

School Law Update

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Supreme Court Rules Against School District In Open Meetings Case

The Wisconsin Supreme Court ruled that the Appleton School District (District) should have had committee meetings open to the public with proper notice given of where and when they were gathering when the Committee was meeting for the purpose of reviewing course material for a freshman communication arts class. [We previously outlined the issues in this case in a [November 2016 For Your Information](#)]. The Supreme Court decided that the District's Communication Arts I Review Committee (Review Committee) was a governmental body subject to Wisconsin's Open Meetings Law. The Court specifically held that "[w]here a governmental entity adopts a rule authorizing the formation of committees and conferring on them the power to take collective action, such committees are 'created by . . . rule' under [Wis. Stat.] § 19.82(1), and the open meetings law applies to them."

In this case, the Appleton School Board adopted a Rule which provided that a review of educational materials should be done according to a Board-approved Assessment, Curriculum, and Instruction Handbook. This Handbook was adopted under the authority of Wis. Stat. § 118.03(1) which provides that a school board is vested with the authority to adopt all textbooks necessary for use in the schools under its charge.

There has always existed a tension between the stated policy in the Open Meetings Law that "the public is entitled to the fullest and most complete information regarding the affairs of government" and the countervailing concern that the law must be construed "as is compatible with the conduct of governmental business."

Prior to this decision, there were only a handful of Attorney General Opinions and letters addressing the issue of when a "committee" meets the definition of a "governmental body" under the Open Meetings Law. Many individuals had hoped the Court would provide additional guidance to school districts. This included Justice Abrahamson, who concurred in the result but filed her own twenty-two page opinion taking issue with much of the majority's reasoning and approach. Instead, the five member majority opinion of the Court took a narrower approach and structured its decision somewhat to the facts of this case. However, a number of important points can be gleaned from the majority opinion.

Summary: Where a governmental entity adopts a rule authorizing the formation of committees and conferring on them the power to take collective action, such committees are created under § 19.82(1), and the Open Meetings Law applies to them.

Governmental Body Two-Part Test:

When deciding if an entity is a governmental body one should look at:

- (1) The form it takes; and
- (2) The source of its existence in a constitution, statute, ordinance, rule, or order.

Whether an entity is a “governmental body” is not determined by examining the purpose behind its formation or by the subject matter of its meetings.

The Essential Elements That An Entity Must Take In Order To Be A Governmental Body Are:

- (1) A defined membership; and
- (2) Collective responsibilities, authority, power, and duties vested in the body as a whole, distinct from the individual members.

In this case, the fact the Review Committee had a defined membership was critical because without a defined membership it would not be possible to determine whether a sufficient number of members were assembled to constitute a “meeting” of the body and a necessary characteristic of a governmental body is that collective power has been conferred upon it. In this case, the Handbook did not name the members of the Review Committee, but established the framework under which the administration selected regular members for the specific committee.

Ad Hoc Gatherings Not Covered: The Court noted a creation of a governmental body is not triggered merely by “any deliberate meetings involving governmental business between two or more officials.” Loosely organized, ad hoc gatherings of governmental employees, without more, do not constitute governmental bodies. For example, the Court noted a meeting between the head of a department and the entire staff of a department was not covered by the Open Meetings Law because the staff did not constitute a body. Rather, an entity must exist that has the power to take collective action that the members could not take individually.

Distinction: The fact that an entity calls itself a committee, keeps minutes, records attendance, and records votes is informative with respect to the determination of a governmental body, but not dispositive.

Definition Of “Rule”: For purposes of the Open Meetings Law, a “rule” includes any authoritative, prescribed direction for conduct, such as the regulations governing procedure in a governmental body. The recognition by the Supreme Court that the term “rule” should be given a common, ordinary, and accepted meaning undoubtedly encompasses entities created by board policy or other board action, including board approval of entities presented to it via handbooks.

Distinction In This Case And This Fact Setting: It was the Board’s Rule and Board-approved Handbook that provided the legal authority for the Review Committee to exist in this case and set forth the Review Committee’s duties and functions, not a directive from either of the administrators who coordinated the formation of the Review Committee. The Board had passed a specific policy dealing with curriculum review committees. The Review Committee in this case used a “modified process” where it followed most, but not all, of the steps and procedures laid out in the Board Policy and Handbook. The Court held that, despite these modifications, in reality, the Review Committee derived its authority and functions from the Board Rule and Handbook and, because of that, it constituted a governmental body.

Reminder: The Open Meetings Law applies to every “meeting” of a “governmental body.” Wis. Stat. § 19.83. A “meeting” is defined as the convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power, or duties delegated to or vested in the body. Wis. Stat., § 19.82(2). The Wisconsin Supreme Court has held that the definition of a “meeting” applies whenever a convening of members of a governmental body satisfies two requirements: (1) There is a purpose to engage in governmental business; and (2) the number of members present is sufficient to determine the governmental body’s course of action. *State ex. rel. Newspapers, Inc. v. Showers*, 135 Wis. 2d 77 (1987).

Other Important Points:

- A governmental body does not have to include a board member. In this case, there was no Board member who sat on the committee.
- A governmental body does not only include entities with the word “committee” in its name. It could include “study groups” or any other entities which meet the criteria noted above.
- All governmental bodies can go into closed session. If the topics to be discussed meet the criteria for considering going into closed session, then the fact that the entity is a committee, as opposed to a full board, does not make a difference. [The meeting still needs to be properly posted and a proper motion to go into closed session must be made, with a roll call vote.]

Takeaway: While this decision does not provide the guidance many had hoped for, it does delineate certain principles school districts should follow. Districts may wish to re-evaluate their use of committees based on whether they constitute governmental bodies. Not every committee or meeting of employees will be a governmental body subject to the Open Meetings law. However, if a committee has a defined membership and is charged with collective responsibilities, authority, power, and duties (by statute, rule, etc.), it is likely to be a governmental body, and the requirements of the Open Meetings Law should be followed.

For questions or more information about this topic, please contact one of the attorneys listed below.

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