

***School Law FYI***

Court Reinforces School Board Open Meeting Law Requirements for Voting

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Wisconsin's Open Meetings Law requires public officials to conduct voting in a manner which ensures each vote is "recorded, preserved, and open to public inspection." Therefore, the Wisconsin Open Meeting Law prohibits school boards from using secret ballots to vote, except for when board members choose board officers. A recent decision from the Wisconsin Court of Appeals reiterated that the use of secret ballots during a vote to fill a vacant seat on a school board violates the Wisconsin Open Meeting Law.

WHAT DID THE SCHOOL BOARD DO?

In *Wied v. Wheeler*, the Wisconsin Court of Appeals held that the Elmbrook School District school board president, Scott Wheeler, and vice president, Jean Lambert, violated Wisconsin's Open Meeting Law when they conducted a vote via secret ballot. The Elmbrook School District school board held a meeting via Zoom on May 12, 2020, to fill an empty board seat. The board interviewed four candidates. During that meeting, Wheeler and Lambert facilitated the use of secret email voting to have the board select the candidate for the empty board seat.

Wheeler stated he directed the board members to email him and the executive assistant their preferences among the candidates. After the first two votes, Wheeler stated that no candidate received the necessary four votes for consensus and a direct vote. Wheeler did not announce or make public each board member's vote, but Wheeler displayed the names of the top two preferences Leanne Wied and Mushir Hassan on a screen.

The board engaged in more discussion about the candidates, then commenced a third round of voting between Wied and Hassan. In this round, two members switched their votes. Wheeler incorrectly announced that there were four votes for Hassan and two votes for Wied, even though the actual result was three to three, because he missed that two members, not just one, had switched their vote this time around.

Wheeler stated that the four votes for Hassan were enough for a motion as they had consensus. At that point, Lambert made a motion to appoint Hassan to the empty board seat, and Wheeler commenced a public roll call vote. Five members voted to appoint Hassan with one abstention. Wheeler never disclosed to the board that Hassan had only received three votes during the third round, and there was never a public disclosure as to which board members voted in preference for Wied or Hassan except for during the final vote.

A LAWSUIT FOLLOWED

Wied filed a claim against Wheeler and Lambert alleging their actions during the meeting violated the Open Meetings Law. The Wisconsin Court of Appeals held that Wheeler and Lambert violated Wisconsin's Open Meetings Law when they did not make the board member's preferences known during the meeting. The court held that the emailed votes were part of the conversation, and Wheeler should have disclosed them during the open session. Wheeler and Lambert could have asked the board members to verbally state their preferences or read the emails aloud to comply with Wisconsin law. The court found Wheeler and Lambert's actions kept the public in the dark about the elected board members' thoughts on the candidates for the vacant board seat. Therefore, they violated the Open Meetings Law.

Conclusion

This case provides an important reminder to school boards to comply with the Open Meetings Law. All board discussions and votes must be public in real time, unless the board is in a properly noticed closed session, and, even then, there are limitations on voting in closed session.

Compliance with the Open Meetings Law can be challenging, but the law provides for individual board member fines. Therefore, schools should consult with legal counsel to ensure their practices are correct. Reach out to the authors of the article or any member of the [Boardman Clark School Law Practice Group](#) with any questions about the Wisconsin Open Meetings Law.

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