

# **ILLINOIS MUNICIPAL LEAGUE**

## **100<sup>th</sup> Annual Conference**

### **October 17-19, 2013**

### **Chicago, Illinois**

**Ancel  
Glink**  
*Your Local Government  
Attorneys*

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**SATURDAY, OCTOBER 19, 2013**

**9:15 A.M. – 10:15 A.M.**

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## **HOW TO OPERATE AS A LEGISLATIVE BODY (QUESTIONS & ANSWERS)**

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**PRESENTERS:**

**STEWART H. DIAMOND**

**JULIE A. TAPPENDORF**

**TERRY BURGHARD (GMT CONSULTING)**

**Q1. Are there any restrictions relating to local procedural rules?**

A1. All local procedural rules must comply with the provisions of the Open Meetings Act and any other state statutes that preempt Home Rule Authority. Home rule authorities are free to adopt their own rule and procedure so long as they do not conflict with their established governmental form or unduly restrict the power of officials so as to be contrary to the form of government. Home rule municipalities can otherwise deviate from non-restrictive state statutes. Non-home rule governments cannot deviate from any statutory requirements.

**Q2. Can local procedural rules restrict the power of a political minority or outlier board or council members to have access to documents?**

A2. In recent years, courts have held that when they are carrying out their legislative duties, elected officials are entitled to access to needed documents. Documents containing factual data should not be hidden or only partially provided to outliers. Outliers also need to be given adequate time in debate.

**Q3. If the outlier is the mayor, what procedural restrictions can be placed upon his or her activities?**

A3. We believe that an ordinance limiting the power of the mayor or presiding officer to being only a non-participating member in legislative debate would likely be invalidated by a court.

**Q4. What methodology can be used with an outlier mayor who keeps making incorrect procedural rulings?**

A4. The most effective procedural rule that can be used with an outlier mayor is a motion to overrule the decision of the chair. Once made, seconded and passed, the presiding officer must follow the valid expression of will of the legislative body. His or her only realistic counteraction is a court suit.

**Q5. What can be done procedurally if the mayor ignores motions by the board?**

A5. Hopefully with the cooperation of a rational municipal clerk, the board can carry out its parliamentary responsibilities even with an objecting or inactive presiding officer.

**Q6. What happens if an outlier trustee or alderman continues to make motions, some of which have been recently rejected or not seconded?**

A6. In the absence of a second, the council or board can move to the next matter. If a motion previously rejected is seconded, the presiding officer can rule it out of order or a motion can be made to table the matter indefinitely. A better approach regarding public policy is probably to quickly debate the newly proposed and seconded motion and to defeat it. The public should be able to learn why the proposal isn't beneficial.

**Q7. What if outliers continue to call special meetings?**

A7. If special meetings are called strictly for political purposes, the quorum of the council or board may simply choose not to attend the meeting. No constructive action can take place if a majority of a quorum (i.e., 3 members of a 7 member board) but not a full quorum shows up since any semblance of a meeting would violate the Open Meetings Act.

**Q8. Must amendments to ordinances or motions be allowed?**

A8. Yes, but amendments to change the main motion need to receive a second and debate should take place on the amendment. If the amendment fails, then the main motion is still before the board.

**Q9. How many amendments must be allowed?**

A9. The presiding officer should allow a reasonable number of amendments if they are offered. A procedural rule can be adopted to require that proposed amendments be in writing and even that they be presented some period of time prior to the meeting. Even if the amendments are being presented by outliers and they are given an opportunity to present them, courts will uphold reasonably applied limitations.

**Q10. Can limitations be placed on the number of times or the amount of time that a member of the legislative body may speak to a particular matter?**

A10. Yes. Reasonable limitations, fairly and equitably applied will be upheld. Problems may occur if the rules have never been applied before and if they are unfairly put in place. The presiding officer can indicate that the rules will be enforced in advance of a divisive issue which is likely to take a substantial amount of time to debate.

**Q11. Can board members disclose to the public matters that have been discussed in closed session?**

A11. We do not yet have a clear understanding of the way to silence closed session leakers. Someday, a government will have the courage to seek an injunction in court to stop such disclosures under penalty of contempt.

**Q12. What procedural rules should a municipality adopt?**

A12. Even though Robert's Rules of Order were developed for larger deliberative bodies, which often do not meet as frequently as local governments, these rules provide acceptable standards. On the Ancel Glink website: [www.ancelglink.com](http://www.ancelglink.com), you can view Diamond's Simplified Rules of Order.

**Q13. If a governmental body does not have a rule of order relating to a particular matter, can it adopt one on the spot?**

A13. Probably yes. Although governments are not allowed to adopt actions not on their agenda, courts probably would allow them to deal with these controversies through the adoption of reasonable procedural rules. Such a rule can be put on the agenda and later ratified at a subsequent meeting.

**Q14. Who appoints the chairman and members of legislative committees?**

A14. In most municipalities, the mayor appoints the chairman and the members of committees. The legislative body by ordinance can take some or all of that power away from the mayor because committees are creatures of the legislative body. The trustees or alderman can, by ordinance, choose the type and composition of legislative committees.

**Q15. How effective are legislative committees in the procedural process?**

A15. Legislative committees can be very effective in shortening unnecessary discussions at council or board meetings based on reports and recommendations of effective committees. Public questions can often be more fully answered in a committee setting. Committees contain individuals with varying views so that some debates can take place at the committee level rather than at the council or board level. If committees do not make valuable recommendations, then they are of little use to the procedural process because all items in controversy will be argued again at the board or council level.

**Q16. Can public questions and comments be limited at committee or council or board meetings?**

A16. Illinois law now requires governmental bodies to allow an opportunity for public comment and questions seemingly at all meetings. A public meeting is different than a public hearing where a majority of the process may be public comments. At a public meeting, the total time for public comments can probably be limited to a period such as a half hour and individual comments can be limited to three minutes per speaker. The process must be fair and evenly applied and comments should be timed.

**Q17. Is the rule different for a public hearing?**

A17. Yes, at public hearings, the public must be given a greater opportunity to address the subject for which the hearing is called. If proponents or opponents of a matter give testimony such as at a plan commission meeting, members of the public are allowed to ask questions in addition to providing their own comments.

**Q18. Is there a procedural limit on how long meetings can last?**

A18. Regular or special meetings of a legislative body have no limit on how long they can last so long as they start at a reasonable hour and location.

**Q19. Can a public meeting be held outside of the municipality?**

A19. Yes, but not too far. Meetings of all governmental bodies must be “convenient and open to the public.” The Public Access Counselor (“PAC”), recently found that a fire protection district, which held a special meeting at the office of the fire protection district’s attorney about 26 miles from the district’s regular meeting location, at 9:00 a.m. on a week-day, discouraged attendance by persons who might otherwise have attended the district meeting. The meeting likely went immediately into closed session, and no action was probably taken. In spite of that, the PAC found the meeting to be improper. You can’t call meetings in a manner to run away from your political opponents.

**Q20. Can workshops assist a governmental body having difficulty with its procedures?**

A20. Yes, although the workshop must be held in open session unless it can be conducted under the auspices of a statewide organization of which the municipality is a member. Successful local officials from other communities or consultants such as professors or attorneys may assist in the process. Viewing video presentations of municipal governments with successful procedures may be helpful.

**Q21. Can the municipal clerk help towards effective legislative procedures?**

A21. Yes. Municipal Clerks of Illinois is an association which has substantial training programs for its members. A large part of that training program involves learning effective procedural rules and how to administer them. In some municipalities where a lawyer does not regularly attend meetings, the clerk is often called upon to procedurally keep the meeting going and to assure the statutes are complied with. Clerks should be encouraged to gain such training which ultimately can result in a certification.

**Q22. If a local government has a major dispute regarding procedural rules, how can it be resolved?**

A22. Clearly the government should first seek the opinion of its regular attorney. Sometimes a second independent opinion might be needed. Some communities have found that mediating disputes of this nature with a retired local judge can be helpful. If all else fails, the court system is available.

**Q23. How willing is the court system to resolve arguments over procedure?**

A23. Not very. The federal courts will almost never overturn a local decision regarding allege violation of state procedural rules unless it involves a federal constitutional issue. Most state courts will not overturn legislative actions based on a procedural error unless the clear rights of third parties should intervene.

**Q24. Can a local governmental body correct a procedural error?**

A24. Yes. Unless the error is extraordinarily wrong, most courts will allow a government, at a later meeting, to correct a procedural error and to validate the actions sought to be accomplished.

**Q25. Does the law require a second and third reading of ordinances, resolutions and motions?**

A25. There is no such requirement in the state statutes, although some have local rules in place that require this. Many communities have abolished this practice, however.

**Q26. Can a written ordinance be amended by oral changes at the meeting at which it is passed?**

A26. Yes. If the intent of the governmental body in passing the matter can be determined, there can be some modification made at the meeting and put into final form after the meeting which carries out the intent of the amendments. In the municipalities where the mayor or president has the veto power, the choice of that individual to approve the ordinance or to veto it also acts as a guarantee that the final version is the one intended to be adopted.

**Q27. Must a quorum of the public body always be present for a meeting to continue?**

A27. A quorum must be present for any action to be taken. If a board member leaves the room and there is no call for a quorum vote, the meeting can continue.

**Q28. Must an ordinance or resolution actually be read aloud prior to passage?**

A28. No, but the public must be made aware procedurally of the nature of the action being debated or acted upon. A motion to adopt Ordinance No. 1578 without indicating the title of the ordinance or its subject is inadequate.

**Q29. Are elected officials allowed to explain their votes during the roll call?**

A29. Effective governmental procedures should allow elected officials to explain their intended vote during the debate, prior to the vote, or at some portion of the meeting when officials are allowed to address the public. The roll call process should only involve ayes and nays.

**Q30. Are abstention votes counted?**

A30. The general rule is that abstentions are counted with the majority if the vote results in a winning side. By statute, some matters can only be adopted by a certain number of “affirmative votes”. In those cases, abstentions do not count.

**Q31. What does an elected official do if he or she has a conflict of interest?**

A31. The vote of some elected officials who, for example, have a hidden financial interest in a vote would invalidate the vote, and the action, even if the official abstained. Where the conflict is of a practical or moral nature and doesn’t involve the legality to vote, the person can abstain which generally does not count as a yes vote or a no vote.

## **DIAMOND'S 30-MINUTE -- 30 RULES OF ORDER**

Thomas Jefferson developed a set of Rules of Order for the United States Congress. In part, he based his draft on rules which had been used in the British Houses of Parliament. Rules of this nature were developed for large legislative bodies, which are usually continuously in session. Such rules are far too complicated, and do not deal with the procedural issues that generally occur in municipalities that have small legislative bodies, and frequently meet only once or twice a month. It is, therefore, not surprising that General Henry M. Roberts decided, in 1876, that it was time to develop another set of rules of procedure. Robert's Rules of Order have been widely used in Illinois, and across the Country. With regards to Illinois governments, however, Robert's rules and other similar 19<sup>th</sup> and 20<sup>th</sup> Century rules are simply unnecessarily complex for usage in most Illinois governmental bodies. The rules are lengthy, subject to interpretation and not easy to understand. In some governmental bodies, one or two members of the legislative body or the executive claim to be an expert on these rules, and lord over those who do not have the time or interest in becoming parliamentarians.

My experience is that in almost every case, the procedural issues and problems that occur at the legislative level of Illinois governmental bodies are very direct and simple. For that reason, I have prepared Diamond's 30-Minute -- 30 Rules of Order. It is my hope that these rules can be read through and put into use in 30 minutes or less. The Rules deal with all common problems and issues raised during a typical meeting of the Corporate Authorities of an Illinois governmental body. Rule 23, called "The Problem Solver," is intended to deal with unusual or difficult problems. It allows the governmental body to decide by majority vote of a quorum how to resolve any new problem not otherwise covered in these simple rules. The main purpose of a set of rules of order is to allow for fairness and certainty. A vote of the majority of a quorum, however, provided it is otherwise lawful, should prevail after brief and fair debate. In the one out of a hundred situations in which the other simple rules of order do not deal with a question before the legislative body, the Problem Solver will allow for a motion to be made to resolve the problem. Once seconded and with limited debate the legislative body can make a decision and move on. In most cases, that decision will be made very quickly.

Because the Illinois statutes contain few mandatory rules of order for any governmental body, almost any set of rules adopted, will be upheld by the court systems both State and Federal. I hope that your government will consider adopting Diamond's 30-Minute -- 30 Rules of Order. These Rules are intended to simplify the mysteries of procedures and should allow the legislative process to take place more quickly and with less drama. If you adopt these rules, I would be pleased to hear how they work in your community. The rules are available on our website: [www.ancelglink.com](http://www.ancelglink.com).

### **About the Firm:**

Ancel Glink, now in its 82<sup>nd</sup> year, is a law firm with offices in the Chicago Metropolitan Area and in Bloomington. The law firm employs approximately 35 attorneys who principally represent municipalities, park districts, school districts, townships, fire protection districts and intergovernmental entities. The law firm pioneered in the creation and the representation of governmental self-insurance pools and continues to represent many pools and other intergovernmental entities and to provide legal defense work for these clients.

### **About the Presenters:**

**Stewart H. Diamond** is a partner and shareholder with Ancel, Glink, Diamond, Bush, DiCianni and Krafthefer, P.C. He has represented dozens of Illinois governmental bodies as regular or special counsel. Stewart received his undergraduate and law school degrees from the University of Chicago and has taught law at The John Marshall Law School and Northwestern University Law School. He has served as the Chairman of the Local Governmental Section council of the Illinois State Bar Association. He has represented both home rule and non-home rule municipalities and he has been asked to speak in municipalities considering home rule referenda. Stewart is the primary editor of the Illinois Municipal Handbook. He has been named by Illinois Super Lawyers as one of the top attorneys representing cities and municipalities each year that distinction has been awarded. Stewart currently serves as the Village Attorney for the Village of University Park. He advises municipalities, counties, park districts, townships, fire protection districts, library districts, water agencies and many intergovernmental agencies.

**Julie Tappendorf** is a partner with Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer, P.C. in Chicago. She practices in the area of local government, land use, and zoning litigation. Julie is a frequent speaker at local and national conferences on issues such as social networking by government bodies, sunshine laws, ethics, and a variety of land use topics. Julie has also published on a variety of local government issues, including a land use casebook, books on development agreements and exactions, and chapters and articles on social media, annexation and subdivisions, and regulating distressed properties. The American Bar Association recently published a book she co-authored titled Social Media and Local Governments: Navigating the New Public Square (ABA Section of State & Local Government, 2013).

Julie currently serves as Village Attorney for Gilberts, Lindenhurst, and Wadsworth and counsel to the Glencoe Police Pension Fund. She is an Adjunct Professor at The John Marshall Law School. Julie earned her J.D. from the University of Hawaii and her B.A. from Illinois State University. Prior to her law career, she served in the U.S. Army, Military Intelligence Branch, as a Korean cryptologic-linguist. Julie is also the author and moderator of the local government blog, Municipal Minute, and the social media blog, Strategically Social.



**Terry Burghard** has been involved in the Illinois municipal market for the past 40 years.

After serving in the Marine Corps, Terry graduated from Northern Illinois University with a Masters Degree in Political Science. He went on to serve as manager in the Village of Homewood, Mount Prospect, and as administrator in the Village of Plainfield. Most recently, he was interim City Manager in Glen Ellyn.

On the private side, Mr. Burghard has been a managing partner in a real estate development company, established a public management subsidiary for a leading area engineering firm, and currently is a principal with GMT LLC, Flossmoor, Illinois. GMT is a management consulting firm focusing on service delivery to public and private clients. GMT specializes in the areas of economic development, organizational and program management assessment and the implementation of policies to assist in the enhancement of organizational change.

GMT emphasizes a reality-based approach to identifying and addressing issues affecting successful project and program outcomes for public officials as well as opportunities for long-term private investment.