



When Are Committees “Governmental Bodies” Under the Open Meeting Law?

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In *State ex rel. Krueger v. Appleton Area School Dist. Bd. Of Educ.*, 2017 WI 70, the Wisconsin Supreme Court attempted to clarify when a committee constitutes a “governmental body” for purposes of the open meeting law after Krueger, a parent excluded from meetings of school district staff reviewing books for an alternative course which he had requested, sued the school district seeking a declaration that the reviewers were a governmental body under the Open Meeting law and subject to the law’s various requirements.

At issue in the case was whether the staff reviewing the books was a committee assembled pursuant to rules adopted in the school district’s handbook governing curriculum review, or whether the group was a more loosely constituted group of staff formed for the limited purpose of reviewing Krueger’s particular request. The circuit court granted summary judgment to the school district and the Wisconsin Court of Appeals affirmed in an unpublished decision. The Supreme Court reversed.

The Court held that the members of the school district staff reviewing books for this particular class in response to Krueger’s request for an alternative course using books without profanities, obscenities or sexually explicit material was a committee and a governmental body subject to Wisconsin’s Open Meeting Law since it had a defined membership, authority to review materials and make recommendations to the school board, and was created

pursuant to rules in the handbook adopted by the School District.

The Supreme Court held that a “governmental body” under the Open Meetings Law must have a defined membership and must be created by constitutional provision, statute, ordinance, rule or order causing the governmental body to exist where none existed before. Moreover, the relevant directive must “confer upon it the collective ‘responsibilities, authority, power or duties’ that are necessary to a governmental body’s existence under the open meetings law.” According to the court, “rule” is defined by looking to a common dictionary definition and, for purposes of the open meetings law, “includes any authoritative, prescribed direction for conduct, such as the regulations governing procedure in a governmental body.” Krueger at par. 33.

Importantly, the Court explained that “[c]reation of a governmental body is not triggered “merely by ‘any deliberate meetings involving governmental business between two or more officials.’” *Id.*, ¶ 26. “Loosely organized, ad hoc, gatherings of government employees, without more, do not constitute governmental bodies.” *Id.* The decision cites 57 Wis. Op. Att’y Gen. 213, 216 (1968) explaining that meetings between the head of a department and entire staff of a department were not covered by the former version of the open meetings law “because the staff does not constitute a body.” “Rather, an entity must exist that has the power

to take collective action that the members could not take individually.” The question of whether a particular group of members of the government actually compose a governmental body is answered affirmatively only if there is a constitution, statute, ordinance rule or order conferring collective power and defining when it exists.

Looking to the criteria it laid out, the court concluded that the body was a committee with a defined membership, created by rules in the School District’s Handbook, which was tasked with reviewing materials and making recommendations to the school board. Thus, it was a “governmental body” under the Open Meeting law and subject to the law’s requirements and its exclusion of Krueger from its meetings violated the Open Meeting law.

Justice Abrahamson, joined by Justice Ann Walsh Bradley, concurred that the committee in question was a governmental body subject to the Open Meetings Law but said it was a “close call.” (¶55) She stated:

Government operations should be open and transparent to the fullest extent possible. But the Open Meetings Law should not be interpreted to apply to every meeting between administrators and employees and others to discuss how to implement specific policies or programs or how to do their day-to-day jobs.

What is the Takeaway from Krueger?

A municipality which is uncertain whether a committee is a “governmental body” for purpose of the open meetings law should review the characteristics of the committee to determine whether it meets the essential elements of the form that an entity must take in order to be a governmental body:

1. Does the committee have a defined membership?
2. Was the committee created by constitutional provision, statute, ordinance, rule or order causing the governmental body to exist where none existed before?
3. Did the rule or relevant directive confer upon the body the collective “responsibilities, authority, power or duties” that are necessary to a governmental body’s existence under the open meetings law?

If the answers to the previous questions are yes, the committee will be considered a “governmental body” subject to open meeting law.

Municipalities may want to review ordinances, handbooks, and other directives to see if committees may have been inadvertently created.

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