

Preparing for the Emergency You Hope Never Happens

Wisconsin Counties Association Annual Conference

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Agenda

- Discussion Topics:
 - County emergency management powers
 - County government operations and day-to-day duties
 - Open Meetings Law during an emergency
- Q&A Session after all topics have been presented and discussed.

County Government Emergency Powers



Ongoing Powers and Duties

- Every local unit of government (including counties) must develop and adopt an emergency management plan and program. Wis. Stat. s. 323.14(1)(a)1.
- Each county board must also designate a head of emergency management (in counties with a county executive, the executive or the executive's appointee serves as the head of emergency management). Wis. Stat. s. 323.14(1)(a)2.
- Each county board must also designate a committee of the board as the "county emergency management committee. Wis. Stat. s. 323.14(1)(a)3.

Ongoing Powers and Duties (cont.)

- The county emergency management plan must also be compatible with the state plan of emergency management.
- Compatibility with the state plan includes the requirement that the county emergency management system must incorporate the use of the state's "incident command system."
 - The "incident command system" is "a functional management system established to control, direct, and manage the roles, responsibilities, and operations of all of the agencies involved in a multi-jurisdictional or multi-agency emergency response." Wis. Stat. §§ 323.14(1) and 323.02(9).

Ongoing Powers and Duties (cont.)

- The county board may also:
 - (1) appropriate funds and levy taxed for its emergency management plan;
 - (2) cooperate with other local government pursuant to Wis. Stat. § 66.0301 to furnish services, combine offices, and finance emergency management programs; and
 - (3) contract for emergency management services with political subdivisions, agencies, and federally recognized American Indian tribes and bands of this state, and, upon prior approval of the adjutant general, with such entities in bordering states. Wis. Stat. § 323.14(2)(c).

Declaration of an Emergency

- A county is authorized to declare a state of emergency existing within the county whenever conditions arise by reason of a riot or civil commotion, a disaster, or an imminent threat of a disaster, that impairs transportation, food or fuel supplies, medical care, fire, health or police protection, or other critical systems of the local unit of government. Wis. Stat. § 323.11.
- The declaration must be made by ordinance or resolution.
- The period of the emergency must be limited by the ordinance or resolution to the time during which the emergency conditions exist or are likely to exist.

Declaration of an Emergency (cont.)

- If the county board is unable to timely meet due to the emergency conditions, the county's chief executive or administrative officer (*e.g.*, for a county, the county executive or county administrator) is authorized, by proclamation, to exercise all of the powers conferred upon the governing body that “appear necessary and expedient.” Wis. Stat. § 323.14(4)(b).
- Such a proclamation is subject to ratification, alteration, modification, or repeal by the governing body as soon as it can meet. However, any subsequent action taken by the governing body does not affect the prior validity of the proclamation.

What does this Mean?

- Two Conditions Precedent required to Declare an Emergency:
 1. There must be (a) a riot or civil commotion, (b) a disaster, or (c) an imminent threat of disaster
 2. Such riot or civil commotion, disaster, or imminent threat of disaster must (or will) actually have the effect of impairing critical supply needs, medical care, fire, health or police protection, or other critical systems of the local unit of government.

What is a “Disaster”?

- “Disaster” is defined in state statute. Wis. Stat. s. 323.02(6).
- “Disaster” means a severe or prolonged, natural or human-caused, occurrence that threatens or negatively impacts life, health, property, infrastructure, the environment, the security of this state or a portion of this state, or critical systems, including computer, telecommunications, or agricultural systems.

Powers During an Emergency

- When an emergency is declared by a county, the county board is vested with broad authority “to order, by ordinance or resolution, whatever is necessary and expedient for the health, safety, protection, and welfare of persons and property within the local unit of government in the emergency and includes the power to bar, restrict, or remove all unnecessary traffic, both vehicular and pedestrian, from the highways, notwithstanding any provision of chs. 341 to 349.” Wis. Stat. § 323.14(4)(a).
- During an emergency declared by a county, the county’s head of emergency management is charged with implementing his or her duties prescribed by the board under the county’s emergency management plan. Wis. Stat. § 323.15(1)(a).

Case Law

- ***Ervin v. State*, 41 Wis. 2d 194, 163 N.W.2d 207 (1968)**. Held that imposition of municipal curfew in Milwaukee because of riots and disorders such as were frequent in major American cities in summer of 1967 was a valid emergency measure undertaken to restore order, and the curfew proclamation and statute authorizing it were not unconstitutional as denying freedom of movement.

County Government operations and day-to-day duties during an emergency



Emergency Situations Create Emergency Questions for County Operations

Examples from the COVID-19 experience and the nature of the emergency:

- What should county governments do to ensure continued operations and administration of county governments day-to-day and ongoing duties?
- May county governments suspend any typical duties or programs?
- May county government restrict building access?
- How do we best protect our employees while still providing public services?

What Does the Emergency Plan Say?

In determining county operations during an emergency, first step is to review the emergency plan:

- A county subject to an Governor's Order during a state of emergency may “employ personnel, facilities, and other resources consistent” *with its emergency plan* to cope with problems resulting from the emergency. Wis. Stat. § 323.14(3)(b) (*emphasis added*).
- During local a local disaster, a county is not prohibited from “employing their personnel, facilities, and resources” *consistent with the emergency plan*. Wis. Stat. § 323.14(3)(b) (*emphasis added*).
 - Exception: Restrictions imposed by federal regulations on property donated by the federal government.

What if the Emergency Plan is Silent?

Because emergencies present many unforeseen implications, not everything may be addressed in an emergency plan.

- Other Requirements and Resources:
 - COOP Plan (Continuity of Operations Plan)
 - Federal declarations and restrictions.
 - Disaster relief fund requirements.
 - Governor emergency orders.
 - Wisconsin state agency relief requirements.

Statutory Authority to Restrict Operations

- Wis. Stat. § 323.14(4)(a): A county board may rely on its power “to order, by ordinance or resolution, whatever is necessary and expedient for the health, safety, protection, and welfare of persons and property” within the county.
- How may Wis. Stat. § 323.14(4)(a) impact county operations?
 - Setting forth orders or directives for activities on county property.
 - Suspending non-essential services if permitted.
 - Limiting county building access to a central location.
 - Limiting access to county departments to appointment-only.

Statutory Authority to Restrict Operations

What may a county NOT do?

- Restrict access to court.
- Deviate from Wisconsin State Court or Wisconsin Supreme Court directives.
- Close constitutional offices:
 - County Clerk
 - County Treasurer
 - Register of Deeds
 - Sheriff

County Employee Considerations:

- COOP (Continuity of Operations Plan) to ensure essential county functions continue to be performed.
- Employee safety - is it safe to work in the office?
- Tele-work options, limitations, and management challenges.
- Employee benefit questions.
 - COVID-19 examples:
 - FFCRA
 - EPSLA
 - How does FMLA impact other benefits?

Other Day-to-Day Operational Considerations

- What are the key public services needed in light of the emergency?
 - Public health?
 - Highway services or communications if a natural disaster occurs?
 - Law enforcement?
- Shifting of staff to accommodate needs in emergency services.
- Communication with the public for information regarding reduced or change in services.



Open Meetings Law: Compliance during an Emergency



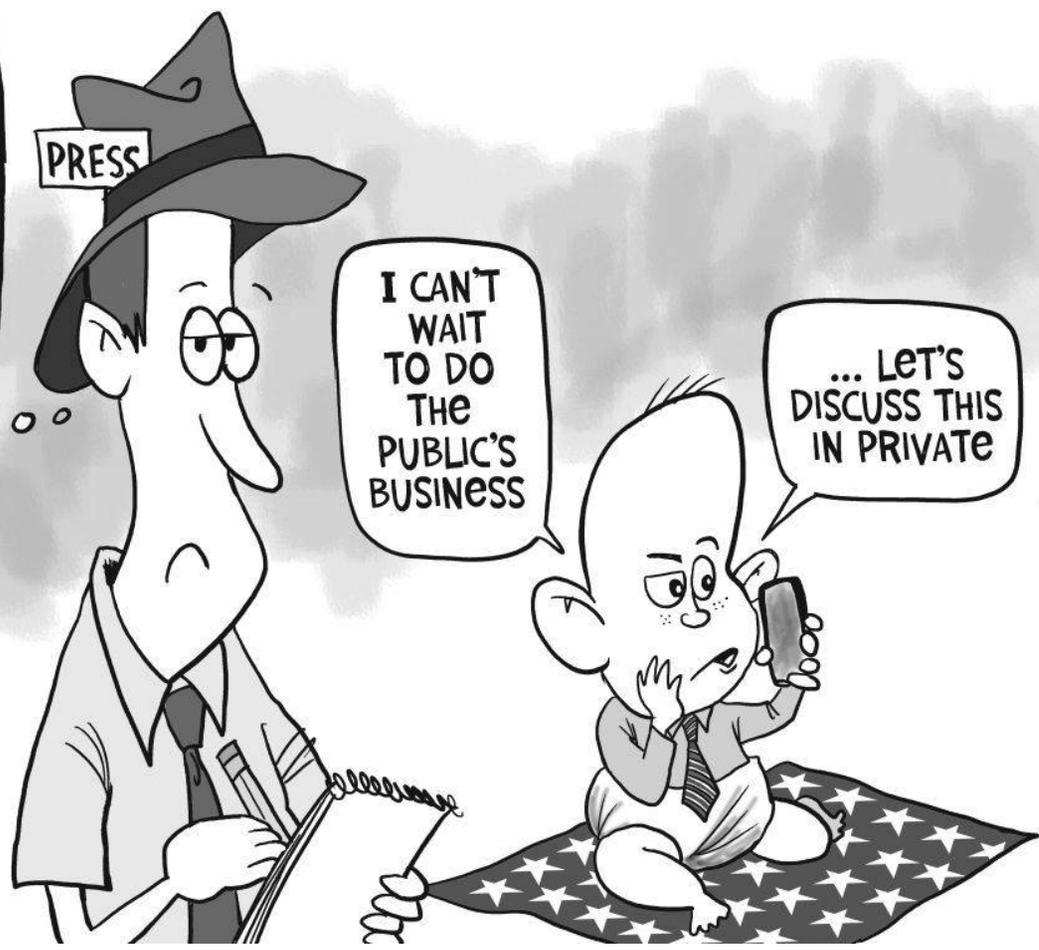
ANOTHER
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WHO **HASN'T**
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OPEN
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PRESS

I CAN'T
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THE
PUBLIC'S
BUSINESS

... LET'S
DISCUSS THIS
IN PRIVATE

LANDCREN
TELEGRAMTOWNS



Open Meetings - The Rule

From the Attorney General's Compliance Guide:

The two most basic requirements of the open meetings law are that a governmental body:

1. give advance public notice of each of its meetings, and
2. Conduct all of its business in open session, unless an exemption to the open session requirement applies.

“Virtual” Meetings

If a governmental body holds a remote meeting by teleconference or videoconference, the body is able to comply with the OML by publicly providing remote access to the general public. This includes the provision of a conference line and dial-in number in order to monitor phone call meetings and/or a live-stream available for viewing by the public on a video conference platform. In both cases, the platform should only allow observation and listening, not direct participation in order to ensure an orderly meeting is held.

Some Practical Pointers

- Notice of the Meeting
 - The notice should explicitly provide the option for the public to access the remote means of communication and the access should be of similar quality to that of the body. In other words, if a body is meeting by video conference, a telephone line only option for the public may not suffice.
 - Provision should be made for members of the public who, for whatever reason, cannot access the remote means.
 - If the body will meet in person, the public should also be allowed to attend in person. If, however, the body decides not to allow the public to attend for safety reasons, the public must be provided the opportunity to monitor the entire meeting by virtual means in real time.

Practical Pointers - Running the Meeting

- Advise members of the body to mute/unmute at appropriate times.
- Proceed SLOWLY - avoid talking over one another.
- Use headsets if available or in a non-private space.
- Ask permission of the chair to exit the meeting to ensure quorum and meeting voting requirements.
- Avoid using chat function. Speak up to be acknowledged/raise hand.
- Chair has discretion to use technology features to ensure that all members have a fair chance to speak.

Closed Sessions - The Rule

All business of any kind, formal or informal, must be initiated, discussed, and acted upon in open session unless one of the exemptions in Wis. Stat. § 19.85(1) applies.

- The statute identifies eleven (11) reasons allowing a governmental body to convene in closed session (*i.e.*, not open to the public.)
- The most common examples of the reason for a closed session are: to conduct a quasi-judicial hearing; discuss a specific personnel matter; discuss matters involving a competitive or bargaining position; and confer with legal counsel to obtain advice on a pending or anticipated claim.

Closed Sessions in a “Virtual” Environment

- All of the procedural rules still apply:
 - Agenda must identify the anticipated closed session and reasonably apprise the public as to what will be discussed in closed session. Most of the legal concerns surrounding a closed session relate to specificity (or lack thereof) in the agenda and closed session discussions deviating from the agenda.
 - Members of the body must vote to convene in closed session. It is a roll call vote.
 - Members of the public are not permitted in closed session unless granted the ability to attend by the body.
 - No official action taken in closed session except in very rare circumstances.

“Virtual” Closed Sessions cont’d.

- Questions a body convening in “virtual” closed session must confront:
 - How will we ensure that the “virtual” communication is closed to the public?
 - How will we let the public know that we are reconvening in open session following closed (if that is noticed on the agenda)?
 - How do we verify that nobody is “listening” to the closed session in the background of a member of the body who is entitled to be in closed session?

Some Practical Pointers

- Designate a person to monitor the meeting and the technology.
- If using a video conference, ensure that the cameras are “on” so as to allow for easy identification of the participants.
- If using a telephone conference, ask participants to verify that they are alone and that nobody other than authorized participants are able to hear the meeting.
- Avoid recording the closed session part of the meeting - this may become a public record.

QUESTIONS?

