

**WISCONSIN ASSOCIATION OF SCHOOL
SUPERINTENDENT ASSISTANTS**

Seventh Annual Spring Conference

Making A Minute Last Forever

Presented by Michael J. Julka

April 16, 2010



740 Regent Street, Suite 400
Post Office Box 1507
Madison, Wisconsin 53701-1507
(608) 257-7766
mjulka@lathropclark.com

I. Meeting Minutes and Record Keeping

A. Who Takes Or Records The School Board Meeting Minutes?

1. The school district clerk is:
 - a. Required to record minutes of school board meetings. Wis. Stat. §§ 120.11(1), 120.17(3), and 120.44(2).
 - b. Required to record proceedings of annual and special meetings. Wis. Stat. § 120.17(2).
 - c. Required to enter minutes of meetings, orders, resolutions and other proceedings in the record book provided by the school board. Wis. Stat. § 120.17(3).
 - d. Required to copy the itemized written report of the school district financial accounts and all other proceedings of the annual meeting in the school district record book. Wis. Stat. § 120.11(3).
2. If the school district clerk is absent from a meeting, the school board selects the acting clerk for the meeting. Wis. Stat. § 120.11(1).

B. What Must Be Included In The Minutes?

1. The Open Meetings Law requires that the motions and roll call votes of each meeting of a governmental body be recorded, preserved, and open to public inspection to the extent prescribed under the Wisconsin Public Records Law. Wis. Stat. § 19.88(3).
 - a. This rule applies to both open and closed sessions.
 - b. In most instances, the minutes of the meeting serve as the record under the Public Records Law.
2. Recorded minutes shall reflect the outcome of every official action taken by the board, which must include the subject matter of the motion, the person making and seconding the motion and the roll call vote taken on the motion. Minutes should, at a minimum, reflect the “substance of every official action” taken by the board in both open and closed session. Wis. Stat. § 120.11(4). “Substance” is defined as “an intelligible abstract of 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.” Wis. Stat. § 985.01(6).

3. The minutes are the legal record of board meetings and are presumptive evidence of all official acts of the board. Therefore, accurate minutes are essential. The minutes may, on occasion, be crucial in determining whether the board took a specific action, as well as whether it did so in a procedurally valid manner.
3. When a school board moves to go into closed session, the vote of each member of the board must be recorded in the minutes. Wis. Stat. § 19.85(1).

C. What Form Should The Minutes Take?

1. According to Robert's Rules, the form for standard minutes should be divided into four parts: the first paragraph, the body, the last paragraph, and the signature.
2. The first paragraph typically contains the kind of meeting, the name of the organization or assembly, the date and time of the meeting, the presence of the president and clerk, and whether the minutes of the previous meeting were reviewed and approved.
3. The body of the minutes should have a separate paragraph for each subject matter and should include all main motions, and all points of order and appeals. The minutes do not need to include the contents of the reports of officers or committees, except to cover motions related to them.
4. The last paragraph should give the time of adjournment and record any motion to adjourn.
5. Robert's Rules indicates that, generally, minutes should not reflect the clerk's opinion, or anyone else's opinion, favorable or otherwise, on anything said or done. It is advisable not to include such information and, instead, to provide only sufficient detail for the reader to know what occurred and to understand the decision made.

D. Practical Considerations.

1. Avoid including descriptions of board member's comments in the school board meeting minutes to avoid creating the following risks:
 - a. That a statement recorded in the minutes, even though accurate, will be used against the board in a legal dispute, e.g., where one board member's comment is taken as representative of the board's views.

- b. That a statement recorded in the minutes will be inaccurate or incomplete and the district will have to admit it in a legal dispute.
 - c. That a board member may make comments that end up being used in a lawsuit.
2. To keep up with the pace of the board meeting, consider using a form that lists the agenda items and fill in the form with notes regarding action items.

II. Posting, Publication, Retention, And Disclosure Requirements

A. General Requirements

1. The school board must publish school board meeting minutes in a newspaper published in the school district, if any, or publicize by school district-wide distribution prepared and directed by the school board and paid out of school funds within 45 days of the school board meeting. Wis. Stat. § 120.11(4).
2. If there is no newspaper published in the school district, the proceedings shall be posted or published as the school board directs. Wis. Stat. §§ 120.11(4) and 120.43.
3. For the purpose of publication, the proceedings shall include the substance of every official action taken by the school board at the meeting and a statement of the receipts and expenditures in the aggregate. Wis. Stat. §§ 120.11(4) and 120.43.
4. The Attorney General has taken the position that these publication requirements apply to proceedings conducted in closed, as well as open, sessions. However, according to the Attorney General, the board should keep any portion of the recorded proceedings of the closed session confidential, if the public interest demands continued confidential treatment.
5. Publication of substantially the whole report of a school district board meeting, leaving out minor details, was sufficient. The clerk was required to enter the whole report in the record, but if only part of the board's proceedings were published which gave a wrong impression to the public. The board was liable for expenses of publication. 20 Op. Att'y. Gen. 850 (1931).

B. Distribution of Minutes

1. Copies of minutes of each school board meeting should be sent to each school board member and administrator as soon as practical to allow for prompt review. Corrections in the minutes may be made prior to or at the next meeting when the minutes are to be approved.
2. It is the school board president's responsibility to ensure minutes of meetings are properly recorded, approved and signed. Wis. Stat. § 120.15(5).
3. Specific entries from closed session minutes must be provided to the public once their content is no longer confidential.

C. Retention of Minutes

1. School board meeting minutes must be retained at least for a minimum of seven (7) years, except as otherwise provided by the public records board. Wis. Stat. § 19.21(6).
2. Tape recordings used for the purpose of preparing minutes may be destroyed no sooner than 90 days after the minutes have been approved and published. Wis. Stat. § 19.21(7).
3. Best practice: permanent retention of school board meeting minutes is strongly recommended. Consider scanning/saving on computer or putting the year's worth of board meeting minutes on microfiche after the auditor's report is done each year to save space.
4. School board meeting minutes (open and closed session) are considered public records and must be maintained and disclosed in accordance with provisions of Wisconsin's Public Records Law.
 - a. Under the Wisconsin Public Records Law, a "record" is defined as "any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority."
 - i. "Record" includes, but is not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer printouts and optical disks.
 - ii. "Record" does not include drafts, notes, preliminary computations and like materials prepared for the

originator's personal use or prepared by the originator in the name of a person for whom the originator is working; materials which are purely the personal property of the custodian and have no relation to his or her office; materials to which access is limited by copyright, patent or bequest; and published materials in the possession of an authority other than a public library which are available for sale, or which are available for inspection at a public library.

- b. Minutes of open and closed sessions of all school board meetings are generally "records" as that term is defined under the Wisconsin Public Records Law. Wis. Stat. § 19.32(2). The general rule is that public records are open to public inspection. *Oshkosh Northwestern Co. v. Oshkosh Library Bd.*, 125 Wis. 2d 480, 482, 373 N.W.2d 459 (Wis. Ct. App. 1985).
- c. In some instances, before the minutes are approved, the minutes may be considered to be "drafts." A "draft" is specifically excluded from the definition of "record," and, as a result, it is not a "record" that is accessible by the public pursuant to the Wisconsin Public Records Law.
- d. As a result, if minutes are requested, a records custodian should first analyze whether the minutes are still "drafts," rather than "records." If the minutes have not been approved by the board, then the minutes may still be "drafts."
- e. Once approved by the board, the minutes are then likely "records," which generally must be provided to members of the public upon request. However, before disclosing the minutes, the custodian of the minutes must weigh the competing interests involved and determine whether permitting inspection is required. A custodian of a record must engage in this balancing process and must state specific reasons if inspection is refused. *Oshkosh Northwestern Co.*, 125 Wis. 2d. at 483 (citations omitted).
- f. Open session minutes are likely subject to disclosure without limitation.
- g. Minutes from a closed session meeting are not exempt simply because the meeting was a valid closed session meeting. However, the records custodian may refuse to permit the inspection of records of closed sessions if the need for secrecy continues and if sufficient reason is given consistent with the law. In many cases, the need to keep confidential the minutes of a closed session may

not extend past the closed meeting itself. In other cases, confidentiality may be required indefinitely, such as in the case of minutes which refer to pupil records.

- h. Certain segments of closed session minutes may be properly open to public inspection, while other segments retain their confidential nature. As such, the custodian may have to review the minutes and block out certain portions prior to disclosure.

III. Minutes of the Annual Meetings

A. School District Clerk Duties

- 1. The Wisconsin Statutes require the school district clerk to record the proceedings of school district meetings. Wis. Stat. §120.17(2).
- 2. If the school district clerk is not present at the meeting, the board may elect a clerk for the annual meeting. The clerk for the annual meeting will be responsible for taking minutes at the annual meeting.

B. Approval of the Minutes

- 1. The agenda for the annual meeting should not contain an item for approval of the annual meeting minutes from the prior year, considering it is highly unlikely that the same electors would be present from year to year.
- 2. Electors could have the minutes prepared, reviewed, and approved all during the same annual meeting. However, it is not required and may be impractical. Instead, the school board typically approves the minutes from the annual meeting.

C. Publication of the Minutes

- 1. In its discretion, the school board may decide to publish the minutes of the annual meeting.
- 2. However, publication is not required by statute and there is no guidance in the statutes regarding publication of the minutes of the annual meeting.