

# Chapter Seven

## *Running Town Meetings Complying with the Open Meeting Law and Other Notice Requirements*

### § 7-1. Overview

The past few chapters have described the powers and the decision-making process for town boards. Despite the complex nature of town governance, some boards fall into a routine. This can be an efficient way of handling normal town business. However, routines should not lull the board into a sense of complacency when handling the mechanics of town meetings. Failing to pay attention to the details of the publishing, posting, record keeping and the Open Meeting law can be fatal to the town board’s decision and could even expose the officers to criminal liability.

The Open Meeting Law and statutes governing townships can sometimes provide an obstacle course for the unwary because they each have certain requirements towns must meet. This chapter discusses the best practices for preparing and running town meetings and meeting the obligations required by law.

### § 7-2. Open Meeting Law

Few laws impact the operation of local government as directly as the Open Meeting law. Minn. Stat. Chapter 13D. All town officers need to develop and then maintain a working knowledge of the requirements of the open meeting law. Born from the idea that public business should be conducted in public, the Open Meeting law requires local governments to do its work at properly noticed public meetings. This relatively simple concept can be very difficult to apply in a given situation.

#### A. Complying with the Open Meeting Law

The Legislature drafted the Open Meeting law very broadly. ***It applies to the governing body of local governments and any committee, subcommittee, board, or department established by the local government.*** This means the town board, town planning commis-

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sion, board of appeals and adjustment, joint powers board, park board, and any other board or committee the town board formally establishes must comply with the Open Meeting law.

### B. Open Meeting Elements

There are five elements to consider when applying the Open Meeting Law:

1. **Quorum of the public body.** Two supervisors constitute a quorum of a three-supervisor board and three supervisors constitute a quorum of a five-supervisor board. Minn. Stat. § 366.01, subd. 1. For other committees or boards, a majority of the voting members usually constitutes a quorum; however, the bylaws of the group should always be referenced to see if quorum was expressly defined for the group.
2. **Voting members of a public body.** The concern is that those with the power to make decisions affecting the public do not discuss public business among themselves in private. This concern does not reach discussions with or among those who do not have the power to make the decision. As such, while a quorum of supervisors may not discuss public business outside of a meeting, a supervisor can usually discuss town business with the clerk or treasurer without implicating the Open Meeting law.
3. **Gathering requirement.** This may seem like a minor point, but it has raised questions over whether discussions via electronic communications such as on the telephone, by e-mail, or through social media are covered by the Open Meeting law. When interpreting the Open Meeting law, courts often turn to the law's purpose. When one considers that many of the evils the Open Meeting law is intended to guard against can be committed through electronic communications, it becomes clear that such communications between supervisors must be avoided. In other words, do not hit "Reply all" when responding to an email relating to town business.
4. **"Discuss, decide, or receive information."** A common misunderstanding of the Open Meeting law is that it only applies if a **decision** is made at the gathering. That is not true. Not only does the Open Meeting law apply to pure discussions among public officers, it can even be interpreted as applying to the passive act of receiving information.
5. **Must relate to the business of the public body.** The Open Meeting law would apply to two supervisors discussing the proposed adoption of a town zoning ordinance, but not to discussions of the weather or the local football team.

### C. Limited Exception for On-Site Inspections

Because most towns do not have staff, the Legislature has created a limited exception for towns allowing a quorum or more of supervisors to perform an on-site inspection for the town. Minn. Stat. § 366.01, subd. 11. This exception is only available when the town has no employees or other staff able to perform the inspection and the town board acts in a staff capacity. If a news medium has filed a written request for notice of on-site inspections, the board must make a good faith effort to inform the news medium before the inspection.

*This is a very valuable exception for town boards, but the challenge is to always remember that substantive business is not to be conducted during the inspection.* If the board needs to conduct an on-site inspection to gather information that will be used to make a substantive decision, then the on-site inspection can be conducted but the board must wait for a board meeting open to the public to discuss and decide the issues related to the on-site inspection.

## § 7-3. Requirements of Open Meeting Law

The Open Meeting law requires:

- notice of meetings;
- meetings must be held in public;
- public must be able to view written materials available to the board during the meeting, with some exceptions ; and
- limits are imposed on when and how meetings can be closed to the public.

Each will be discussed in detail below.

## § 7-4. Notice of Meetings

Minn. Stat. § 13D.04, subd. 1 outlines the requirement for notices.

- **Regular board meetings:** Usually a town board will establish a schedule of regular meetings held at a pre-established date, time, and place (e.g., 7:00 p.m. on the second Tuesday of the month at the town hall). A schedule of the meetings must be developed and kept on file at the board's primary office.
- **Special Meetings:** If a board meeting is held at a different date, time, or place than indicated on the regular meeting schedule, the meeting is treated as a special board meeting. **For special board meetings, notice of the date, time, place, and purpose of the meeting must be posted on the town's bulletin board at least three days before the day of the meeting.** Minn. Stat. § 13D.04, subd. 2. However because you don't count the day of posting or the day of the meeting, MAT recommends boards post notice of meetings **at least five days before** the day of the meeting. When the last day of the period falls on Saturday, Sunday, or a legal holiday, that day must

### Pervasiveness of the law

Consider, for instance, a quorum or more of the town board attending a meeting of another public body such as the county planning commission meeting. If town business is discussed at the meeting, it is possible to argue the Open Meeting law is triggered requiring the town board to provide its own notice of the fact it will be at the county meeting. If a quorum of the supervisors also serves on the town planning commission, the Open Meeting law must be considered and notice provided for both the town board and the planning commission.

be omitted from the computation. Minn. Stat. § 645.15. If anyone has filed a written request for notice of special meetings with the public body, the public body must mail or otherwise deliver notice to them at least three days before the meeting.

- **Emergency Meetings:** Town boards may meet without providing days of posted notice in order to respond to an emergency. An emergency exists only if the board finds a condition that threatens public health or safety. Minn. Stat. § 13D.04, subd. 3. The emergency must involve circumstances that, in the judgment of the town board, require immediate consideration by the board to protect the public. It is possible for the press to make a written request to receive notice by telephone or email of emergency meetings.
- **Publishing is NOT Required:** There is no requirement to publish notices of regular or special board meetings under the Open Meeting Law. Other statutes may require publication for the use of certain powers.

The Minnesota Department of Administration Data Practices Division provides state-wide assistance on Minnesota's Data Practices and Open Meeting laws. Its website, <https://mn.gov/admin/data-practices/> includes information pages and almost 1000 opinions that give guidance to local governments on complying with the Open Meeting law. Anyone may seek an opinion from the Department of Administration regarding the interpretation or compliance with the Open Meeting law. However, opinions are not binding and may offer a different interpretation than one provided by your township attorney or MAT.

## A. Posting Notices of Township Meetings

The Open Meeting Law requires posted notice of meetings, but does not require published notice of meetings.

The town board is required to designate one or more places in the town as public places where legal notices will be posted. Minn. Stat. § 366.01, subd. 8. Posting notices remains as one of the primary methods for informing the public of meetings and board actions and is a way to comply with the Open Meeting law.

When designating a posting place, the board must be sure the place is accessible after regular business hours. Having a posting place on an inside hallway bulletin board has been determined not to be appropriate as an official post-

ing place for public notices.

Facilities for posting notices at the designated locations must also be provided (i.e., a bulletin board). A board may waive the posted notice requirements of any law, but must then publish the notice once each week for two successive weeks in a newspaper of general circulation in the town. Minn. Stat. § 366.01, subd. 8.

At least one of the posting places should be on the building where the board holds its meetings. Keep in mind that the proper method of noticing a special board meeting is to post the notice on the town's principal bulletin board, or if the town has no principal bulletin board, on the door of its usual meeting room.

## B. Publishing Notices of Township Meetings

Publication of notices may be required by statutes other than the Open Meeting Law. Therefore, the town board must select an official newspaper for publishing notices. Minn. Stat. § 331A.04, subd. 1. Consider making the designation annually at the reorganization meeting. When designating an official newspaper, the town board must consider the following:

1. The official newspaper must be a qualified newspaper. "A newspaper that is not qualified must inform a public body that presents a public notice for publication that it is not qualified." Minn. Stat. § 331A.02, subd. 1.
2. If a qualified newspaper has its known office of issue in the town, that newspaper shall be designated. Minn. Stat. § 331A.04, subd. 2.
3. If no qualified newspaper has its known office of issue in the town, then the town must designate the qualified newspaper

that has a secondary office in the town. Minn. Stat. § 331A.04, subd. 3.

4. If no qualified newspaper has its offices in the town, then a qualified newspaper of general circulation in the town shall be designated. Minn. Stat. § 331A.04, subd. 4.

An exception to the normal priority set out to designate an official newspaper is available, but is complex and rarely used. Minn. Stat. § 331A.04, subd. 6,

The newspaper must give the town an affidavit of publication setting forth certain information before the paper may be compensated for the publication. Minn. Stat. § 331A.07.

The maximum rate a newspaper may charge for publication of a public notice is controlled by statute. Minn. Stat. § 331A.06, subd. 1.

Statutes typically control when and how often a notice must be published.

- **When:** The statute will use some form of the word "publish" to indicate when a no-

**Official Newspapers:** The Secretary of State has a list of 300 legal newspapers currently registered with the Minnesota Secretary of State's office. Legal newspapers are officially designated publications in which citizens and governmental units advertise notices required by law.

<http://www.sos.state.mn.us/business-liens/start-a-business/legal-newspapers/>

tion must be placed in the town's official newspaper. Published notice is most often required when the town board is conducting a hearing or taking an action that affects someone's property.

- **Frequency:** A notice shall be published once unless the statute provides otherwise. Minn. Stat. § 331A.05, subd. 2(a). If a certain number of "weeks" of notice is required, the notice must be published once each week for the number of weeks specified. Minn. Stat. § 645.11. When the statute requires "successive weeks" of notice, "[t]he publication upon any day of such weeks shall be sufficient publication for that week, but at least five days shall elapse between each publication. At least the number of weeks specified in 'successive weeks' shall elapse between the first publication and the day for the happening of the event for which the publication is made." Minn. Stat. § 645.13. Town boards may provide for additional notice by publishing more frequently than required or by publishing additional notices in non-qualified newspapers. Minn. Stat. § 331A.05, subd. 5.
- **Timing:** Occasionally, the statute will specify a certain number of days that must elapse between the last publication and the happening of the event. For instance, publications for road bids must be published for "two successive weeks" with "the last publi-

cation to be made at least ten days before the time fixed for receiving and letting the contract." Minn. Stat. § 160.17, subd. 2. If the statute does not specify a certain time, then for notices intending "to inform the public about a future event, the last publication shall occur not more than 30 days and not less than seven days before the event." Minn. Stat. § 331A.05, subd. 2(b). For notices intending "to inform the public about a past action or event, the last publication shall occur not more than 45 days after occurrence of the action or event." Minn. Stat. § 331A.05, subd. 2(c).

An error in the publication caused by the publisher does not invalidate the actions taken at a meeting. Minn. Stat. § 331A.05, subd. 7 ("If through no fault of the local public corporation, an error occurs in the publication of a public notice, the error shall have no effect on the validity of the event, action, or proceeding to which the public notice relates.") To take advantage of this protection, town clerks should at least keep a copy of all notices presented to the paper for publication. A copy of the posted notice, supported by an affidavit of posting, corresponding to the published notice will serve as a record of what was presented to the paper.

The general publication requirements for town ordinances are contained in Minn. Stat. § 365.125.

## § 7-5. Meetings Must be Held in Public

"All meetings, including executive sessions, must be open to the public . . ." Minn. Stat. § 13D.01, subd. 1. This is the first line of the Open Meeting law and is the cornerstone of its primary purpose. The statute does not attempt to detail what it means to have meetings open to the public, but there are certain implications

that inevitably flow from the requirement. For instance, the room in which the meeting occurs should be large enough to accommodate the expected number of attendees. Officers should not whisper among themselves, pass notes, or exchange text messages while conducting a meeting.

## § 7-6. Interactive TV

The Open Meeting Law was expanded to allow public bodies to conduct meetings by interactive television (Skype or Facetime would qualify) if specific conditions are met.

- 1) all members of the body participating in the meeting, wherever their physical location, can hear and see one another and can hear and see all discussion and testimony pre-

sented at any location at which at least one member is present;

- 2) members of the public present at the regular meeting location of the body can hear and see all discussion and testimony and all votes of members of the body;
- 3) at least one member of the body is physically present at the regular meeting location; and
- 4) each location at which a member of the body is present is open and accessible to the public.

Minn. Stat. § 13D.02, subd. 1.

A public body using interactive television to conduct a regular, special, or emergency meeting is required to provide notice of the

regular meeting location, and notice of any site where a member of the public body will be participating. The timing and method of providing the notice must follow the requirements associated with the particular type of meeting. Minn. Stat. § 13D.02, subd. 4.

Each member of the public body that participates in the meeting is considered present for determining a quorum and participation. Minn. Stat. § 13D.02, subd.2. When interactive television is used, the public body is required to allow, to the extent practicable, others to monitor the meeting electronically from a remote location. The public body may require the person to pay the additional costs for the connection if they can be documented. Minn. Stat. § 13D.02, subd. 3.

## § 7-7. Record Keeping and Disclosure

All votes taken at a meeting under the Open Meeting Law must be recorded in a journal kept for that purpose. Minn. Stat. § 13D.01, *subd. 4(a)*. Also, the “vote of each member must be recorded on each appropriation of money, except for payments of judgments, claims, and amounts fixed by statute.” Minn. Stat. § 13D.01, subd. 4(b).

The journal must be open to the public during all normal business hours where records of the town are kept. Minn. Stat. § 13D.01, subd. 5. Because many towns do not hold regular office hours, it is important to try to provide other reasonable means of access to the journal. The means of access is usually worked out between the clerk and the requestor. If the town receives many requests for access to information, it should consider adopting a policy as to how it will handle such requests.

Refer to Document Number **TM7000** for a sample policy addressing requests for information.

Public bodies must make available to the public at least one copy of any printed materials relating to an agenda item of a public meeting prepared or distributed by or at the

direction of the governing body or its employees if the information was distributed to all members before the meeting, at the meeting, or made available to the members in the meeting room. Minn. Stat. § 13D.01, subd. 6 (a). This requirement does not apply to materials relating to agenda items of a properly closed meeting. Minn. Stat. § 13D.01, subd. 6 (b).

Towns in the seven-county metropolitan area exercising powers under Minn. Stat. § 368.01 (often referred to as urban powers) must comply with the Data Practices Act (DPA). These towns must develop, implement, and annually review a policy for complying with DPA. Minn. Stat. § 13.02, subd. 11. Towns in this category have had to act very quickly to become familiar with a very complicated area of the law.

Refer to Document Number **TM5000** for additional information on the DPA.

Once again, the record requirements of the Open Meeting law often dovetail with statutory requirements of record keeping for townships. The main source of public information is meeting minutes.

## A. Minutes

Minutes serve as the official record of the town's meetings. It is the duty of the town clerk to keep in the clerk's office a true record of all of the board's proceedings and "to have custody of the records, books, and papers of the town and file and safely keep all papers required by law to be filed in the clerk's office ...." Minn. Stat. § 367.11 (1) & (2). All public officers are required to "make and preserve all records necessary to a full and accurate knowledge of their official activities. All government records shall be made on a physical medium of a quality to insure permanent records." Minn. Stat. § 15.17, subd. 1.

## B. Minute Contents

Meeting minutes "should contain mainly a record of what was done at the meeting, not what was said by the members. The minutes should never reflect the [author's] opinion, favorable or otherwise, on anything said or done." ROBERT'S RULES OF ORDER 458 (Henry M. Robert III et al. eds., 9th ed. 1990). In discussing the record-keeping requirements under Minn. Stat. § 15.17, the Minnesota Supreme Court said to record official actions "all that need be kept of record is information pertaining to an official decision, and not information relating to the process by which such a decision was reached." *Kottschade v. Lundberg*, 160 N.W.2d 135, 138 (Minn. 1968). The court recognized that trying to articulate the basis for every action would be extremely time consuming and "virtually impossible."

Despite this general rule, there are situations in which it is advisable to include in the minutes the findings of fact and reasoning behind a decision. If the only record of a potentially controversial decision is the minutes (versus a resolution for instance), the board should include the key points it used to decide the issue.

The purpose behind this recommendation is to ward off successful claims that the board's decision was "arbitrary and capricious." If the only record of the board's response to a re-

Items that should normally be in the minutes of board meetings include:

1. the kind of meeting (e.g., regular town board meeting);
2. name of the governing body;
3. date, time, and place of the meeting;
4. full name of all the town officers, present or absent;
5. reading and approval of previous meeting minutes;
6. reading and approval of the financial report;
7. the individual items of business raised and the full name of the officers making and seconding the motion;
8. the votes of the supervisors on any action taken in the meeting, including the vote of each supervisor on each appropriation of money, except for payments of judgments, claims, and amounts fixed by statute; Minn. Stat. § 13D.01, subd. 4(b);
9. adjournment and time of adjournment; and
10. signature by the clerk and chair upon approval.

quest is a motion to deny, it would be difficult for a court to decide whether the board acted reasonably. The issue would likely be reopened with new testimony and the board attempting to prove it acted on legitimate reasoning. If, however, the basic reasoning is set out in the minutes, a court may find a sufficient basis for the decision exists in the record without re-examining the issue.

Refer to Document Number **TP4000** for additional information on findings of fact.

The clerk is "to record minutes of the proceedings of every town meeting in the book of town records and enter in them at length every order or direction and all rules and regulations made by the town meeting ...." Minn. Stat. § 367.11(3). The language referring to entering "at length" seems to suggest a fairly detailed set of minutes. However, the repeated reference to the "town meeting" also suggests the Legislature was only referring to annual and special town meetings rather than to board meetings. As such, clerks should take note of this requirement with respect to the listed items occurring at annual and special town meetings.

## C. Changing and Approving Minutes

While typically the clerk takes the minutes, the power to decide the content and level of detail of the minutes is vested in the board of supervisors. Op. Atty. Gen. 851-C, March 5, 1992. When the board reviews the previous meeting

minutes, it has the power, by motion, to change the content of the minutes to more accurately represent the true content of the meeting. The board can also adopt a policy regarding the level of detail to be reflected in the minutes.

## § 7-8. Retaining Minutes

All officers and agencies of the state, counties, cities, towns, school districts, municipal subdivisions or corporation, or other public authorities or political entities within the state...shall make and preserve all records necessary to a full and accurate knowledge of their official activities. Minn. Stat. § 15.17. The responsibility for any given agency's records lies with the chief administrative officer, which is the Town Clerk. Town boards need to provide the clerk adequate means to keep and preserve the town's records.

Minutes must be permanently retained, unless they are transferred to the state archives. This transfer is done by adopting a document retention resolution.

Government entities must establish ongoing records management programs, keep record inventories, and create records retention schedules specifying retention periods and disposition by record type. Minn. Stat. § 138.17 subd. 7 and § 138.19,

Document number **RR2000** in the MAT Information Library contains a sample resolution adopting the Minnesota Township General Records Retention Schedule for the management

The State Archives provides general guidance to government entities on records management topics. *Preserving and Disposing of Government Records*, a document they produce, details the records management responsibilities of government entities, the process for creating/adopting/amending a records retention schedule, and other important aspects of records management.

and destruction of the records in the town's possession.

Once a retention resolution has been adopted, a notice must be sent to the Minnesota Historical Society Government Records Archivist for their signature. No records can be destroyed before the Minnesota Historical Society have signed it. The notification form is found on in the Information Library on the MAT website.

## § 7-9. Recording Meetings

A town board can audio record its meetings. In these cases, the board must decide whether the recording is intended only to assist the clerk to take accurate minutes, or if the tape will be made a part of the official record of the meeting.

Recordings made part of the official record must be preserved and protected like the minute book. Boards should announce at the beginning of the meeting that they are recording the meeting.

**Towns must audio record closed meetings, except those closed under the attorney-client privilege, and preserve the recording for at least three years.** Minn. Stat. § 13D.05, subd. 1(d). It may be helpful for boards to develop a policy regarding access to its records that can address a range of issues including the amount the town will charge for copies.



## §7-10. Releasing and Publishing Minutes

The town's journal or minute book, must be open to the public during all normal business hours where such records are kept. Minn. Stat. § 13D.01, subd. 4(a). This requirement is separate from any requirement of the Data Practices Act, so all towns are subject to the requirement.

Towns exercising urban town powers within the seven-county metropolitan area are subject to the requirements of the Data Practices Act found in Minn. Stat. Chap. 13. They may have additional requirements related to the release of information.

All town boards must provide reasonable access to its meeting minutes. Op. Atty. Gen. 436-F, March 17, 1941. What is reasonable access for those towns not bound by the data

practices act will depend upon the particular situation of the town, but these towns must strive to provide such access. Town boards may develop a policy regarding access to its records that can address a range of issues including the amount the town will charge for copies.

Because of the need to preserve the town's official records, the clerk should not release original records. Instead, the clerk should ensure copies are provided to data requestors to maintain the safety of the town's data.

Towns are not required to publish their minutes, but the board may publish its minutes or other information in its official newspaper, a newsletter, webpage, or any other medium.

## § 7-11. Closed Meetings

In a few instances, towns may close a meeting to the public. Before closing any meeting, certain procedures must be followed. Most important, **the board must identify the statute that allows closure of a meeting before the meeting can be closed.** Closed meetings, except those closed to protect the attorney-client privilege, must be audio recorded and retained for the time required in statute.

The notice requirements of the Open Meeting law apply to closed meetings, so all meetings begin as public meetings. Minn. Stat. § 13D.04, subd. 5. Before closing a meeting, the board must announce the meeting will be closed, state the statute that authorizes the closure, generally describe the subject to be discussed, and record the statute and announcement in the board minutes. Minn. Stat. § 13D.01, subd. 3.

Even though a meeting is closed, it still must still be noticed and the requirements of the Open Meeting Law must be met. See Minn. Stat. § 13D.04, subd. 5. To the extent possible, we recommend closed meetings be posted and handled as special meetings. Because the statute requires governing bodies to comply with its notice provisions for closed meetings, the method of posting two notices, or one notice that addresses both the open and the closed components of the meetings is the more conservative approach and the one we recommend. See Minn. Stat. § 13D.04, subd. 5.

### A. When Meetings May be Closed

There are a limited number of instances when a meeting may be closed to the public. The following are the more common situations in which a board may close a meeting.

- **To evaluate the performance of an individual who is subject to the board's authority.** Minn. Stat. § 13D.05, subd. 3(a). Before closing

the meeting, the board must identify the individual to be evaluated and at the next Open Meeting the board must summarize its conclusions regarding the evaluation. The review must be in an open meeting if requested by the employee. Elected officials are not subject to the board's authority, so meetings cannot be closed to evaluate the performance of an elected officer.

- **Attorney-client privilege.** Minn. Stat. § 13D.05, subd. 3(b). In general, towns may close a meeting to confer with an attorney if they have been sued or believe they are about to be sued and are discussing litigation strategy. This is limited exception so towns should rely on the advice of counsel before closing for this purpose. See *Prior Lake America v. Mader*, 642 N.W.2d 729 (Minn. 2002) and *Minneapolis Star & Tribune Co. v. House & Redev. Auth.*, 251 N.W.2d 620 (Minn. 1976). It appears a town may only close a meeting with its attorney under this exception when: *the balance of competing public policies in the particular situation dictates the need for “absolute confidentiality”; the need for absolute confidentiality relates specifically to litigation strategy; and the board has already made a substantive decision on the underlying matter.*
- **To determine the asking price for real or personal property to be sold by the town.** Minn. Stat. § 13D.05, subd. 3(c) states that a town may close a meeting to determine asking price, review appraisal data, and develop or consider offers or counteroffers for real or personal property. Various conditions apply to meetings closed for one of these reasons including having to announce the particular property involved, audio record the closed meeting, develop a list of everyone who attended the meeting, and making the recording and list available to the public after the meeting.

#### **B. When Meetings Must be Closed**

A meeting must be closed if expressly required by

law. The Open Meeting law lists two situations in which a meeting must be closed. The first is if the meeting would include discussion of:

1. data that would identify alleged victims or reporters of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults;
2. data that concerns an investigation of law enforcement personnel; or
3. data that concerns education data, health data, medical data, welfare data, or mental health data that is not public data. Minn. Stat. § 13D.05, subd. 2(a). Meetings may not otherwise be closed to discuss data that is not public data. Minn. Stat. § 13D.05, subd. 1. Even though most towns were intentionally excluded from the definition of government entities covered by the Data Practices Act, boards must remain aware of this restriction and if, in the unlikely event, they find themselves in a situation of having to discuss the above information, it will likely need to close the meeting. In such a situation it is recommended the board contact an attorney for assistance.

The second type of meeting that must be closed is one in which the board will give preliminary consideration to allegations or charges against an individual subject to the board’s authority. Minn. Stat. § 13D.05, subd. 2(b). If the board concludes that discipline of any nature may be warranted, further meetings or hearings relating to those specific charges or allegations must be open. The meeting must also be opened at the request of the individual who is the subject of the meeting.

## **§ 7-12. Penalties for Violating the Open Meeting Law**

***A town officer found to have intentionally violated the Open Meeting law is personally subject to civil liability for up to \$300 for a single occurrence.*** Minn. Stat. § 13D.06, subd. 1. The town may not pay the fine for the officer. A court may also award a party to the suit up to \$13,000 in costs and attorney fees. Minn. Stat. § 13D.06, subd. 4. Violation of this law is a civil matter, not a crime, so suits alleging such violations are brought by private parties, not prosecutors.

If the board is found to have violated the Open Meeting law in a way that is directly related to an opinion previously issued it by the Department of Administration, the court must award the plaintiff its attorney’s fees up to \$13,000. If multiple plaintiffs bring the Open Meeting law violation suit, each of them could be awarded up to \$13,000 in attorney fees even though they are suing over the same alleged violations. *Brown*, 723 N.W.2d at 46. The town may pay such costs and attorney fees if they are levied against a town officer. No monetary penalties

or attorney fees may be awarded against a member of a public body unless the court finds there was intent to violate the Open Meeting law. *Minn. Stat. § 13D.06, subd. 4(d)*. There is no “specific intent” requirement that must be found before a court imposes this penalty. This means that the court does not need to find a specific purpose for violation Open Meeting law. Instead, all the court needs to find is that Open Meeting law was knowingly or voluntarily violated.

If an officer is found to have intentionally violated the Open Meeting law in three or more actions involving the same governing body, the officer forfeits any further right to serve in any capacity with the governing body for a period of time equal to the term of office the person was then serving. *Minn. Stat. § 13D.06, subd. 3*.

In order to remove an officer, each violation must be adjudicated separately. This allows the officer to be made aware of the violation and to bring their conduct into compliance. If separate adjudications were not required,

someone could simply sit back, wait for multiple violations to occur, and then bring them all at the same time with the goal of unseating the officer.

One of the more unsettling developments concerning the Open Meeting law is the court’s willingness to hold that officers can be found to have violated the Open Meeting law for meetings they do not attend. In *Brown v. Cannon Falls Tp.*, 723 N.W.2d 31, 48 (Minn. App. 2006), the court held that if an officer is instrumental in arranging a meeting that violated the Open Meeting law, the person can be found to have intentionally violated the law even though he or she did not actually attend the meeting. It is not clear how this holding will be applied in other cases, but it does create another level of uncertainty for town officers.

Any person may bring suit alleging an officer violated the requirements of the Open Meeting law. *Minn. Stat. § 13D.06, subd. 2*. Allegations of Open Meeting law violations are common and are usually brought to district court.

## § 7-13 Meeting Chart: Regular, Special, Emergency, Recessed & Closed

| Type                                 | Reasons  | Notice   | Agenda  | Minutes  |
|--------------------------------------|--|--|---|--|
| <b>Regular Meeting</b>               | To conduct the business of the township  | Towns are required to keep a schedule of all regular meetings on file in its primary office. <i>Minn. Stat. § 13D.04 sub 1.</i> It is also recommended that notice be posted on the designated facilities for posting notice. Note: if the regular meeting place changes, the meeting must be noticed as a Special Meeting.  | No agenda is required to be posted ahead of time, but there should be one at the meeting that people can view.          | Yes. Summary of what happened at the meeting. It must contain a record of the votes of the Town Board. <i>Minn. Stat. § 15.17 sub 1.</i> Every appropriation must be voted on, except for payments of judgments, claims or amounts fixed by statute. <i>Minn. Stat. § 13D.01 sub 4</i> |
| <b>Special Meeting</b>               | To conduct business outside the regular meeting.   | Yes, it <b>must include date, time, place</b> on the principal bulletin board of public body or if none, on its meeting door. Notice must be posted at least three days (not counting first and last day, so really five days) before the meeting. Notice <b>must</b> also be delivered to anyone who has requested a notice of special meetings. It <b>may</b> publish notice at least 3 days before the meeting in the official newspaper. <i>Minn. Stat. § 13D.04 subd 2.</i> | Yes, it must be posted. Special meetings can only cover items listed as the purpose of the meeting.                     | Yes, taken like regular meeting minutes.   |
| <b>Emergency Meeting</b>             | Immediate consideration to protect the public body: Safety concerns like a road or bridge washout and something must be done to maintain safe travel. <i>Minn. Stat. § 13D-04 sub 3 (e)</i>  | No. This is an exception to the Open Meetings Law. The only requirement is a good faith effort must be made to notify news media if they have filed a written request for notice.  | No. However, the Town Board may conduct an emergency inspection, if it does not have staff. <i>Minn. Stat. § 366.01</i> | Yes. Minutes must be kept similar to other meetings. Include the circumstances that led the Board to call an emergency meeting.  |
| <b>Recessed or Continued Meeting</b> | To continue discussion not completed at a meeting or hearing   | The time and place for reconvening the meeting is established during the earlier meeting and recorded in the minutes. No further published or mailed notice is required. <i>Minn. Stat. § 13D.04 sub 4(a).</i> However, there is no language on posted or personal service notice.   | From previous meeting   | Yes, like regular meeting.   |
| <b>Closed Meeting</b>                | Limited purposes: 1) Atty client privilege to discuss litigation; 2) Review employee performance, however employee must be given option of having meeting open; 3) Purchase and sale of property. <i>Minn. Stat. §§ 13D.05 &amp; 13.44</i> | Treat like a Special Meeting. Often the closed meeting will be after an open meeting. Both should be noticed separately. At the open meeting, the board should move, on the record, to close the meeting. A public statement can be made at the open meeting as to the reasons for closure. <i>Minn. Stat. § 13D.01 sub 3.</i>   | Same as special meeting. It is important to list the reasons for a closed meeting.                                      | Ask your town attorney. They will advise you whether minutes should be taken. Some closed meetings must be recorded and retained.  |