

COUNCIL WARS

IML Annual Conference
Saturday, September 20, 2014
1:30 p.m. - 4:00 p.m.

PRESENTERS

- **ROBERT K. BUSH**
- **STEWART H. DIAMOND**
- **KERI-LYN J. KRAFTHEFER**
- **STEVEN D. MAHRT**
- **DERKE J. PRICE**
- **JULIE A. TAPPENDORF**

Q. 1

- We have a vacancy in the office of Trustee. The mayor presented Larry Loudmouth as a potential candidate and we voted him down. Then he presented Ginny Gossiper. We don't like her either. What can we do?

A. 1

- You can vote her down as well but if you vote down two candidates presented by the mayor, the mayor may make a temporary appointment of either of the people who were appointed but failed to receive the advice and consent of the corporate authorities.

Q. 2

- Can a Council limit the period of time that an Alderman or Mayor can speak?

A. 2

- Yes, as long as the period of time is reasonable and all parties get to participate.

Q. 3

- What can a Council do if a member breaches the confidentiality of the closed session and passes data on to other parties including the “other side” on issues discussed in closed session?

A. 3

- Not much, although the Council could censure that individual by a motion or resolution. It can file an injunction lawsuit and can report the action, if properly documented, to the local State's attorney.

Q. 4

- Our Board thinks the police chief candidate that the mayor presented for confirmation is incompetent. Can we pick our own?

A. 4

- No. The mayor has the option to appoint appointed officers, subject to the advice and consent of the Board. If the Board withholds consent, the Mayor can make a temporary appointment.

Q. 5

- Can several aldermen leave the meeting to block the vote on an issue if they don't like the way it is going?

A. 5

- Yes. If enough aldermen or trustees leave, resulting in less than a quorum, the vote will be “blocked” because the meeting will have to stop because there is no longer a quorum.

Q. 6

- Who sets the agenda for Board meetings?

A. 6

- In most municipalities, the Mayor and the Clerk establish the Agenda. The Board can establish other fair methods by ordinance.

Q. 7

- Can Trustees schedule a special meeting and exclude the mayor (who doesn't vote anyway) so long as a quorum of the Board is in attendance at the special meeting?

A. 7

- No. On a 7 member Board, 3 Trustees have the authority to schedule a special meeting, and 4 Trustees constitute a quorum for purposes of transacting public business. However, a Board consists of the 6 trustees and the mayor. Therefore, the Trustees must invite all 7 members of the Board and permit all 7 members to attend the special meeting.

Q. 8

- Must the Clerk or Mayor publicly describe items on the consent agenda prior to the vote on the consent agenda?

A. 8

- Probably. A recent PAC opinion held invalid an action taken by a municipality because the agenda item was not publicly described prior to the vote.

Q. 9

- Are citizens allowed to speak at some point at every public meeting?

A. 9

- Maybe. Although the actual language of the statutes would not appear to require it, the Attorney General has issued a number of opinions stating that public bodies must provide public comment at every meeting.

Q. 10

- Can a member of the public demand an answer to a question from a board member or staff member during public comment?

A. 10

- No. Members of the public have the right to address members of the public body, but they have no right to interrogate them or municipal staff members, and the PAC agreed in recent opinions.

Q. 11

- Can a member of the public effectuate a citizen's arrest of the entire Council or Board for an Open Meetings Act violation?

A. 11

- Yes. This rarely used mechanism is starting to gain attention, so make sure you comply with the Open Meetings Act.

Q. 12

- Can a public body's rules on public comment specify that most comments are fine, but any comments that are negative or critical of the public body should be submitted in writing to the Mayor during regular office hours?

A. 12

- No. Public comment rules are not reasonable when they attempt to regulate the content of the speech.

Q. 13

- Can a public body remove a member of the public from a meeting for being disruptive?

A. 13

- Yes. The Attorney General found no violation of the OMA where a public body removed a member of the public for disruptive behavior for a meeting. Similarly, the AG found no violation where a member of the public body interrupted a member of the public during public comment.

Q. 14

- Does the Open Meetings Act require a public body to adopt rules for public comment?

A. 14

- Maybe. The Attorney General has said yes, in a number of non-binding opinions. In fact, the PAC has stated that even subsidiary bodies must establish rules of their own.

Q. 15

- Can a municipality remove negative comments on a municipal Facebook page?

A. 15

- It depends on the nature of the comments, and whether they might be seen as protected speech.

Q. 16

- What can we do if the Clerk is absent or refuses to provide the proper notices for a public meeting?

A. 16

- The individuals calling the meeting can themselves undertake the task of providing notices to the public, the elected officials and the press.

Q. 17

- The Clerk appears to always be "losing" Village records, especially when the Trustees want to see them. The Board votes to take away custodial power from the clerk for all Village records, passing that responsibility on to the manager. Can they do this?

A. 17

- Probably. The Village Board can take the power away from the clerk as custodian of Village records, except those records that the Clerk is required by statute to maintain.

Q. 18

- Can a Village Clerk be prevented from attending closed session meetings of the City Council?

A. 18

- No, except in a situation in which the Clerk is involved in litigation against the municipality and that litigation is the subject of the closed session. The statutes allow the Clerk to attend all meetings.

Q. 19

- How many times can a matter that has already been decided be brought back before legislative body?

A. 19

- In general, items already decided should be ruled out of order by the presiding officer unless new facts have emerged. One way to address this is through a “motion to reconsider” – when it is defeated, it will end consideration of a matter.

Q. 20

- In a manager form of government, the manager appoints John Smith as police chief, but the Council would have preferred Jane Doe. What options do we have for getting a different police chief?

A. 20

- In a manager form of government, the manager possesses the power of appointment, so the only option that the Council has for replacing the police chief would be to replace the manager.

Q. 21

- In a manager form of government, the manager does not let the mayor look at Village records, except by appointment. Does he have the power to do this?

A. 21

- No, the manager must give the mayor and legislators access to the records they require to perform their executive and legislative functions.

Q. 22

- Is it illegal to hit “reply all” when responding to emails sent among a majority of a quorum of a public body?

A. 22

- No, it is not illegal. However, the repeated use of “reply all” is generally discouraged because contemporaneous exchanges of communication between the majority of a quorum grow closer to falling within the definition of “meeting” under the Open Meetings Act.

Q. 23

- A former village employee is now an alderman. He still has a workers' compensation case pending against the City. Can he sit in on executive session when his case is discussed?

A. 23

- No. It is ongoing litigation, and pursuant to attorney/client privilege, he is not entitled to look at any defense reports nor listen to any discussions regarding ongoing litigation involving his case. He should step out of executive session for the time that his case is being discussed.

Q. 24

- The Council holds a special meeting to adopt an ordinance authorizing residents to raise chickens in their backyards. 5 aldermen were present at that meeting. The 6th alderman, who was not present, is a vegan and wants the issue to be reconsidered. He requests a special meeting to reconsider the ordinance. 4 aldermen and the Mayor attend the special meeting and vote to rescind the ordinance. Is the vote to rescind effective?

A. 24

- No, under Section 3.1-40-55 of the Illinois Municipal Code, no vote of a city council may be rescinded at a special meeting unless at least as many Aldermen were present at the special meeting as were present when the original vote was taken.

Q. 25

- How can we limit debate?

A. 25

- Legislative bodies can limit debate by a motion and second to table the matter either to a time certain or indefinitely. Motions to table are usually non-debatable. In the alternative, a member of the public body can make a motion (requiring a second) to “end debate” or “call the question.” The courts will not allow debate to be ended in this manner if the opportunity for the expression of the views of some Board members has been suppressed.

Q. 26

- Whose job is it to prepare the minutes of a public meeting?

A. 26

- The statute does not direct anyone to carry out this duty. In most communities, the Clerk performs this function. The Board can assign the preparation of minutes to a recording secretary or other person.

Q. 27

- What if the Council disagrees with the minutes prepared by the Clerk?

A. 27

- The Council members can vote to amend the minutes before approval or create their own set of minutes to be presented for approval. The Clerk is required to keep the minutes that the Board or Council approves.

Q. 28

- What should we do if more citizens show up as spectators than our meeting room will accommodate?

A. 28

- The municipality should make an effort to find another location and transfer the site of the meeting, or, if possible, a video transmission of the meeting should be available electronically in other available rooms.

Q. 29

- Can the Board discuss matters at some length, even if there is no motion on the floor?

A. 29

- Probably. Many municipalities allow discussion which can assist in the formation of a motion. The presiding officer may wish to allow such discussion to take place until it is clear that the discussion is non-productive or should have resulted in the presentation of a motion.

Q. 30

- Must the maker and seconder of a motion vote in favor of the motion when the vote is taken?

A. 30

- It depends. Some rules of order require this to take place. If either party changes his or her mind, another approach is to withdraw the motion or the second.

Q. 31

- What happens if the person who seconded a motion withdraws that second?

A. 31

- Under most rules of order, the maker of the motion can seek a substitute second.

Q. 32

- What happens if the maker of the motion withdraws the motion?

A. 32

- Under most rules of order, the motion is no longer on the floor, although the seconder may choose to renew the motion and seek a second.

Q. 33

- Can our Board adopt its own rules of parliamentary procedure?

A. 33

- Yes, so long as those rules do not contravene pre-emptive provisions of State law.

Q. 34

- If we have limited the time for public comment and not all members of the public have been able to speak, how can these citizens present their views?

A. 34

- Some governmental bodies adopt a rule that permits citizens whose comments are not received at a meeting to present their questions or comments in writing. Another approach is to let them speak first at the next meeting.

Q. 35

- Is a public hearing different than a public meeting?

A. 35

- Yes. At a public hearing, presentations are generally made by the proponent or applicant and public participants must be given broad and lengthy opportunities to present their views. That is the principal purpose of a public hearing.

Q. 36

- Are citizens allowed to ask questions at a public hearing?

A. 36

- Yes. In addition, courts have allowed limited cross-examination of witnesses who present testimony.

Q. 37

- Can lawyers represent citizens' groups at public hearings?

A. 37

- Yes. Those persons conducting public hearings should encourage groups with similar views to select a single person to represent their position.

Q. 38

- Can we restrict the time allowed for a public hearing?

A. 38

- Probably not. Courts have overturned several actions of governmental bodies because the bodies made efforts to restrict public participation at public hearings. The time allowed for individual comments can be limited, but, if necessary, public hearings should be recessed to another day if it appears likely that all individuals wishing to present evidence or ask questions were denied an opportunity to do so.

Q. 39

- What should we do if there is an error in a public notice?

A. 39

- If the notice was required to be published (like a public hearing), the improperly-scheduled meeting probably needs to be cancelled. If publication is not required, then the notice can be corrected 48 hours before the meeting.

Q. 40

- Do we need to publish notices in English and in another language?

A. 40

- A governmental body is certainly free to publish notices in English and in another language, but, unless required to do so by statute, the English notice will suffice.

Q. 41

- Must every motion be seconded?

A. 41

- In order to prevent legislative time from being take up by a matter that only one member is interested in, most rules of order require all motions to be seconded.

Q. 42

- How can a Council member raise a matter of interest if the motion is not seconded?

A. 42

- Most governmental bodies allow some period of time at each meeting for each elected Council member, including the Mayor, to raise issues important to them, such as during their reports. That is the period of time when such matters can be brought to the attention of the Council.

Q. 43

- Can we adjourn a meeting to another date without another notice?

A. 43

- Yes. If the Board establishes the time and place of the next meeting date, and announces such at the initial meeting, no new notice is required to be posted. The press must be notified of rescheduled or reconvened meetings.

Q. 44

- What items can we act on at a regular meeting?

A. 44

- The only items that you can take final action on at a regular meeting of a public body are those which are specified on the agenda and which are described in adequate detail during a discussion before a vote is taken.

Q. 45

- What items can be discussed and acted on at a special meeting?

A. 45

- The only items that you can discuss and act on are those items that are listed on the special meeting agenda and adequately described at the meeting prior to action being taken. You cannot bring us new items at a special meeting even for discussion purposes. The same holds true for emergency meetings.

Q. 46

- How much notice must we give prior to an emergency meeting?

A. 46

- Emergency meetings can be called on as much notice as is reasonably possible due to the emergency. The courts will invalidate meetings and actions taken at emergency meetings called for fictitious or contrived emergency purposes. The municipality must give statutory notice of emergency meetings to the press.

Q. 47

- Who can call a public meeting?

A. 47

- By statute, the Mayor or any three Aldermen may call a public meeting. Following statutory procedure, they can do it on their own or through the office of the Clerk.

Q. 48

- Are citizens allowed to speak about every issue at the time it comes before the Board?

A. 48

- No. The time for citizens' questions and comments can be limited as long as the rule is fairly implemented.

Q. 49

- When must we notify the press of meetings?

A. 49

- The statute requires all public media, which wishes to receive notice of public meetings, to provide that request each year and to provide a location or phone number within the area of the governmental body where the notice can be sent. Most governments provide statutory notice to the press even in the absence of the annual request.

Q. 50

- What if a Clerk believes that the minutes are inaccurate?

A. 50

- Since the Clerk is typically the keeper of the municipal minutes, the Clerk can file an affidavit with the minutes, expressing the Clerk's disagreement with the approved text.

Q. 51

- Is the Clerk the keeper of all municipal records?

A. 51

- The Clerk is to keep those records except those which the Board has been directed to be kept by some other person. If the Board takes this action, the Clerk is absolved regarding the retention of the records so transferred.

Q. 52

- What should we do if the tape machine or other device for recording breaks during a closed session?

A. 52

- You must recess the meeting until some method of recording the closed session can be worked out.

Q. 53

- Can the Council or Board designate a deputy clerk for purposes of accepting election filings when the clerk will be absent?

A. 53

- No. However the Council can permit the clerk to designate a deputy clerk. The selection of the deputy clerk is always up to the municipal clerk.

Q. 54

- Can a public body give public records to elected officials without requiring a Freedom of Information Act request, but require members of the public to file Freedom of Information Act requests for the same information?

A. 54

- Yes. Members of the legislative body need access to public records on a regular basis simply to perform their elected functions. There is nothing requiring a public body to use FOIA requests to submit records to public officials. However, we suggest that when it comes to documents related to the election – nomination papers, etc., that elected officials and non-elected officials be treated the same. Either they all get the information without filing a FOIA request, or they all are required to file a FOIA request.

Q. 55

- What can we discuss at a regular meeting?

A. 55

- You can discuss anything at a regular meeting, and you may also add new items for discussion to the agenda.

QUESTIONS?

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