



Date: July 21, 2021

To: Town Partnership Committee

From: Nick Vivian

Re: Town Partnership Committee & Open Meeting Law (OML)

The Wisconsin Open Meeting Law (OML) favors transparency for governmental bodies. The statute itself provides that it is the policy of the 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 governmental business. The OML applies to governmental bodies defined as state or local agencies, boards, commissions, counsels, departments of public bodies corporate and politic created by constitution, statute, ordinance, rule and order.

Governmental bodies are defined primarily in terms of the manner in which they are created, rather than in terms of the type of authority they possess. Purely advisory bodies can be subject to the OML if they are created by constitution, statute, ordinance, rule or order. Accordingly, where a committee is created by rule or order of a County, City or Town, that committee is a governmental body under the OML and subject to OML requirements. However, a group organized by its own members - like your advisory group which was not created by any constitution, statute, ordinance, rule or order - is not subject to the OML.

Rather, the meetings of the advisory group are considered to be ad hoc gatherings. Case law holds that the directive (constitution, statute, ordinance, rule or order) that creates the governmental body must also confer collective power and define when it exists. Additionally, a meeting of a governmental body takes place only if there is a sufficient number of members present to determine a governmental body's course of action. In order to determine whether a sufficient number of members are present to determine a governmental body's course of action, the membership of the body must numerically be definable.

The Wisconsin Attorney General's Office, using this guidance, has concluded that a loosely constituted group of citizens and local officials gathering to discuss various issues related to local land use was not a governmental body because no rule or order defined the group's membership, and no provision existed for the group to exercise collective power.

Based upon my understanding of the creation and make up of your advisory working group, it is not a governmental body as defined by the OML. It was not created by any constitution, statute, ordinance, rule or order. There is no power or authority conferred to the working group and the group is not defined by a specific number of members.

Because the working group lacks the specific characteristics of a governmental body, meetings are most akin to ad hoc gatherings. A "meeting" under the OML is defined as "the convening of the members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body". The advisory working group is not a governmental body and has no responsibilities, authority, power or duties delegated to it. Accordingly, the group is not subject to the requirements of the OML, is not required to post its meetings and is not required to conduct its work in an open setting.

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