

## Wisconsin's Open Meetings Law and Meetings of Administrative Professionals

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Posted By: Kyle J. Gulya

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Municipal Administrators often meet with Department heads and police and fire chiefs to discuss issues facing their community. Superintendents often meet with their school district administrators to discuss issues facing their districts. While these meetings are convened for productive purposes, government officials should be aware of a recent opinion from an Assistant Attorney General regarding how Wisconsin's Open Meetings Law may affect these meetings.

In a June 8, 2005 letter, Assistant Attorney General Thomas C. Bellavia addressed whether meetings of a school district Management Team—a body composed of district administrative staff including the Superintendent, Assistant Superintendent and principals—constituted “meetings” of a “government body” under Wisconsin's Open Meetings Law. Like each Open Meetings inquiry, the facts of this case are important. The School Board directed the Superintendent to formulate and submit his recommendations for addressing the budget deficit. The Superintendent met with the Management Team to discuss this matter on several occasions. The Management Team issued a written memorandum to the Board that stated the Management Team's collective recommendation. A concerned citizen questioned whether the gathering of the Management Team, without the presence of even one single board member, was a “meeting” of a “government body” subject to Wisconsin's Open Meetings Law.

In order to establish whether the Management Team's meetings constituted “meetings” of a “government body,” two tests must be met. First, the group must constitute a collective body rather than merely an assemblage of individuals. Second, there must be a directive creating the group “by constitution, statute, ordinance, rule or order.” “Rule or order” is interpreted broadly to include formal and informal directives that create a body and assign it duties.

The Assistant Attorney General concluded that the Management Team engaged in at least two meetings that may be subject to Wisconsin's Open Meetings Law. First, the Assistant Attorney General determined the Management Team acted as a collective body and not as an assemblage of individuals. The Superintendent claimed the Management Team operated on a consensus basis without requiring a quorum or any voting practice and, therefore, could not be subject to the Open Meetings Law. The Assistant Attorney General, however, found the Management Team must have made some form of *de facto* decision making on behalf of its membership when it developed and submitted its collective recommendation to the Board. The Management Team did not act as a consultant to the Superintendent to assist him in formulating his own recommendations. Instead, the Management Team acted as a body when it collectively formulated a written memorandum that stated the collective recommendation of the Management Team. Therefore, the Management Team engaged in an advisory process that resulted in a collective written recommendation that was expressed directly to the Board and its subcommittee.

The Assistant Attorney General also found the meetings of the Management Team were held pursuant to a "rule or order" and therefore subject to the Open Meetings Law, because there was a formal or informal directive convening the Management Team for the purpose of developing and submitting budget recommendations to the Board. The Board issued a directive to the Superintendent to provide it with budget recommendations, and the Superintendent delegated that directive to the Management Team to discuss and respond to the Board. While the directive from the Board to provide the Superintendent's feedback was only given to the Superintendent, and it was the Superintendent who chose to convene the Management Team, the Assistant Attorney General found the directive did not need to flow directly from the Board to the Management Team. Accordingly, if an individual government official, acting within the scope of properly delegated authority creates an advisory body, then that advisory body is treated as if the governmental body itself created it.

### **Is There Any Breathing Room for Local Government Officials to Meet with Each Other?**

In order to provide efficient and productive government services, Administrators and Department Supervisors need flexibility to meet with other supervisors and staff in order to receive guidance from experienced personnel or to collectively resolve certain matters without meeting the stringent notice requirements of the Open Meetings Law. As public scrutiny of government escalates, compliance with Wisconsin's Open Meetings Law becomes an even more important issue. While this Assistant Attorney General's perspective should cause administrative officials to exercise caution, not all meetings of Administrators, Department Supervisors or staff constitute "meetings" under the Open Meetings Law.

The Assistant Attorney General noted two types of gatherings that would probably not require notice. First, meetings of groups of government officials and employees that are not established pursuant to a formal or informal directive, and who simply meet together on an *ad hoc* basis in the interest of efficiency or improving performance, are probably not governed by Wisconsin's Open Meetings Law. Second, the Open Meetings Law may not cover meetings between an individual Department supervisor and his or her staff when the supervisor and staff do not engage in collective action as a separate governmental body. In response to this Assistant Attorney General's opinion, village boards, city councils, and school boards must exercise caution when issuing directives to administrative officials. Additionally, these administrative officials must be more cautious when taking action on those directives. Boards may still issue directives to administrators to provide it with the administrator's recommendations or guidance. The Board's directives, however, should not govern the means that the administrator uses to create his or her recommendations. Such a directive from the Board should state "the Administrator should provide the Administrator's recommendation to the Board, but the Administrator may use whatever means the Administrator chooses to establish those recommendations." It should be left up to the administrator to determine whether to discuss and generate a recommendation from a collection of supervisors, or staff or to only solicit their input and come up with his or her own response rather than coordinating a collective recommendation. Based on this Assistant Attorney General's opinion, if the administrator or the collection of supervisors or staff chooses to provide a collective recommendation to the Board, then the group should consider whether it needs to follow the requirements of the Open Meetings Law.

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