

To: Council  
From: Clerk

## FREQUENTLY ASKED QUESTIONS:

By Claire Silverman, Legal Counsel

**F**ew topics have relevance for all municipalities; the taking of minutes is one exception. All municipalities, regardless of size, population or other characteristics, must keep a record of their proceedings. Understandably, League attorneys receive many questions on this important topic.

This legal comment attempts to answer the questions that municipal officials most frequently ask pertaining to the responsibility to record the "proceedings" or "minutes" as they are commonly called.

### WHAT GOVERNMENTAL BODIES ARE REQUIRED TO KEEP MINUTES?

Village boards and common councils are required, by statute, to keep a full record of their proceedings.<sup>1</sup> Statutes also re-

quire that other governmental bodies, such as boards and commissions, keep minutes.<sup>2</sup> Although committees are not governed by statute, there is no basis for concluding that committees need not keep a record of their proceedings. If a committee failed to keep minutes, there would be no record reflecting that a quorum convened and considered or took action regarding certain matters. This lack of a record would undermine or defeat the purpose for which the committee was created.

### WHO IS RESPONSIBLE FOR TAKING MINUTES?

The municipal clerk is responsible for attending village board and common council meetings and taking minutes.<sup>3</sup> If the clerk is unable to attend, then it is the deputy clerk's responsibility, assuming one has been appointed, to attend the meeting and take minutes.<sup>4</sup> In a situation where both the clerk and deputy clerk are unavailable, it is necessary to temporarily designate someone as the person responsible for taking minutes.

In the case of governmental bodies other than the village board or common council, there is wide variation between

municipalities as to who is responsible for recording the proceedings. Some factors that influence the designation include the size of the municipality and the availability of municipal personnel to staff meetings, as well as the number of governmental bodies and the frequency with which they meet.

Frequently, a member of the governmental body is designated as secretary for the body and is responsible for taking minutes. In other instances, the responsibility for taking minutes is shared by members of the group, with the chair or the body designating a member on a per-meeting basis.

### WHAT MUST BE INCLUDED IN THE MINUTES?

State law requires that city and village clerks keep a "full record" and "the full minutes: for meetings of their respective governing bodies." Wis. Stat. secs. 61.25(3) and 62.09(11)(b). "Full" is not statutorily defined, but is commonly defined to mean compete. This does not mean the minutes must contain a detailed description of everything that transpires at a meeting. However, complete minutes are more than a summary and should

1. See Wis. Stat. secs. 61.32 and 62.11(4).

2. See, e.g., Wis. Stat. sec. 62.13(5)(i) (police and fire commission), secs. 62.23(7)(e)(3) or 62.23(6)(f) and (h) (zoning board of appeals or the governing body sitting in place of the ZBA), sec. 66.1001(4)(b) (plan commission) and sec. 70.47(7)(bb) (board of review).

3. Wis. Stat. secs. 61.25(3) and 62.09(11)(b).

4. Wis. Stat. secs. 61.19 and 62.09(11)(i).

5. Wis. Stat. sec. 985.01(4).

# Minutes Minutiae

provide sufficient detail for the reader to know what occurred and understand the decision made. Complete minutes are also more than what is contained in the “proceedings” that must be published. “Proceedings,” when published in newspapers, means the substance of every official action taken by a local governing body at any meeting, regular or special.<sup>5</sup> “Substance” is defined as “an intelligible abstract or synopsis of the essential elements of the official action taken by a local governing body, including the subject matter of a motion, the persons making and seconding the motion and the roll call vote on the motion. . . .”<sup>6</sup> Ordinances and resolutions published as required by law need not be republished in the proceedings. A reference to their subject matter is sufficient.<sup>7</sup>

What should be included in the minutes will also depend on the type of body involved. Where a governmental body is sitting in a quasi-judicial capacity and making a decision based on evidence presented to the body, the minutes should reflect the basis for the body’s decision. This is statutorily required in some instances. For example, sec. 125.51(1)(c)1, Stats., prohibits a governing body or committee dealing with alcohol license renewals from denying an application for renewal of an existing license unless the clerk includes a statement of the reason for the denial in the minutes.

There are some other instances where statutes require that certain information be included in the minutes. For example, the open meeting law requires that certain information be included in the minutes whenever a governmental body convenes in closed session. A motion to go into closed session must be carried by a majority vote in such manner that the vote of each member is ascertained and recorded in the minutes. The law also prohibits a motion to convene in closed session from being adopted unless the chief presiding officer announces to those present at the meeting at which such motion is made, the nature of the business to be considered at such closed session, and the specific exemption or exemptions authorizing the closed session. That announcement must be made part of the record of the meeting.<sup>8</sup>

## HOW DETAILED SHOULD MINUTES BE?

The answer to this question depends on whom you ask. Some believe minutes should be extremely concise and contain only a description of the subject matter considered and any substantive actions taken by the body. Others believe that the minutes should be concise, but detailed enough to ensure that there is an adequate history. Finally, others believe that minutes should capture everything that

happened at the meeting and should contain an almost verbatim account of all discussion on a matter, including the views of the individual members present. This is really a matter of personal taste and the subject of endless debate. There are different philosophies but no correct answer.

In my opinion, the best level of detail is one that is somewhere between the two extremes. In order for the minutes to create a meaningful history of what the governing body has done, there will be times when additional information will be helpful and will aid someone reading the minutes at a later date. Sometimes, however, additional information does not add much. Including every detail can make minor details seem much more important than they are, and it can elevate the importance of the details so that they obscure the significance of the action taken by the body.

## WHO PREVAILS IF THE CLERK AND GOVERNING BODY HAVE CONFLICTING VIEWS REGARDING THE APPROPRIATE LEVEL OF DETAIL TO BE INCLUDED IN THE MINUTES?

Where there is disagreement, it is best when a compromise can be reached. Be-

*see Minutes  
continued on page 92*

6. Wis. Stat. sec. 985.01(6), Stats. See also sec. 19.88(3).

7. *Id.*

8. Wis. Stat. sec. 19.85(1).

*see Minutes  
from page 91*

cause the governing body and the clerk both play a vital role in the minutes, it is important that the clerk and the governing body both feel that the minutes fairly and accurately reflect what transpired at the meeting. However, where agreement cannot be reached, it's important to remember that although the clerk is responsible for taking the minutes, the minutes must be approved by the governing body. Thus, it is the governing body's decision that ultimately will determine what is included in the minutes.

**WHAT CAN THE CLERK DO IF THE CLERK FEELS THAT THE MINUTES APPROVED BY THE GOVERNING**

**BODY ARE INCOMPLETE OR DO NOT FAIRLY REFLECT WHAT TRANSPIRED AT THE MEETING? CAN THE CLERK AMEND THE MINUTES OR INCLUDE ADDITIONAL INFORMATION IN THE MINUTES?**

No. Although there is no statute or case law which governs this kind of situation, it is my opinion that the clerk has no authority to amend the minutes or include something in the minutes that the governing body did not approve. However, the clerk has the statutory duty to take the minutes and therefore arguably has some responsibility if the approved minutes are incomplete or bear no resemblance to what actually happened at the meeting.

If a clerk truly believes that the substantive record is inaccurate, and it's not

just a question of style or preference, then the clerk might choose to prepare and insert in the minute book a statement indicating his or her reasons for disagreeing with the minutes approved by the governing body. Such a note would not, however, be part of the official minutes.

**DO MINUTES NEED TO BE TAKEN IN A CLOSED SESSION?**

Yes. Any substantive actions taken in the closed session (motions, seconds, votes), must be recorded to the same extent as in open session. The statutes requiring that minutes be kept, and the open meeting law, which requires that the motions and roll call votes of each meeting of a governmental body shall be recorded, preserved, and open to public inspection to



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the extent prescribed by the public records law,<sup>9</sup> do not distinguish between closed and open sessions. However, if the body does not act in closed session, the minutes from the closed session might simply note that there was a motion, second, and vote to go back into open session.

Since the purpose of going into closed session is to keep the discussion confidential, it is not advisable to create a written summary of the discussion or to tape a closed session. Such an action creates a record which can then be requested and which may well have to be disclosed. In most instances, substantive actions can and should be taken in open session. Thus, there will rarely be a need to take extensive minutes in closed session.

Voting in closed session is only appropriate where the decision is an integral part of the discussion and voting in open session would undermine the purpose for moving into closed session in the first place. An example of such an instance would be where competitive or bargaining reasons require that a governing body go into closed session under Wis. Stat. sec. 19.85(1)(e) to discuss the purchase of public property. It clearly makes no sense for a governing body to go into closed session to consider the matter and then return to open session to announce that the governing body will attempt to purchase the specified property at \$125,000 but is willing to pay as much as \$175,000. When it is appropriate to vote in closed session, there will be closed session minutes.

**HOW SHOULD MINUTES OF A CLOSED SESSION BE APPROVED?**

In many instances, the minutes of a closed session can be approved in open session with other minutes because it is

the discussion itself and not the decision reached by the governmental body which is intended to be confidential. In situations like that described above, where the reason for requiring confidentiality continues to exist and would be impaired by the public disclosure of the minutes or by public discussion concerning the minutes, the minutes can likely be approved in closed session pursuant to the same statutory exemption which authorized the closed session in the first instance.

**WHERE SHOULD THE MINUTES FROM A CLOSED SESSION BE KEPT?**

There is no defined method for dealing with the minutes from a closed session. However, it makes sense to keep them in a sealed envelope or apart from other minutes while the need for confidentiality continues to exist. This gives the custodian the ability to determine whether the records can be released if someone requests them. However, closed session minutes should not be indefinitely sealed or kept apart from the rest of the minutes if the need for confidentiality is not ongoing.

It's important to remember that minutes from a closed session are not automatically exempt from disclosure under the public records law. They are public records and there is a strong presumption that the public is entitled to access. A request for those records will require the custodian to balance the public benefit from disclosure of the records against the public harm that will result from disclosure. If the need for confidentiality continues to exist, then the records custodian can deny the request and explain the specific harm that will result from

*see Minutes continued on page 94*

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9. Wis. Stat. sec. 19.88(3).

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disclosure. The open meeting law exemptions that allow closed sessions to be held are indicative of public policy under the public records law.<sup>10</sup>

**IS THERE A TIME PERIOD WITHIN WHICH MINUTES MUST BE APPROVED?**

No. The statutes do not set forth a time frame for the approval of minutes. When possible, it is desirable that minutes be approved at the next meeting of the body while the events of the meeting are fresh in the members' minds. This is not always possible. Where a body meets once or twice a month, there is usually suffi-

cient time between meetings for the minutes to be put in proper form. Where a body meets more frequently, there may not be time to prepare the minutes before the next meeting. What is reasonable will also depend on what other things demand the clerk's attention at a given point in time.

**MUST MINUTES BE APPROVED AT A MEETING OF THE GOVERNING BODY OR CAN THEY BE APPROVED BY CIRCULATING THEM TO MEMBERS OF THE BODY AND HAVING MEMBERS SUBMIT ANY OBJECTIONS WITHIN A CERTAIN TIME PERIOD?**

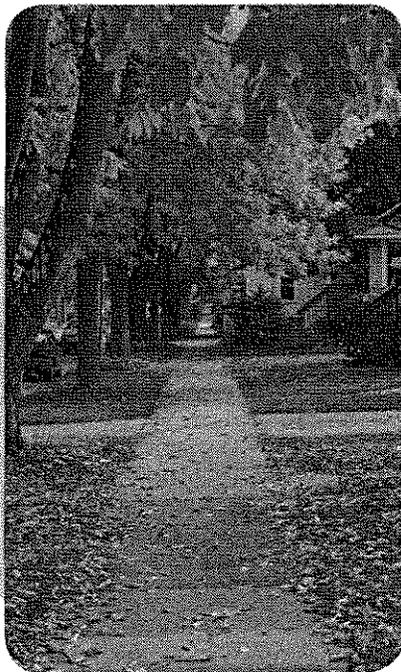
Final approval of minutes must be done at a properly convened meeting.<sup>11</sup> There

are several reasons supporting this conclusion. First, the open meeting law is premised on a strong legislative policy of open government which would be frustrated if official action were taken outside of a meeting.<sup>12</sup> Also, case law and the weight of authority require that action be taken at a meeting. According to 4 MC-QUILLIN, MUNICIPAL CORPORATIONS (3rd ed., revised), sec. 13.07:

The fundamental principle is that the affairs of a corporate body can be transacted only at a valid corporate meeting. . . . Acting separately and individually [the officers] can do nothing to bind such body. [Footnotes omitted.]

10. Wis. Stat. sec. 19.35(1).  
11. Governing Bodies 308.

12. Wis. Stat. sec. 19.81.



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Regarding boards, commissions and committees, sec. 13.30 of MCQUILLIN provides:

[A]lthough the contrary has also been held, if the act is one requiring the exercise of discretion and judgment, in which case it is usually termed a judicial act, unless provision is otherwise made by law, the persons to whom the authority is given must meet and confer and be present when the act is performed . . . .

Wisconsin case law supports the conclusion that action must be taken at a meeting. In *State ex rel. Mayer v. Schuffenhauer*, 213 Wis. 29, 33, 250 N.W. 767 (1933), the Wisconsin Supreme Court quoted an earlier edition of McQuillin for the proposition that a discretionary act may be performed by members of the board only at a meeting. In addition, in *McNolty v. Board of School Directors of the Town of Morse*, 102 Wis. 261, 263-264, 78 N.W. 439 (1899), the court stated:

It is familiar law that when a board of public officers is about to perform an act requiring the exercise of discretion and judgment the members must all meet and confer together, or must all be properly notified of such meeting, in order to make the action binding. Individual and independent action, even by a majority of the members of the board, will not suffice.

Although the approval of minutes can be characterized as a routine function, there is an exercise of discretion involved because each member must de-

cide whether he or she agrees with the characterization of the prior meeting's activities in the minutes.

**WHEN DO MINUTES HAVE TO BE PUBLISHED AND WHEN CAN THEY BE POSTED?**

In villages where a newspaper is published in the village,<sup>13</sup> minutes of the village board must be published in the paper as a Class 1 notice. If no newspaper is published in the village, the village board may cause the proceedings to be published in a newspaper having general circulation in the village, posted in several public places or publicized in some other fashion as directed by the board.<sup>14</sup> In cities, minutes of the common council must be published in the official newspaper as a Class 1 notice.<sup>15</sup> The statutes do not require that minutes of other governmental bodies be published.

**WHAT HAPPENS IF MINUTES ARE NOT PUBLISHED OR POSTED AS REQUIRED BY LAW?**

Wisconsin law does not define the consequences for failing to publish or post minutes as required by law. The most likely conclusion is that if minutes are not published or posted as required by law, it gives an opponent a basis for challenging the actions therein but does not necessarily void the actions taken by the governing body. In contrast, ordinances do not take effect until they are published or posted as required by law.<sup>16</sup>

**HOW LONG SHOULD MINUTES BE RETAINED?**

Unlike other records, minutes should be permanently retained because they provide the historic record of the govern-

mental body's actions. Minutes are a particularly important information source and record for decisions with long-term consequences such as rezonings, ordinance enactments and amendments, and other similar actions.

**WHAT IS THE PROPER PROCEDURE FOR AMENDING MINUTES? SHOULD THE CHANGES BE MADE WITHIN THE ORIGINAL MINUTES OR IS IT SUFFICIENT IF THE MINUTES FROM THE MEETING WHEN THE AMENDMENT IS MADE REFLECT THAT THE MINUTES FROM A SPECIFIC PRIOR MEETING WERE AMENDED?**

This usually will not be a predicament because the minutes will not be included in the official minute book until they have been approved and any changes directed by the governing body prior to approval should be made before the minutes are included in the minute book. If it happens that the minutes are subsequently revised after the initial approval, there is no defined "correct" method for amending the minutes. Nonetheless, it's my opinion that it is much more advantageous to make changes within the original minutes so that someone does not have to read all subsequent minutes to determine whether the minutes have been revised at a later time.

**WHERE SHOULD MINUTES BE KEPT?**

Minutes should be kept in a minute book in chronological order.<sup>17</sup>

Governing Bodies 373 R1

13. A newspaper is "published" at the place from which its mailing permit is issued. See Wis. Stat. sec. 958.01(5).  
14. Wis. Stat. sec. 61.32.

15. Wis. Stat. sec. 62.11(4).  
16. Wis. Stat. secs. 61.50(1) and 62.11(4).  
17. Wis. Stat. sec. 61.25(3).