



TOWNSHIP TRUSTEES DUTIES, POWERS, & FUNCTIONS

Township Officials of Illinois Education Series 2013

Presenters:

Keri-Lyn J. Krafthefer

Robert A. Porter

Ancel
Glink

DIAMOND BUSH
DiCIANNI
& KRAFTHEFER



TOP 10 THINGS YOU NEED TO KNOW ABOUT THE OPEN MEETINGS ACT TO KEEP YOUR BOARD MEETINGS LEGAL

- Notice
- Minutes
- Agendas
- Public Comment
- Remote Participation



TOP 10 THINGS YOU NEED TO KNOW ABOUT THE OPEN MEETINGS ACT TO KEEP YOUR BOARD MEETINGS LEGAL

- Closed Sessions
- Training
- Web Site Posting Requirements
- Voting
- Recording Meetings



BOARD vs. SUPERVISOR

- Who controls what appears on the agenda?



BOARD vs. SUPERVISOR

- The development and posting of the agenda is controlled by the full Board, and can be assigned to various parties. In most Townships, the Supervisor or the Clerk prepare the agenda. An agenda should contain items requested by any member of the Board. The preparation of the agenda can, by ordinance, be given to any named person or position, but the obligations would be the same.



BOARD vs. SUPERVISOR

- Is the Supervisor the only one who can call a special Township Board meeting?



BOARD vs. SUPERVISOR

- No. The statutes provide that either the Supervisor or two Trustees can call a special board meeting. If the number of participants who appear at the meeting do not constitute a quorum, the meeting cannot go forward.



BOARD vs. SUPERVISOR

- When can we call an emergency meeting?



BOARD vs. SUPERVISOR

- While a special meeting requires 48 hours advanced notice, an emergency meeting can be called on the shortest practical notice, although notification must be made to all Board members, posted and given to the members of the press that have properly asked for the notification of meetings. The court will likely overrule actions taken in an emergency meeting if there is no true emergency.



BOARD vs. SUPERVISOR

- Can the Supervisor refuse to allow the Board to discuss or act on an issue?



BOARD vs. SUPERVISOR

- No. The Supervisor cannot refuse to allow the Board to discuss or act on an issue. His action to do so can be overridden.



BOARD vs. SUPERVISOR

- Can the Supervisor veto a legislative action?



BOARD vs. SUPERVISOR

- No. Supervisors have no veto power.



BOARD vs. SUPERVISOR

- The Supervisor, as the presiding officer, always calls on his supporters on the Board first. Can he do that?



BOARD vs. SUPERVISOR

- Yes, the Supervisor probably can choose who he wishes to call upon first to address a particular issue. No statutory or constitutional problem will occur if members of the Board taking different positions are also allowed to speak in an equal manner. Ordinarily, the proponents of a motion are allowed to speak first.



TRUSTEE DYSFUNCTION

- Can the Board pass procedural rules to prevent a Trustee from speaking for a long time or repeatedly?



TRUSTEE DYSFUNCTION

- Yes. All governmental bodies have the ability to adopt procedural rules. So long as legislative members are given a reasonable opportunity to speak, limitations may be placed upon duration or frequency.



TRUSTEE DYSFUNCTION

- What can we do if a Board member discloses information to the press which was discussed in a closed session?



TRUSTEE DYSFUNCTION

- An effective answer remains one of the great mysteries in Illinois law. A vote of censure can help and making that act a violation of Township ordinances and prosecuting may be effective. In the right case, a court might enter an injunction against such an individual on a continuing basis. The State's Attorney may also be willing to get involved.



TRUSTEE DYSFUNCTION

- Can a Township refuse a Trustee's requests for documents, whether the Trustee requests them either directly or under FOIA?



TRUSTEE DYSFUNCTION

- Not if the records are related to their legislative duties. Courts have held that members of legislative bodies are entitled to data which can reasonably assist them in their legislative duties. FOIA requests from legislators are to be treated the same way as FOIA requests from anyone else.



TRUSTEE DYSFUNCTION

- Can a Board prevent a Trustee from repeatedly raising the same issue?



TRUSTEE DYSFUNCTION

- Yes. Once an issue has been definitively decided by a legislative body, efforts to raise the same question without a significant change of circumstances can be ruled out of order by the Supervisor or Chair of the meeting.



TRUSTEE DYSFUNCTION

- Can a member of a Board be charged with disturbing the peace at a meeting?



TRUSTEE DYSFUNCTION

- Yes. Anyone who disrupts a public meeting can be arrested and charged with disturbing the peace or disorderly conduct.



TRUSTEE DYSFUNCTION

- Can our Board videotape a Trustee's shenanigans and seek an injunction to prevent the repeat of such practices?



TRUSTEE DYSFUNCTION

- Yes. All open session public meetings can be recorded by the government or by a citizen. Someday, a government will have the gumption to seek a court-ordered injunction to prevent the repeat of disruptive tactics by an elected official.



BOARD MEMBERS vs. OTHER BOARD MEMBERS

- What can we do if two Board members hate each other and any statement by one results in an angry statement by the other?



BOARD MEMBERS vs. OTHER BOARD MEMBERS

- Debate can be limited at a public meeting and officials can be publicly chastised about their incivility.



BOARD MEMBERS vs. OTHER BOARD MEMBERS

- Can one Board member demand that another Board member “answer the question?”



BOARD MEMBERS vs. OTHER BOARD MEMBERS

- No. Neither a Board member nor members of the public can demand that another Board member “answer the question.”



BOARD MEMBERS vs. OTHER BOARD MEMBERS

- Can a Trustee demand that her supporters in the audience be allowed to comment repeatedly on issues being considered by the Board?



BOARD MEMBERS vs. OTHER BOARD MEMBERS

- No. A Board member can point out the occurrence of the improper act of failing to allow all views to be stated regarding a particular issue. The Board can, however, forbid repetitive comments or multiple comments so long as the individual has been given an opportunity to initially speak for a reasonable period of time.



BOARD MEMBERS vs. OTHER BOARD MEMBERS

- What can we do if a Trustee threatens to hold his breath until he gets his way?



BOARD MEMBERS vs. OTHER BOARD MEMBERS

- We suggest the use of “time out.”



THE BOARD VS THE CLERK

- We don't like the way the Clerk takes the minutes. What can we do about this?



THE BOARD VS THE CLERK

- The Board has the ability to choose the person taking the minutes and the draft minutes are to be reviewed and considered by the body that held the meeting.



THE BOARD VS THE CLERK

- Board members want the clerk to change his minutes to include things that they never said. Can they do that?



THE BOARD VS THE CLERK

- The Board majority has the right to approve its own minutes, but since the Clerk's office is generally the repository for all minutes, the Clerk can add his or her note at the end of the minutes if the Clerk believes that they are incorrect.



THE BOARD VS THE CLERK

- The Board wants clerk to be at the Township building every day. Can they make him?



THE CLERK vs. EVERYBODY

- If the elected Clerk fails to fill responsibilities given to that office by the Board, it is probably up to the electorate to decide, during the next election cycle, if the Clerk has or has not done a good job.



THE BOARD vs. THE PRESS

- The newspaper keeps writing unfair stories about the Board. As the board, what can we do?



THE BOARD vs. THE PRESS

- You can address this issue at a meeting of the Board, where your remarks will be likely subject to absolute immunity. You can address issues at a press conference, or in a letter to the editor, in which case your immunity will be inapplicable.



THE BOARD vs. THE PRESS

- One of the Trustees called the supervisor a crook during a public meeting and the newspaper printed his comments. What can I do?



THE TOWNSHIP vs. THE PRESS

- The supervisor can sue the Trustee and the newspaper. Because you are a public official, you will only collect damages if the remarks were false and malicious. The Trustee probably has absolute or qualified immunity.



THE BOARD vs. THE PRESS

- As a Trustee, I am constantly misquoted by the newspapers. Is there any way that I can control printed statements?



THE BOARD vs. THE PRESS

- You can submit your views to the newspapers in press releases and not talk to them otherwise. They will likely quote the words in your press releases or state that you were unavailable for comment.



THE BOARD vs. THE PRESS

- The newspaper keeps printing terrible pictures of me. How can I fight back or make them use my photos from Glamour Shots?



THE BOARD vs. THE PRESS

- You can provide the newspaper with better pictures or have plastic surgery. You can show terrible pictures of the editor and owner during your televised meetings. The plastic surgery is not reimbursable by the Township.



THE BOARD vs. THE PRESS

- The Board members voted to reduce the Supervisor's salary because she doesn't come to meetings. Can they do that?



THE BOARD vs. THE PRESS

- Not during the Supervisor's term of office. The Illinois Constitutional prohibits an increase or decrease in an elected official's salary during his or term of office.



TOWNSHIP vs. TECHNOLOGY

- Are text messages that Township officials send and receive on our private cell phones considered public records?



TOWNSHIP vs. TECHNOLOGY

- Yes, if the message relates to public business, according to a recent opinion issued by the Public Access Counselor. If they related to private business, no.



TOWNSHIP vs. TECHNOLOGY

- Are comments posted on the Township's Facebook page subject to the Open Meetings Act?



TOWNSHIP vs. TECHNOLOGY

- They might be. Just as with any other electronic communication, if a majority of a quorum of a public body is engaging in a contemporaneous discussion of public business, whether in-person, on a telephone, through e-mail, or by posting comments on a Facebook page, their actions may be considered a meeting subject to the requirements of the Open Meetings Act.



TOWNSHIP vs. TECHNOLOGY

- Can the Township Board require somebody who wants to record our meeting to give us advanced notice?



TOWNSHIP vs. TECHNOLOGY

- No. The Attorney General recently issued an opinion finding a public body in violation of the Open Meetings Act when it refused to allow an individual to record a public meeting because the individual failed to advise the public body in advance of his intention to record the meeting in accordance with the public body's rules.



PUBLIC ACCESS COUNSELOR vs. TOWNSHIP

- Can we hold a Township Board meeting in the private home of one of our Trustees if we notice the meeting for that location, open the meeting to the public and if our township hall is closed?



PUBLIC ACCESS COUNSELOR vs. TOWNSHIP

- No. In PAC Opinion 12-008, the PAC found a school district in violation of the Open Meetings Act where it conducted a meeting to adopt the annual tax levy in the private home of the school superintendent. The PAC determined that a home is “ill-suited” for a public meeting and could deter members of the public from attending.



PUBLIC ACCESS COUNSELOR vs. TOWNSHIP

- Can the Township Board discuss budgetary matters in closed session as part of the discussion of layoffs of individual employees?



PUBLIC ACCESS COUNSELOR vs. TOWNSHIP

- No. According to the PAC, probably not. In PAC Opinion 12-011, the PAC found a Township in violation of the Open Meetings Act when a discussion about layoffs included a discussion of township finances and budgetary constraints.



PUBLIC ACCESS COUNSELOR vs. TOWNSHIP

- BONUS QUESTION: Have any of the PAC opinions issued since 2010 (the year the PAC was established) been in favor of the public body?



PUBLIC ACCESS COUNSELOR vs. TOWNSHIP

- No. There have been 23 binding opinions issued by the PAC since it was created. All of them went against the public body.



TOWNSHIP vs. PUBLIC

- Does our Township Board have to allow an opportunity for public comment at every meeting?



TOWNSHIP vs. PUBLIC

- Probably. Although the current version of the Open Meetings Act does not specifically make this requirement, the Public Access Counselor appears to be interpreting the Act to require that such an opportunity be granted to the public.



TOWNSHIP vs. PUBLIC

- Do we have to permit public comment at our committee meetings?



TOWNSHIP vs. PUBLIC

- Yes. The provisions of the Open Meetings Act apply to all governmental bodies and all of their sub-units.



TOWNSHIP vs. PUBLIC

- Does the Open Meetings Act require that audience members be allowed to address the Board on each agenda item?



TOWNSHIP vs. PUBLIC

- No. Each governmental body can establish rules, which, for example, can limit public comment to either the beginning or the end of a meeting. If individuals are allowed to address the public body during the meeting, there must be a fair opportunity for all views to be expressed.



TOWNSHIP vs. PUBLIC

- Can the board only allow the first ten speakers who sign up to speak at a public meeting?



TOWNSHIP vs. PUBLIC

- No. Although some limit in number or time period may be established for the number of individuals who will be allowed to speak, ten (10) is too small of a number.



TOWNSHIP vs. PUBLIC

- Can we limit the time for any one person to comment to a maximum of 3 or 5 minutes?



TOWNSHIP vs. PUBLIC

- Yes. We believe that such a rule would be upheld if established in advance and if uniformly administered.



TOWNSHIP vs. PUBLIC

- Can the board permit a representative for a large group of people to speak for additional time?



TOWNSHIP vs. PUBLIC

- Yes. We believe that the Public Access Counselor and the courts would uphold such a rule.



TOWNSHIP vs. PUBLIC

- Can members of the public demand an immediate answer or any answer to their questions at a meeting?



TOWNSHIP vs. PUBLIC

- No. Under the First Amendment of the Federal Constitution, people who address public bodies are given great flexibility in what they can say or ask. There is, however, no legal requirement that elected officials respond to the questions either when asked or ever. Members of the public who are not given answers may, however, extensively seek the answer to their questions through Freedom of Information Act requests.



TOWNSHIP vs. PUBLIC

- Must we hold all Township meetings within the Township's boundaries?



TOWNSHIP vs. PUBLIC

- No. The law requires, however, that meetings must be held at a convenient time and a convenient place. In some communities, the convenient place may be in a building just outside of the current corporate boundaries.



TOWNSHIP vs. PUBLIC

- Is it a violation of the Open Meetings Act for the board to discuss public business about their Township at a TOI conference?



TOWNSHIP vs. PUBLIC

- Yes. If a majority of a quorum of a public body is in attendance at a conference, the members can discuss the information being disseminated at the conference, but any discussion of local business, which can be considered deliberative, is in violation of the law. Local politics, as opposed to local public policy matters can be discussed. Who should be the next candidate for Supervisor?



TOWNSHIP vs. PUBLIC

- Can a person demand an answer to a particular question through a Freedom of Information Act request?



TOWNSHIP vs. PUBLIC

- No. People can only use the Freedom of Information Act to seek, see, review and get copies of particular named and described documents. Governmental bodies only have to turn over the documents. They do not need to create them, explain them or interpret them for the requesting party, nor do they have to answer questions.



TOWNSHIP vs. PUBLIC

- Can we use our Township newsletter to urge the passage of a referendum or to outline our successes around election time?



TOWNSHIP vs. PUBLIC

- No. A newsletter can give facts about a coming referendum, but public funds cannot be used in support of or in opposition of a public issue or a candidate. Factual data about the successes of a Township may, obviously, encourage the re-election of an incumbent.



THE TOWNSHIP vs. THE COURT SYSTEM

- I am the Supervisor, involved in a controversial lawsuit in which the Township is the plaintiff. The Judge said he will dismiss the lawsuit if I don't appear for a negotiating session. People on the other side are horrible liars and I hate them. Do I really, really have to appear?



THE TOWNSHIP vs. THE COURT SYSTEM

- Yes. Under our Constitution, the Judicial Branch is equal in power to the Legislative Branch and decisions by courts must be followed. Your lawyers can explain the reasons why you do not wish to appear, and can seek interlocutory appeal to test the validity of the trial court judge's threatened action.



THE TOWNSHIP vs. THE COURT SYSTEM

- I believe that the Judge in a court case is prejudiced against our Township. What can I do about it?



THE TOWNSHIP vs. THE COURT SYSTEM

- You can make a motion for a substitution of judges at the very beginning of the case. If the prejudice occurs later, a motion can be made asking the judge to transfer the case. Simply arguing that the Judge is ruling against you is not adequate grounds to prove improper prejudice.



THE TOWNSHIP vs. THE COURT SYSTEM

- We won a case at the trial court level and lost it at the appellate level. Can we automatically appeal to the Illinois Supreme Court? P.S. The Appellate Court is wrong and the people who sued us are very bad people.



THE TOWNSHIP vs. THE COURT SYSTEM

- Illinois is one of those States where there is an automatic appeal to the Appellate Court, but the Illinois Supreme Court has discretion over the cases it will hear and only takes a small percentage of the cases which it is asked to consider.



TECHNIQUES THAT MIGHT DIMINISH BOARD CONTROVERSY

- Don't confront people at board meetings with questions that they could have been asked prior to the meeting.



TECHNIQUES THAT MIGHT DIMINISH BOARD CONTROVERSY

- Don't spring information on the Board for the first time at a meeting.



TECHNIQUES THAT MIGHT DIMINISH BOARD CONTROVERSY

- Don't reject ideas you didn't think of first.



TECHNIQUES THAT MIGHT DIMINISH BOARD CONTROVERSY

- Use an egg-timer to delay immediately sending nasty e-mails.



TECHNIQUES THAT MIGHT DIMINISH BOARD CONTROVERSY

- Write out and read your response to controversial issues and give copies of your carefully-crafted words to the press.



TECHNIQUES THAT MIGHT DIMINISH BOARD CONTROVERSY

- Really, really listen to compromise suggestions. At rare and golden moments, be willing to admit that your previously held position might have been incorrect. Remember Mark Twain's quote, "Loyalty to a petrified opinion never yet broke a chain or freed a human soul in this world – and never will."

Ancel
Glink

DIAMOND BUSH
DiCIANNI
& KRAFTHEFER



TECHNIQUES THAT MIGHT DIMINISH BOARD CONTROVERSY

- Praise your natural opponent when that individual surprises with a cogent idea of well thought-out position.



TECHNIQUES THAT MIGHT DIMINISH BOARD CONTROVERSY

- Try to creatively expand your power base.



TECHNIQUES THAT MIGHT DIMINISH BOARD CONTROVERSY

- Don't let anger or sarcasm use you.



TECHNIQUES THAT MIGHT DIMINISH BOARD CONTROVERSY

- Really listen to suggestions from people you respect.



TECHNIQUES THAT MIGHT DIMINISH BOARD CONTROVERSY

- Crush your opponent only when to do so really helps your cause, and when you can actually accomplish the crushing effectively.



TECHNIQUES THAT MIGHT DIMINISH BOARD CONTROVERSY

- Newspaper editorials or letters to the editor demanding that officials work together.



TECHNIQUES THAT MIGHT DIMINISH BOARD CONTROVERSY

- Open workshops with consultants to discuss Township problems and goals.



TECHNIQUES THAT MIGHT DIMINISH BOARD CONTROVERSY

- Workshops in closed session with representatives of the Township Officials of Illinois.



TECHNIQUES THAT MIGHT DIMINISH BOARD CONTROVERSY

- The normal election process.



TECHNIQUES THAT MIGHT DIMINISH BOARD CONTROVERSY

- Resignation because of frustration.

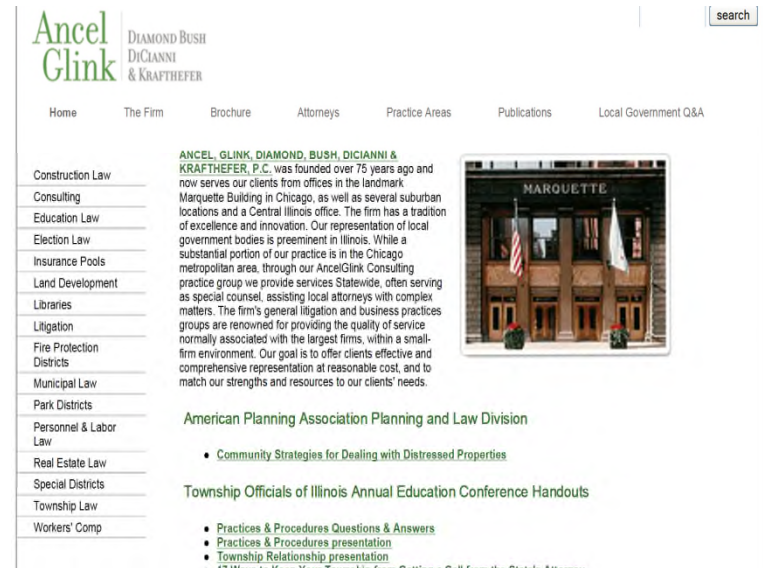
Contact us...

**Ancel, Glink, Diamond, Bush,
DiCianni & Krafthefer, P.C.**

**Keri-Lyn J. Krafthefer
Robert A. Porter**

**Chicago: (312) 782-7606
Vernon Hills: (847) 247-7400
Naperville: (630) 596-4610
Crystal Lake: (815) 477-8980
Bloomington: (309) 828-1990**

www.ancelglink.com



**Ancel
Glink** | DIAMOND BUSH
DiCianni
& KRAFTHEFER