member of the official's immediate family, or an organization with which the official is associated, as long as:

- The official's action affects a whole class of similarly situated interests;
- Neither the official's interest, the interest of a member of the official's immediate family, nor the interest of a business or organization with which the official is associated is significant when compared to all affected interests in the class; AND
- The action's effect on the interests of the official, of a member of the official's immediate family, or of the related business or organization is neither significantly greater nor less than upon other members of the class.

APPLYING POLICY. A local public official should not, in an official capacity, participate in or perform any discretionary action with respect to the making, grant, or imposition of an award, sanction, permit, license, zoning change, contract, offer of employment, or agreement in which the official or a member of the official's immediate family or a business or organization with which the official is associated[4] has a substantial financial interest, direct or indirect.[5] In addition, a local public official should not, in an official capacity, participate in a matter affecting a business or organization from which the official or a member of the official's immediate family receives substantial compensation or income.§[6]

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[2] This is a guide. For authoritative information consult *Wisconsin Statutes.* Prepared by the Wisconsin Ethics Board. 44 E. Mifflin Street, Suite 601, Madison, WI 53703-2800. (608) 266-8123 December 2001. Obtain revised edition after February 2003. http://ethics.state.wi.us; Eth 240 Chapter I Appendix - City's Ethics Code Suppl #26 05-2008

[3] See comparable statement concerning state government officials at §19.45(1), *Wisconsin Statutes.*

[4] **"Associated",** when used in connection with "business" or "organization" refers to a business or organization of which an individual or a member of the individual's household or immediate family is an officer, director, trustee, owner of a 10% or greater interest, or authorized representative. An individual is not associated with a business or organization merely because the individual is a member or employee.

[5] §19.59(1)(a) and (c), *Wisconsin Statutes.*

[6] 1994 Wis Eth Bd 5.

HOW TO WITHDRAW FROM OFFICIAL ACTION

When a matter in which a public official should not participate comes before a board, commission, or other body of which the official is a member, the official should leave that portion of the body's meeting involving discussion, deliberations, or votes related to that matter and ask that the body's minutes reflect the absence. The body's remaining members may review the matter and take whatever action they find appropriate.

ACTING IN A PRIVATE CAPACITY

APPLICATIONS, BIDS, AND CONTRACTS. Usually, a local public official should not, in a private capacity, apply, negotiate, bid for, or receive any award, sanction, permit, license, zoning change, contract, offer of employment, or agreement in which the official has a private financial interest, direct or indirect, if the official is *authorized* to perform in regard to it any governmental function requiring the exercise of discretion, even if the official does not participate in the governmental action or exert any influence on his or her own behalf.[7]

REPRESENTING CLIENTS. A local public official should not, for compensation or on behalf of an employer, represent an individual, business, or organization before a board, commission, or other body of which an official is a member. The statutory code of ethics is not an obstacle to a local official's partner or business associate representing a client before such board,

commission, or other body as long as the official is not financially interested in, and does not exercise control over, the representation.[8]

[7] With limited exceptions, §946.13, Wisconsin Statutes, makes it a felony for a governmental official to negotiate or bid for or enter into a contract in which the official has a private pecuniary interest if at the same time the official is authorized to perform in regard to that contract some official function requiring the exercise of discretion. As long as private activity is not otherwise prohibited, departure from the usual rule may be justified in an occasional, sporadic, or infrequent case such as an official's action in a private capacity to protect or preserve a private interest of the official or the official's family.

[8] §19.59(1)(b), Wisconsin Statutes, prohibits an official to accept anything of value that could reasonably be expected to influence official action or judgment. The disqualification from official action that would be required of a local government official who accepted pay for being an advocate before the very government body to which his or her office pertains is a clear, direct, and reasonably foreseen effect upon official action.

Sex Offender Residence Appeal

SECTION 1: Introduction.

This manual is intended to serve as a guide to the members of the City of Berlin City Council to describe their general roles and responsibilities in reviewing Petitions for Exemptions to the City's Sex Offender Residency and Activity Restrictions. In general, the City Council will have the obligation of administering the Petition for Exemption Process described in Section 46-173(9) of the City of Berlin's City Code. The members of the City Council shall make a determination, by majority vote of the members, to grant or deny the exemptions sought, and impose terms as fitting and allowed for by the City Code based upon evidence presented, applying the standards of the Ordinance and the petition form to the facts received at the hearing. This manual should not be interpreted as modifying any standard shown in the City Code or approved petition form or in applicable laws, but is only intended to serve as a guide and further research may be required as issues are presented case by case.

SECTION 2: Role of the City Council and the approved Petition Form.

The City Code and the approved petition form describes the role of the Common Council in hearing and administering the Petition for Exemption described in Section 46-173(9) of the City of Berlin City Code regarding "Sex Offender Child Safety Zones." Particular duties include the following:

A. Under a permit granted by the common council, upon recommendation from the chief of police, or his or her designee. A permit shall only be issued upon a determination that the permitted activities of the person will not likely lead to a disruption of the stated purpose of this article. The chief of police, or his or her designee, shall establish an application process and permit form consistent with this purpose, which process and permit form shall be approved by the common council. The chief of police, or his or her designee, shall have the power to revoke or temporarily suspend a permit issued hereunder if, in his or her opinion, the activities of the permit holder are not in compliance with the terms and conditions of this article or the permit granted, or circumstances have changed from the date of initial permit issuance whereby the permitted activities will constitute an unreasonable safety hazard to the general public or will otherwise lead to a disruption of the stated purpose of this article. Further, any permit granted hereunder may be revoked or temporarily suspended by the chief of police, or his or her designee, if the permit holder commits a crime or violates any other city ordinance as a result of or during the permitted activities hereunder. The decision of the chief or police, or his or her designee, to revoke or suspend a permit hereunder shall be final, subject only to review by the common council under Wis. Stats. Ch. 68.

B. The Common Council approved an official petition form. The Sex Offender seeking an exemption must complete the petition form. The Common Council shall hold a hearing on each petition, during which the Common Council may review any pertinent information and accept oral or written statements from any person. The Common Council shall base its decision on factors related to the City's interest in promoting, protecting, and improving the health, safety and welfare of the community. The purpose

of the Sex Offender Child Safety Zones, as stated in Article VI. Section 46-170, is "This chapter is a regulatory measure aimed at protecting the health and safety of children in Berlin from the risk that convicted sex offenders may re-offend in locations 'where children tend to congregate or be regularly present. The city finds and declares that sex offenders are a serious threat to public safety. When convicted sex offenders re-enter society, they are much more likely than any other type of offender to be re-arrested for a new rape or sexual assault. Given the high rate of recidivism for sex offenders and that reducing opportunity and temptation is important to minimizing the risk of re-offense, there is a need to protect children where they congregate or play in public places in addition to the protections afforded by state law near schools, day care centers and others places children frequent. The city finds and declares that in addition to schools and day care centers, children congregate or play at public parks." Applicable factors for the Common Council's consideration shall include, but are not limited to:

1. Nature of the offense that resulted in sex offender status
2. Date of offense
3. Age at time of offense
4. Recommendation of probation or parole officer
5. Recommendation of Police Department
6. Recommendation of any treating practitioner
7. Counseling, treatment and rehabilitation status of sex offender
8. Remorse of sex offender
9. Duration of time since sex offender's incarceration
10. Support network of sex offender
11. Relationship of sex offender and victim(s)
12. Presence or use of force in offense(s)
13. Adherence to terms of probation or parole
14. Proposals for safety assurances of sex offender
15. Conditions to be placed on any exception from the requirements of this Ordinance

C. The Common Council shall decide by majority vote whether to grant or deny an exemption. An exemption may be unconditional or limited to a certain address or time, or subject to other reasonable conditions. The Common Council's decision shall be final for purposes of an appeal. A written copy of the decision shall be provided to the Sex Offender.

SECTION 3: Quasi-Judicial Capacity: Ethical Considerations.

The members of the Common Council serve as judges, not as legislators, when acting in this capacity ("Reviewer"). The decisions are not based on policy, but based upon facts presented and standards applied. Service in this quasi-judicial capacity requires all of the following:

a. The Reviewers must be impartial.

b. If a Reviewer is not impartial, or cannot be fair to both sides, or has expressed opinions publicly in favor of one side in the issue, the member should recuse himself or herself.

c. Reviewers should not participate in communication with others outside of the public hearing process. Like a court procedure, the information that informs the decision-making should all be received at the hearing, so that all parties have an opportunity to respond to the relevant information.

d. There must be an opportunity for the interested parties to be heard.

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2025 MAYORAL APPOINTMENTS

Officers	Current Incumbent	Term Expires	Re-Appointment	New Appointment
City Attorney	Municipal Law & Litigation Group	5/1/2026	YES	Municipal Law & Litigation Group
Health Officer	Green Lake County Health Unit	5/1/2026	YES	Green Lake County Health Unit
Humane Officer	Berlin Police Department	5/1/2026	YES	Berlin Police Department
Building Inspector	Kunkel Engineering	5/1/2026	YES	Kunkel Engineering
Official Newspaper	Berlin Journal	5/1/2026	YES	Berlin Journal
Weed Commissioner/Forester	Scott Zabel	5/1/2026	YES	Scott Zabel

Commission	Current Incumbent	Term Expires	Re-Appointment	New Appointment
Travel & Tourism	Michelle Omichinski	1/1/2028	YES	Michelle Omichinski
Travel & Tourism	Andi Rogers	1/1/2028	YES	Andi Rogers
Park & Recreation Commission		5/1/2028	NO	Emmett Durtschi
Park & Recreation Commission	Victoria Hill	5/1/2028	NO	Kamie Jorgensen
Park & Recreation Commission	Tim Bending	5/1/2028	YES	Tim Bending
Plan Commission	Paul Hanan	5/1/2028	YES	Paul Hanan
Plan Commission	Victoria Hill	5/1/2027	NO	Kayla Reeves
Plan Commission		5/1/2028	NO	
Police & Fire Commission	Ron Ross	5/1/2030	YES	Ron Ross
Police & Fire Commission	Joanne Guden	5/1/2029	NO	Morgan Monahan
Sewer & Water Commission	David Youngbauer	5/1/2030	YES	David Youngbauer
Sewer & Water Commission		5/1/2026	NO	

Board	Current Incumbent	Term Expires	Re-Appointment	New Appointment
Cemetery Board	Nancy Gimenez	4/30/2028	YES	Nancy Gimenez
Cemetery Board	Dave LaBuda	4/30/2028	YES	Dave LaBuda
Cemetery Board	LuAnne Beyer	4/30/2028	YES	LuAnne Beyer
Library Board	Carrie Blazel	5/1/2028	YES	Carrie Blazel
Library Board	Kay Roethel	5/1/2028	YES	Kay Roethel
Board of Appeals	Bobbie Erdmann	11/1/2028	YES	Bobbie Erdmann
Board of Appeals	Nathan Corduan	11/1/2028	NO	
Board of Appeals (Alternate)		11/1/2026	NO	
Board of Appeals (Alternate)		11/1/2026	NO	
Board of Review		7/1/2030	NO	Keith Hess
Board of Review		7/1/2030	NO	Bobbie Erdmann
Board of Review		7/1/2026	NO	Dave Doan
Board of Review		7/1/2027	NO	Paul Hanan

Board of Review		7/1/2027	NO	
		Term	Re-	New
Committee	Current Incumbent	Expires	Appointment	Appointment
Committee on Aging	Keith Hess	4/30/2028	NO	Anne Murphy
Committee on Aging	Richard Lashbrook	4/30/2028	YES	Richard Lashbrook
Committee on Aging		4/30/2027	NO	Amanda Krause
Liaison				
		Term	Re-	New
Board/Commission/Committee Liaisons	Current Incumbent	Expires	Appointment	Appointment
BCDC	Emmett Durtschi	4/15/2026	NO	
Cemetery Board	Emmett Durtschi	4/15/2026	NO	
Committee On Aging	Josh Nigbor	4/15/2026		
Community Development Authority	Terry Przybyl	4/15/2026		
Community Development Authority	Kristina Boeck	4/15/2026		
Library Board	Emmett Durtschi	4/15/2026	NO	
Park & Recreation Commission	Catrina Burgess	4/15/2026	NO	
Plan Commission	Terry Przybyl	4/15/2026		
Police & Fire Commission	Samantha Stobbe	4/15/2026		
Sewer & Water Commission	Kristina Boeck	4/15/2026		

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CITY OF BERLIN
Policy on Filling Mayor and Common Council Vacancies
(Updated January 15, 2019)

According to Wisconsin State Statutes Sec. 17.23(1)(a), vacancies in the office of mayor and alderperson in second, third and fourth class cities are filled by appointment by the common council. In the office of mayor, the person appointed to fill a vacancy shall serve for the residue of the unexpired term unless a special election is ordered by the common council, in which case the person appointed shall serve until his or her successor is elected and qualified. In the office of alderperson, the person appointed shall hold office until a successor is elected and qualified. Unless otherwise ordered by the common council, a successor shall be elected for the residue of the unexpired term on the first Tuesday of April next after the vacancy happens, in case it happens no later than December 1 preceding the first Tuesday in April, but if the vacancy happens after December 1 preceding the first Tuesday in April and before that day, then the successor shall be elected on the first Tuesday in April of the next ensuing year. See the following examples for illustration purposes:

- Example 1: Alderperson's term expires in April, 2021 and vacancy occurs on October 13, 2019 (i.e. prior to December 1), and that vacancy is filled by appointment. The person so appointed shall hold office until a special election to fill the remainder of the term is held in April, 2020; meaning the person so elected would then serve until April, 2021 which is when the original term expired.

- Example 2: Alderperson's term expires in April, 2021 and vacancy occurs on December 13, 2019 (i.e. after December 1), and that vacancy is filled by appointment. The person so appointed shall hold office until April, 2021 which is when the original term expired. There is no need for a special election.

- Example 3: Alderperson's term expires in April, 2020 and vacancy occurs on October 13, 2019, and that vacancy is filled by appointment. The person so appointed shall hold office until April, 2020 which is when the original term expired. There is no need for a special election.

- Example 4: Alderperson's term expires in April, 2020 and vacancy occurs on December 13, 2019, and that vacancy is filled by appointment. Even though the vacancy occurred after December 1, the person so appointed shall hold office until April, 2020 which is when the original term expired. There is no need for a special election.

The common council may, if a vacancy occurs before June 1 in the year preceding expiration of the term of office, order a special election to fill a vacancy to be held on the Tuesday after the first Monday in November following the date of the order. A person so elected shall serve for the residue of the unexpired term.

The statutes do not set forth a specific procedure by which appointments of the common council must be made. Since no method of appointment is prescribed in the statutes, municipal governing bodies may determine their own procedure for nominating candidates and selecting a person to fill the vacancy.

The following policy is established as a set procedure for the Berlin common council to use in filling mayoral and aldermanic vacancies. This policy is adopted by resolution by the common council, and may be reviewed and revised at the discretion of the common council. Once a vacancy occurs, the following process will be followed:

1. **Nomination Process.** Nominations will be received from the floor of the common council at the nomination meeting, and will be only from the pool of eligible applicants who timely submit an application under paragraph 3 below.

2. **Public Notification.** The vacancy will be noticed in the Official City Newspaper requesting applications for the position via a Class 1 notice. The vacancy will also be noticed in a minimum of three public places as well as on the City's designated cable channel. This notice will include a deadline date for applications, which will be at least one week prior to the nomination meeting.

3. **Nomination and Application Requirements.** Applicants will be required to submit a completely filled out Board, Committee, Commission & Common Council Application Form, which is on file at the Clerk's office. A resume will also be requested as part of the application. The application deadline will be one week prior to the nomination meeting. Only applications received by the published deadline will be considered for common council nomination. Nominations will be based on these applications. No nominations will be considered that have not gone through the appropriate application process.

4. **Multiple Nominations.** In the case of more than two nominations, if after a vote of the common council no applicant receives the requisite majority to be elected, the two highest vote getters will be automatically nominated for a final election of the common council.

5. **Selection Process.** Applicants will be notified of the nomination meeting and requested to attend. During the nomination and selection process, the common council may interview applicants at its discretion. Interview questions will be established by the common council in advance, and will be the same for all applicants. The common council shall then vote on the nominations. If a nominee receives a vote representing a majority of the entire common council (currently 4 votes), then that nominee shall be the newly elected alderperson. If a nominee receives a vote of less than a majority of the entire common council, but a majority of those members present, or by virtue of a tie breaker vote by the mayor (assuming the office of mayor is not the vacant position being filled), then that nominee shall become the final candidate, whereby a final vote shall be held to approve or disapprove of that final candidate. To become elected, the final candidate must receive a final approval vote of majority of the entire common council.