

EDITORIAL

Open government report card: Arena improves, Lone Rock sued, other local public bodies receive letters

Sunshine Week is a time to celebrate government transparency and public service, as well as a time to address lapses in the same. In October 2020, shortly after incorporating and shortly before our first edition, we sent out a Wis. Stat. 19.84(1)(b) written request by email from news media to our local governmental bodies asking that Valley Sentinel be sent meeting notices for the respective governmental bodies. Recently, we sent reminder letters by mail to the local governmental bodies in our immediate coverage area that have not been consistent in sending us meeting notices, with several having sent none at all in the past nearly 2.5 years.

What is public notice? What is news media notice? Wis. Stat. 19.84 outlines the various ways a public body — such as a village or town board — needs to provide proper notice of its meetings. Best practice is to post those notices in a mix of ways most likely to apprise residents and those interested. Other requirements include at least 24 hours notice, generally, and requirements that the subject matter of the notice — usually in the form of the agenda — is reasonably likely to apprise members of the public and the news media of what action the public body will be taking.

When news media request notice under Wis. Stat. 19.84(1)(b) it is separate from the notice given to the public, but equally as necessary. This notice is required for meetings to be considered properly noticed. Further, Wis. Stats. § 19.96 & 19.97 prescribe the forfeitures possible when notice isn't proper and state any action taken at a meeting of a governmental body held in violation is potentially voidable.

Public notice is often confused with paid legal notices, which are required for certain meetings and hearings by statute, but what Valley Sentinel was and is asking for are emails from the clerks of local public bodies with notice of upcoming meetings and its agenda items. These meetings may additionally need legal notice, but that's a sidebar.

Valley Sentinel requested all meeting notices, for each public body and its subunits. Even for public bodies that have done well sending notices for their boards, we still have issues receiving committee and commission notices for their subunits, as well as joint committees — despite our request covering those bodies as well.

We should note that we were then, and still are, figuring out the extent of our local government coverage and how it should look, so we never did follow up on our request until recently with many of the townships below, so we certainly give them some leeway. Our lack of resources and manpower makes consistent, minute-like coverage difficult — but we strive to cover local government topically where we feel the story has a compelling local community interest and value to our readers.

Much of the below grades are due to the public body's clerk, for better or worse. Clerks have a tough job, a job that can be made harder or easier by the board and the community they serve. But both clerks and local elected officials have the duty to ensure things are being done correctly and in the public interest in their community.

Why is this important? This is important to us because if we're not getting notice as a newspaper it's likely you're not getting notice either. Recent studies have shown civic engagement and strong local journalism directly correlate to a number of local government metrics like local government bond rates, including rates to fund government infrastructure projects. For example, where robust local journalism disappears or is lax, local government borrowing costs increase because less information is publicly available, and local officials are no longer monitored as closely, reducing the quality of governance. Simply put, the financial sector views an area with low civic engagement and lax or nonexistent local journalistic oversight as a risky investment. Without open government it becomes increasingly hard for us to do our job.

SUNSHINE WEEK 2023 LOCAL OPEN GOVERNMENT REPORT CARDS

Sauk County: A+

Valley Sentinel receives County Board notices promptly as well as notices for all its various committees and department meetings. Sauk County is proactive and robust in its media and public relations, sending out press releases and community events often.

But it may be important to note County Board agenda and meeting length were reduced noticeably and dramatically following the hire of a county administrator, potentially — in our editorial board's opinion — to the detriment of public access and civic engagement. Meeting agendas have slowly increased in size again in the last year after the noticeable decline.

Iowa County: F

Valley Sentinel received a couple county board agenda meeting notices when we first asked, but nothing since.

Valley Sentinel occasionally receives county emergency management media notices, however.

Richland County: A-

Valley Sentinel receives County Board notices promptly as well as notices for all its various committees and department meetings.

Richland County takes a slight hit in its grade with the recent UW-Richland negotiations (and lack of legal action to enforce its contract with the UW System). We've heard concerns that the public has with not just how the UW-System's decision to constructively close the campus lacked public input and hearings, but also that much of the County Board's response has been to hold questionable closed sessions rather than discuss its options openly. We concur. Having a closed session with counsel to discuss litigation strategy is understandable, but having a closed session to discuss trying to negotiate in good faith with a state agency that has no intention to do so isn't in the public's best interest.

River Valley School District: A

Valley Sentinel receives River Valley School District notices promptly as well as notices for all its various committees. This is much improved following disagreement in our first year publishing. The School Board established an ad hoc committee of residents, with a defined membership and defined mission to advise the board on a possible diversity statement to be adopted by the District. Many ad hoc committees aren't necessarily required to notice their meetings (although it is good practice), but legal experts consulted agreed that a policy-writing ad hoc committee that had a defined membership and mission that reported to the board with its findings and recommended policy would need its meetings noticed, which the district failed to do.

Village of Arena: B

The Village of Arena has improved after an open meetings complaint last year due to an improper closed session. The meeting was re-done and the notices have been proper since.

Clerk DeNeen Naeger is very responsive when records are requested and questions are asked about the village, she provides an invaluable crutch to the village's officials.

The Village, fairly or not, loses a point as we've stopped receiving the Fire & EMS Board notices after a fairly consistent last year. This comes at a time when the joint village and town Fire Board is struggling to fund and man their EMS program, with fingers pointing at one another.

It's also important to note that Arena is one of only a couple villages that doesn't stream or conference their meetings for accessibility, and while that's not a requirement of an open meeting, it does create a more inclusive way of allowing residents to be informed on their local government. They also don't video or

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There is a part of the Open Meetings statute that is titled "Public Notice." This includes "notice to the public" and notice to news media. Understandably, some government bodies can confuse the obligations of "notice to the public" with the more inclusive obligations of the "Public Notice" statute, hence misunderstanding their obligations to news media.

A second source of confusion is an entirely separate set of laws regarding legal notices. Local governments must send out paid legal notices of certain kinds of government actions, such as budget-setting and new ordinances. Both legal notices and open meetings notices to news media serve the function of informing the public and specific parties with the most direct interests of government activity

by utilizing the press, but they are governed by completely different laws. So, for example, to receive public notices, a media outlet need only put in a request, and this could include a newspaper, radio station, or even a blog. Once the media organization gets the notice, they can decide to just ignore it, or write about the meeting it notices. Legal notices are completely different: they are

advertisements that have to be earned. Only official papers which meet certain requirements are eligible for them, and the notices must be run in print.

Despite being completely different, both are forms of notice and it's not rare for local governments to get their obligations under these two kinds of notice mixed up.

—Gary Ernest Grass, esq., Legal Editor

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Have graphic design experience or interested in meetings, events or writing and becoming a community contributor? Let us know. Thank you to all of our contributors for believing in our community.

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Editors may feature opinion columns written by public figures, members of the public or other publication staff. Columns reflect the opinions of the individual contributors and do not represent positions of the publication. Guest columns of an anticipated length more than 500 words should seek prior editor authorization.

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From time to time the editorial board may select letters to the editor of a particular compelling community interest where a public figure or accountable public action is the recipient of criticism and allow, in the same issue, the subject of the criticism chance for rebuttal, with expounded independent input. The format shall be point, counterpoint and expert analysis. This community discussion shall serve as a moderated dialogue that presents multiple views of important community topics.

LOWER WISCONSIN RIVER VALLEY SENTINEL

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## OPINION/EDITORIAL

## EDITORIAL (CON.)

## Open government report card: Arena improves, Lone Rock sued, other local public bodies receive letters

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audio record their meetings currently despite their longstanding tradition of doing so previously, as well as having the infrastructure and equipment to do so. Their report card and the public interest would be improved by them returning to those practices.

Village of Lone Rock: F

After a rocky start, then a lapse that resulted in an open meetings complaint and a public records lawsuit (after Clerk Tammy Christianson erroneously claimed notice to the press was simply an FYI, instead of an actual, legal requirement), and then a rocky restart that will likely result in another open meetings complaint after a closed meeting was improperly held without notice to discuss the resulting public records lawsuit, Lone Rock has been consistently sending meeting notices for the last few months.

Village of Plain: A

Perfect. Village of Plain Clerk Sheila Carver is great to work with. We get meeting notices and agendas promptly and never have a problem. Although we'd like to see the Fire & EMS Board notices as well as other subunit/committee notices.

Village of Spring Green: A

After a couple hiccups a year or so ago where media was booted from a virtual meeting before a motion and vote to go into closed session were taken, as well

as a conspicuously lacking of notice in the initial vote to hire Clerk Wendy Crary as Village Administrator as well had to be redone, the Village of Spring Green has been perfect in getting meeting notices and meeting minutes out promptly. They have had meaningful discussions recently about how to best return to in person meetings in a hybrid fashion that is accessible virtually. These efforts should be applauded.

Town of Arena: F

After several requests for meeting notices, we still haven't received any. However, previous clerk Joni Johnson-Kropp was helpful in forwarding information about a failed Vortex project in the township.

The Town has undergone turnover in clerks and this surprisingly large township has been dealing with some outsized issues with EMS services and a village within its bounds that cannot be counted on to maintain its services. Ensuring proper notice will help get more people involved and will help educate residents about the potentially dire situations the Village and Township of Arena find themselves in.

Town of Bear Creek: N/A

We can't say with certainty that the Town of Bear Creek received a request prior to those sent out recently. We'll provide a grade next year.

With excellent Village of Plain Clerk Sheila Carver at the helm here as well, we have little doubt notices will be proper.

Town of Black Earth: N/A

While a small sliver of the Town of Black Earth is within our immediate coverage area, not enough of it is to send a request at this time.

Town of Buena Vista: F\*

We have never received a meeting notice despite our request. Period.

\*Clerk Van Nelson has acknowledged our recent request and committed to providing notices.

Town of Clyde: A

Taking over from a wonderful clerk in her own right, Clerk Leah Spicer has hit the ground running and has proven herself a sharp and adept public official. Notices are prompt and complete, and minutes are well written. This rural community is lucky.

Town of Dodgeville: N/A\*

This appears to be our first time sending a news media notice request to the Town of Dodgeville - which starts just south of the House on the Rock and encompasses Gov. Dodge State Park — both of which we consider within our immediate coverage area — and continues south to encompass a much larger area.

\*It's important to note that Clerk Sara Olson started sending meeting notices immediately upon receipt of our letter.

Town of Franklin: F

We have never received a meeting notice despite our request. Period.

Town of Honey Creek: F\*

The previous Clerk was sent our request in 2020, but we never received notices.

\*Current Clerk Jennifer Evert started sending meeting notices immediately upon receipt of our letter. We'll provide an updated grade next year.

Town of Ithaca: N/A

While a small sliver of the Town of Ithaca is within our immediate coverage area, not enough of it is to send a request at this time.

Town of Ridgeway: N/A

We can't say with certainty that the Town of Ridgeway received a request prior to the requests sent out recently. We'll provide a grade next year.

Town of Spring Green: A

Perfect. We get meeting notices and agendas promptly from Clerk Vicki Terpstra.

Town of Troy: F

We have never received a meeting notice despite our request. Period.

Town of Wyoming: F

We have never received a meeting notice despite our request. However, it should be noted that Town Clerk Mary Lloyd-Jones has been helpful in the past with responding to emails requesting election information and absentee ballot numbers.

## Legal Editor: Lone Rock lawsuit, open meetings updates

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different. There is a different theoretical and practical relationship between the public body and the individual. A meeting cannot be opened up after the fact. The logic of the case and the possible remedies are therefore much different.

In a public records case, a requester does not need to show that they needed a record or were harmed by not getting it, because the real issue is the public policy of open government, and even though one person may specifically have been denied access to records, it is the entire public that is harmed. In open meetings cases, this idea is kicked up one more level. Where the plaintiff in a public records case acquires their ability to sue from having requested a record and not getting it, a plaintiff in an open meetings case does not have to be someone locked out of the meeting.

They don't have to have any connection to the meeting. The case is even more focused on the public interest, so much that the person who sues does not even do so in their own name but on behalf of the state.

Filing an open meetings case is a distinct process. Before you can run into the court representing the State of Wisconsin, you need to file a sworn report (a "verified complaint") to the attorney general or the district attorney, or in some cases, corporation counsel for the county. These are the state's preferred officials for taking action, but if they decline or do not act within 20 days, an ordinary person can act for the state.

Remedies in an open meetings case are mostly not designed to benefit the person filing the case. They can recover their court costs and attorney fees, but will not come out ahead on money.

Individual officers who violated the law may be forced to pay the equivalent of a fine to the state or county, which unlike most liabilities of public officers cannot be paid for them from the public treasury.

What happens to the business conducted at the unlawful meeting? Well, it is not automatically void, but the court does have the power to nullify all or part of the public business performed at a meeting that has been found unlawful. The court must balance the public interest in transparent government against the possible disruption to innocent people who relied on the validity of the government's acts.

The Valley Sentinel has made its report to the district attorney and has the go-ahead to sue the Village of Lone Rock on behalf of the state. Since its last report it has learned of additional violations which it will also be reporting.

As soon as the Valley Sentinel learned of the unlawfully conducted meetings, it reached out to the Village, informing them of the meetings' illegality and asking the Village whether the meetings would be done over again, so that the public would have appropriate access and the business of the meetings could be performed again free of any legal taint. This would have been a wise action, which would have assured that no public business would be rendered void and the worst the Village would face would be some small payments of legal costs and some small fines to its members. For whatever reason, the Village did not do this. Perhaps they feared the outcome of the business would be different. Perhaps they were irrationally confident of the legality of the meetings.

It will be a big step to go into court on these claims, and ask the court to undo the actions taken at the meeting.

The Village of Lone Rock committed to hundreds of thousands of dollars in expenditures on top of the annual budget. It is likely someone will not welcome such a reversal. But the fact that the actions of the Village were momentous is equally a reason why they should have been performed with respect for the law and the rights of citizens to access.

We've previously addressed why we think the open meetings law is important. It is not just a shield against corrupt action but a means of allowing public engagement, which might lead to more informed and better decisions. Outside parties look for such transparency as a sign of a government that is competent, honest, and responsible to its citizens. It gives the government credibility and makes it more credit-worthy. And for many of us, it is not just a matter of practical benefit but of principle. It is the life breath of a functioning democracy.

We are always happy to see issues like this resolved without recourse to a courtroom, but we are also not reluctant to sue when justice and principle demand it.

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