

Chapter 985 Legal Notices & the Open Meetings Law

Wisconsin
Towns
Association

Please keep in mind:

- This presentation covers Wisconsin Town-specific issues. Other entities can and do have different legal requirements than Towns in Wisconsin.
- This educational presentation is general in nature and will not have the opportunity to cover all possible circumstances. Resort to the town's attorney is recommended for specific questions.

Ch. 985 & Open Meetings Law

- Chapter 985
 - Governs Legal Notices generally;
 - Is referenced by Open Meetings Law & many other statutes too;
 - Need to understand Ch. 985 for all of those.
- Open Meetings Law ss. 19.81 – 19.97
 - Whenever a “Governmental Body” . . .
 - Has a “Meeting” . . .
 - Proper notice must first be given.

Notice Requirements

- There are two possible situations:
 - (1) A statute or local ordinance imposes exact notice requirements; or
 - (2) General notice law applies.
- Step 1 is to know which situation you are in.
 - Is this matter governed by a particular statute or ordinance? If “yes” then follow that;
 - If “no” then follow the general notice law.
 - (Sometimes both specific & general.)
- Step 2 is to carry out the notice.

General Notice Law

- Towns can choose to notice by Newspaper or Posting Places. ss. 985.05(1) & 985.02.
 - Town Board would decide which method to use.
 - A resolution on file is best to set town policy.
- The word “publish” is not literal
 - Statutes almost always say “publish”;
 - But that refers to Ch. 985, which gives the Town the option to use posting places too.
 - (A specific statute may mandate using a newspaper, but otherwise you have a choice.)

Posting Places s. 985.02(2)

- Need 3 of them
 - Designated by the town board;
 - Generally they should be within the town;
 - Website does NOT count.
- Proof of Posting: Affidavit of person posting
 - Recommended, but not required under Ch. 985;
 - List the time, place and manner of posting;
 - Is presumptive evidence of posting.

Newspaper s. 985.03

- Only a paper with all of the following qualifies:
 - For at least 2 of the last 5 years;
 - Has been published at least once per week;
 - It has had a bona fide paid circulation;
 - It has at least 300 subscribers in the town;
 - And contains actual news.
- Shoppers are NOT newspapers.
- If no qualifying newspaper in your town, use one in the county.
- If no qualifying newspaper in your county, use one in an adjoining county. s. 985.14.

Proof of Notice

- Of Newspaper publication s. 985.12
 - Affidavit of Printing from the newspaper;
 - Is presumptive evidence of publication;
 - Fee is mandated by statute at \$1.00.
- What if there is a newspaper mistake?
 - If your notice is not actually published; then
 - It doesn't count!!!

Official Newspapers

- Towns are NOT required to have one
- Towns may have one if they wish
 - Town Board would designate.
- If you have an official newspaper, then whenever you place a notice in a newspaper it has to be the official one. s. 985.05(2).
- Having an official newspaper does NOT mean that your Town can no longer use Posting Places.

Open Meetings Law

- Can do more than minimally required notice.
 - E.g. use both posting & newspaper;
 - Caution: “Reasonably likely to apprise” s. 19.84(2);
 - Can trap yourself by using the newspaper: forget to publish, weekly paper, etc.
- WTA recommends using posting places as primary notice:
 - More flexibility & it’s under your control;
 - If also use newspaper: use disclaimer in ads;
 - If changing papers, say so in your ads first.

Types of Notices

- Insertions s. 985.01(1m):
 - Once each week for consecutive weeks, the last of which shall be at least one week before the act or event (unless otherwise specified).
 - E.g., a statute might say “Class 1 notice 30 days in advance.” In that case, use 30 days instead of 1 week.
- Classes s. 985.07:
 - Class 1 notice = 1 insertion.
 - Class 2 notice = 2 insertions.
 - Class 3 notice = 3 insertions.

Calculate the Time s. 985.09

- Exclude the first day of notice;
- Include the day of the noticed event;
- If the last day is Sunday or a Legal Holiday go to the next secular day.
 - Section 995.20 lists legal holidays.
- Whenever time for a notice is expressed in hours, publication on Sunday or a legal holiday does not count. s. 990.001(4).

Open Meetings Law

- Notice per s. 19.84 has three (3) parts:
 - To the public via at minimum newspaper **OR** posting in 3 places; **AND**
 - To any reporter with a written request; **AND**
 - Your official newspaper if you have one; if you don't, then a news medium in your area.
 - This last is not an ad and you don't have to pay for it.
 - In writing is recommended, but not required.
- Don't forget to do all three every meeting!!!

Open Meetings Law

- Standard minimum 24 hours notice.
- Less than 24 hours notice:
 - For “good cause” at least 24 hours is “impossible or impractical”;
 - Needing to leave town early for vacation won’t cut it.
 - Never less than 2 hours.
- Remember, Sundays and legal holidays won’t work for either 24 or 2 hours. s. 19.84(3).

The End

- Please contact WTA with any questions about this presentation.
- Thank you for watching.