

**THE COUNTY BOARD ORGANIZATIONAL MEETING
Q & A ON CONDUCTING THE MEETING IN THE “NEW” ENVIRONMENT**
Updated: April 13, 2020

Now that the statewide elections for county board supervisors are nearly complete, counties are faced with the challenges presented by holding the statutorily required “Organizational Meeting” in the midst of the COVID-19 pandemic. Many counties have switched to virtual meetings or canceled monthly committee meetings, but what about the statutorily required Organizational Meeting? If a county chooses to hold a virtual Organizational Meeting, how does the county ensure compliance with applicable legal requirements, such as conducting the business of the Organizational Meeting and the open meetings requirements?

The Wisconsin Counties Association and its general counsel, von Briesen & Roper, s.c., have received many questions surrounding how to conduct the Organizational Meeting during the COVID-19 pandemic. Our general counsel has prepared the Q & A below to provide information related to the Organizational Meeting based upon the questions received and information shared by counties as to how they plan to conduct the meeting.

This information should be reviewed carefully with corporation counsel to ensure county compliance with other applicable laws and regulations, including its own board rules, policies and procedures.

Organizational Meeting

Q: What is an Organizational Meeting?

A: *In counties with a population of 750,000 or less, a county board of supervisors is required to hold its “Organizational Meeting” on the third (3rd) Tuesday of each April to “organize and transact business.” Wis. Stat. § 59.11(1)(c).*

Q: In light of the COVID-19 pandemic, may a county simply reschedule its Organizational Meeting?

A: *Section 59.11(1)(c) provides that a county board **shall** meet on the third (3rd) Tuesday of each April. While Wis. Stat. § 59.11(1)(c) does not specify items of business that must be on the agenda for the meeting, Wis. Stat. § 59.12 requires that the board elect a chair and vice chair “at the first meeting after each regular election at which members are elected for full terms,” i.e., the Organizational Meeting. Reading these statutes together, it would be possible for a county board to take up the election of chair and vice chair as the only official item of business at the Organizational Meeting and postpone all remaining typical items of business to a meeting at a later date. In addition, it is important to remember that*

a board chair is elected by majority vote of the board and may be replaced at any time. (OAG 1-07). As a result, a county board could elect a recognized “temporary” chair and vice chair at the meeting on the third Tuesday in April and place the election of chair and vice chair on the agenda for a later meeting.

Q: The statute states that the board shall meet to “organize and transact business.” What does that mean?

A: The Organizational Meeting provides an opportunity for a county board to literally “organize:” it elects board leadership and establishes the board rules that will govern for the two-year session of the board. A board may also “transact any business” that is otherwise permitted. Beyond election of leadership, practice varies from county to county in terms of the typical agenda for the Organizational Meeting. Many counties use the meeting primarily for ceremonial and educational purposes – new supervisors are sworn in and, once officers are elected, the board receives information concerning the affairs of the county. Other counties proceed with a more typical agenda at the meeting. While the statutes provide flexibility as it relates to the agenda for the meeting and county practice varies, it is important to remember that there may be board rules or ordinances dictating the agenda as well.

Q: What other business is usually conducted at the Organizational Meeting?

A: In addition to the election of the chair and vice chair, many county boards adopt or modify board rules at the Organizational Meeting. There is no statutory requirement that a county board adopt rules; however, board rules contribute to the proper and efficient functioning of the board. In addition, County board supervisors may also take the oath of office at the Organizational Meeting. Finally, many counties use the Organizational Meeting to appoint committee membership and otherwise establish the board’s governance foundation.

Q: If a county board may postpone the majority of the typical Organizational Meeting agenda to a later date, is there any “business” that must be completed at the initial Organizational Meeting?

A: As indicated above, the only statutorily required item of business is the election of the chair and vice chair. It is important to review local rules and ordinances to determine if there are other requirements for the Organizational Meeting beyond that required by statute.

Q: Can the Organizational Meeting be adjourned to a later date to complete the agenda?

A: A board could adjourn the typical order of business for an Organizational Meeting to another board meeting, but Wis. Stat. § 59.11(1)(c) requires that the Organizational Meeting be adjourned in the same manner as the annual meeting, which is “not less than one week nor more than 3 weeks” from the date of the annual meeting. If this statute is applied literally to the Organizational Meeting, this means that the continued meeting may not occur before April 28, 2020 and no later than May 12, 2020. However, if a board is interested in postponing action

on what would be considered the typical agenda for the Organizational Meeting for that county, it seems the better practice would be to complete only those items of business required of the Organizational Meeting (election of Chair and Vice Chair) and then take other matters up at the next scheduled board meeting. In other words, there is no need to adjourn the Organizational Meeting because all of the required items of business (election of chair and vice chair) will have been completed. Again, it is important to review local rules and ordinances when determining the agenda and order of business for the Organizational Meeting and any subsequent meeting to ensure compliance.

Q: Is it necessary that committees be organized, and members appointed during, or immediately following, the Organizational Meeting?

A: Pursuant to Wis. Stat. § 59.13, a board may “by resolution designating the purposes and prescribing the duties thereof and manner of reporting, authorize their chairperson to appoint before June 1 in any year committees from the members of the board, and the committees so appointed shall perform the duties and report as prescribed in the resolution.” While many county boards and chairs appoint committees at the Organizational Meeting, it is possible to delay action on committee appointments so long as the committees are appointed prior to June 1. It is important to remember, however, that the committee structure is important for the conduct of a county’s business so boards should be mindful of not leaving vacancies in committees for an extended period of time.

Open Meetings Law Compliance During COVID-19

Q: What if a county desires to hold its Organizational Meeting in-person? How does the county comply with the Wisconsin Open Meetings Law if the county’s facilities are closed to the public?

A: A county may designate the Organizational Meeting as an “Essential Government Operation” pursuant to the State’s Safer at Home Order. This would allow board members and committee members to travel to and attend the meetings. Nonetheless, all individuals attending an in-person meeting must comply with social distancing requirements. Some counties are exploring the option of using multiple rooms in the county facilities to maintain distancing and utilizing “runners” to gather ballots. This process seems workable, but it would seem wise to consult with health officials about best practices in that circumstance.

Even if the county building is closed to the public, the county may still comply with the Wisconsin Open Meetings Law by publicly streaming real-time video of the meeting and/or providing a conference line and dial-in number. In both cases, the platform should only allow observation and listening, not direct participation in order to ensure an orderly meeting can be held.¹ In addition, the

¹ The Wisconsin Department of Justice (“DOJ”) has provided guidance indicating that remote participation by members of the public complies with the Open Meetings Law. DOJ’s current guidance is available at: <https://www.doj.state.wi.us/news-releases/office-open-government-advisory-additional-information-regarding-covid-19-and-open>; DOJ also recommends providing

public should be made aware of alternate monitoring environments in the event viewing or listening on a particular platform is unavailable.

Q: What if a county desires to hold its Organizational Meeting virtually? Does the Open Meetings Law apply?

A: *Yes. The Wisconsin Open Meetings Law applies to any virtual meeting that (1) is for the purpose of conducting governmental business; and (2) involves a sufficient number of members of the body to determine the body's course of action on the business under consideration.*

Q: How does a county comply with the Open Meetings Law if it holds its Organizational meeting virtually?

A: *If a county holds its organizational meeting by teleconference or videoconference, the county is able to comply with the Open Meetings Law by providing remote access to the general public. This includes the provision of a conference line and dial-in number in order to monitor a phone call meeting 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. Whatever accommodations are made to allow for public monitoring, it is important that the instructions be contained on the notice of the meeting. As well, it is recommended that the notice also contain a name and contact number of a designated person at the county that can be contacted in the event a member of the public is unable to participate in the remote means so the county is able to evaluate its potential obligation to accommodate participation.*

It is recommended that counties thoroughly vet the technology used for virtual meetings. Some platforms provide better security than others. Likewise, some platforms are easier than others when it comes to controlling participation (mute, unmute, chat features, etc.)

Q: Because some members of a community may not possess the means to monitor a virtual meeting, is a board required to provide a public place where video or audio of the meeting is streamed?

A: *Likely no. Boards are not required to take every possible step to provide opportunities to monitor board meetings. Whether a meeting place is reasonably accessible depends on the facts in each individual case. In light of the ongoing public health emergency and the State's Safer at Home Order, a public gathering of this nature would not be permitted as it would be nearly impossible to ensure proper social distancing. DOJ has provided guidance to local units of government endorsing the use of telephone and video conferences for conducting board business, so long as the public has the opportunity to monitor board deliberation and action. Boards therefore have the ability to utilize such options*

telephonic access to the public in all cases so as to not discriminate against those without internet access.

provided reasonable steps are taken to allow the public the opportunity to monitor as discussed above.

Q: Is any additional language necessary for the public notice and posted agenda if the Organizational Meeting will be held virtually?

A: *Counties must comply with the Open Meetings Law's public notice requirements. Notices should follow typical practice, but should also note that the Organizational Meeting will be held remotely and include instructions for how the public may access the meeting. This includes providing the telephone number, video conference link, and any necessary passcodes or other login information. The agenda should also include this information to help ensure the meeting's accessibility to the public. As indicated above, it is recommended that the notice also contain a name and contact number of a designated person at the county that can be contacted in the event a member of the public is unable to participate in the remote means so the county is able to evaluate its potential obligation to accommodate participation.*

Q: Is a board required to reserve time for public comment and direct participation by the public during the Organizational Meeting?

A: *Unless required by local rule or ordinance, no. The Wisconsin Open Meetings Law only requires the ability of the public to monitor meetings of governmental bodies in a meaningful way. Direct participation and public comment is not required unless a statute specifically provides for public participation (i.e., a zoning petition.) Nonetheless, some counties have a requirement in local rules or ordinances requiring a public comment period during board and/or committee meetings. Consistent with a county's emergency powers, the designated person/committee/board should suspend such a rule during the emergency or require public comment be submitted electronically beforehand. Either option would appear consistent with Open Meetings requirements that the public simply be able to monitor board deliberation and action.*

Q: If a county typically records meetings, including the Organizational Meeting, should it continue doing so if the county holds remote meetings?

A: *Yes, and counties that are not recording meetings are encouraged to begin doing so. While real-time monitoring is required under the Wisconsin Open Meetings Law, DOJ is recommending that governmental bodies post recordings on websites as soon as practicable after the meeting concludes if a board or committee meets by remote communication. Again, posting a recording is not a substitute for real-time monitoring, but still provides an additional level of access to the public showing a good faith attempt to maintain openness.*

Q: Are there any special procedures or practices that county boards should follow when holding the Organizational Meeting by teleconference or videoconference?

A: *There are no required additional or special practices or procedures that must be implemented for remote meetings. However, it is good practice for the chair (in*

consultation with others) to develop a “script” to read at the beginning of any virtual meeting to establish the process for the meeting. In addition to other items, the script should indicate that all members should identify themselves before speaking and to avoid speaking over one another. This will help both members and the public to hear speakers clearly and follow the progression of the meeting. When it comes to voting, votes on any matters other than the truly routine should be conducted by roll call vote. Likewise, members should be required to announce when they are temporarily absent from a virtual meeting. Finally, it is important that the chair maintain decorum and order during the meeting to allow for the orderly transaction of business. By following a script and announcing these procedures prior to taking up the order of business, members of the board and the public will have a better understanding of how to conduct themselves.

Secret Ballots for Officers

Q: May a county board elect its officers by use of secret ballots?

A: *Yes. The election of officers for a governmental body is the only time secret ballots are permitted under the Wisconsin Open Meetings Law. See Wis. Stat. § 19.88(1).*

Q: Are secret ballots “records” subject to disclosure under the Wisconsin Public Records Law?

A: *Generally, no. While county boards must create a record of all motions and roll call votes and make the record available for public inspection under the Wisconsin Public Records Law, this requirement likely does not apply to secret ballots authorized for the election of officers. Secret ballots used to elect officers are an exception to the Wisconsin Public Records Law because they are expressly authorized to remain secret by statute.*

Q: How can a board vote for officers by secret ballot if the Organizational Meeting is being held virtually?

A: *Counties are exploring several different means of engaging in “remote” secret balloting. There are some conferencing services that allow anonymous polling or voting. Other counties are exploring the use of an internet-based platform (e.g., SurveyMonkey) that allows for real time anonymous responses. These platforms allow for respondents to submit votes without disclosing any personally identifying information, thus remaining truly anonymous.*

Email may be a functionally easier and more efficient option for many boards, but it may not be truly anonymous. Even if the designated recipient is not a board member (e.g., the clerk), the vote of each board member will be known by at least one person. There is also the possibility of technical errors where unintended recipients are mistakenly included on a vote submission. Further, using email raises possible Open Meetings and Public Records concerns. Again, an email vote is not truly secret, even if only one person knows how individuals voted.

Votes that are not “secret” are therefore generally recorded and subject to potential disclosure. Counties interested in this option should consider the creation of a special email address designated for the sole purpose of collecting the anonymous ballot and a form email should be created to preserve anonymity.

The Oath of Office

Q: How are supervisors sworn into office if the Organizational Meeting is conducted by remote means?

A: *Section 59.21(1) provides that “every county supervisor shall take and file the official oath within 20 days after receiving official notice of election or appointment, or if not officially notified, within 20 days after the commencement of the term for which he or she is elected or appointed.” Typically, the oath is administered prior to or at the board’s Organizational Meeting.*

Section 19.01(1) provides the form of the written oath that is required for a board supervisor to take office. Section 19.01(1m) provides the form of the oral oath, which may be used in addition to the written oath if desired. Based upon these statutes, the written oath is the operative oath and every attempt must be made to have the written oath administered prior to the Organizational Meeting or, at the very least, within 20 days after notice of election.

Oaths are usually administered in-person by an individual authorized under Section 887.01, but the process is not clearly defined in statute. Section 887.03 provides that any oath required by law “may be taken in any of the usual forms.” However, the meaning of the phrase “any of the usual forms” is not defined in statute or interpreted in Wisconsin case law. Given the challenges presented by the COVID-19 pandemic, it is reasonable to interpret Wis. Stat. § 887.03 as permitting oaths to be administered by remote live audio and video connection. This interpretation is also consistent with guidance issued by the Wisconsin Department of Financial Institutions providing that remote notarization is permissible until further notice in light of the pandemic.²

An option for county boards to consider would be for the board to publicly acknowledge during the Organizational Meeting that all oral oaths of office are being administered remotely because of the mandate in Emergency Order #12. While the physical act of taking the oral oath is conducted remotely, it is again imperative that counties arrange for the signature and return of the written oath (including witness signature) within the statutory timeframe. When the constraints of Emergency Order #12 are relaxed, a county board that administered the oral oath by remote means may consider ratifying prior acts by having all board supervisors take a new oral oath in person.

² WDFI’s guidance is available at:

[http://wdfi.org/Apostilles Notary Public and Trademarks/pdf/Emergency %20Guidance%20-%20Remote%20Notarization.pdf](http://wdfi.org/Apostilles%20Notary%20Public%20and%20Trademarks/pdf/Emergency%20Guidance%20-%20Remote%20Notarization.pdf)

The purpose of the oath of office is primarily related to granting rights and privileges to the office holder. It is a statutory prerequisite to a person being cloaked with all such rights and privileges under the law. Given the serious nature of the oath, it is critically important that counties work with corporation counsel to determine the best process to ensure that board supervisors are legally qualified to take appropriate action.