

**105th Annual Educational Conference  
of the  
Township Officials of Illinois  
November 11-13, 2012  
Prairie Capital Convention Center  
Springfield, Illinois**

*Your Local Government  
Attorneys*

**MONDAY, NOVEMBER 12, 2012**

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***TOWNSHIP BOARD MEETING  
BOOT CAMP***

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**PORT PCCC — LOWER DECK**

**ROOM B4**

**3:15 P.M.—4:45 P.M.**

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**PRESENTERS:**

**KERI-LYN J. KRAFTHEFER  
TIFFANY NELSON-JAWORSKI**

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

## **TOWNSHIP BOARD MEETING BOOT CAMP**

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

#### **1. Notice**

The Open Meetings Act requires notice of all meetings, and notice must contain an agenda. There are different notice requirements for regular board meetings, special board meetings, emergency meetings, and annual town meetings. If you are the person in charge of posting and distributing the notices, make sure you know the different requirements.

#### **2. Minutes**

The Open Meetings Act requires that Townships keep minutes of all meetings, whether open or closed. This requirement also pertains to committees. Section 2.06 of the Open Meetings Act specifies that minutes must include: (1) the date, time and place of the meeting; (2) the members of the public body recorded as either present or absent and how they were present; (3) a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken.

#### **3. Agendas**

Every meeting notice must contain an agenda. Townships cannot take action on items that are not listed on the agenda, but items may be discussed, for example under “new business” without them being specified on an agenda.

#### **4. Public Comment**

The Open Meetings Act was recently amended to include Section 2.06(g). That section states that, “Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body.” Note that this does NOT say that a Township must permit public comment at every board meeting. However, the Public Access Counselor’s office has been construing this section to require that the public be able to address public officials at board meetings.

#### **5. Remote Participation**

Section 7 of the Open Meetings Act specifies that a member of the township board may participate remotely in a meeting if a majority of the board is present at the meeting, the person is absent because of a personal illness or disability, employment purposes or township business, or a family or other emergency. Absences caused by vacation do not qualify. In order to use this process, a township must adopt an ordinance or rule allowing for remote participation.

## 6. Closed Sessions

Township Boards may only go into closed session to discuss items that are permitted to be discussed in closed session under Section 2(c) of the Open Meetings Act. In the motion to go into closed session, you must specify which exception you are using. There is a common misconception that you can never vote in closed session. That is not what the Open Meetings Act says. It actually says that you cannot take “final action” in closed session.

## 7. Training

Section 1.05 of the Open Meetings Act requires that all elected or appointed township officials must complete the electronic training curriculum developed and administered by the Public Access Counselor regarding the Open Meetings Act. Once the training is successfully completed, the official must file a copy of the certificate of completion with the Township. The failure of one or more members of a public body to complete the training required by this Section does not affect the validity of an action taken by the public body.

## 8. Web Site Posting Requirements

As technology increases, so do transparency requirements related to technology. Section 2.02 of the Open Meetings Act requires that a township that has a website maintained by full-time staff must also post the notice and agenda for its regular meetings on its website. Regular meeting notices and agendas that are posted on the website must remain posted continuously for at least forty-eight (48) hours on the website until the regular meeting is concluded. In addition, townships must post the annual schedule of meetings on the website. Townships should also post notices and agendas of special, reconvened and rescheduled meetings on the website. In addition, regular meeting minutes must be posted on the website within 10 days after they are approved, and must remain posted for at least 60 days after their initial posting per Section 2.06 of the Open Meetings Act.

## 9. Voting

Under Section 1.02 of the Open Meetings Act, in order for any motion, ordinance or resolution to pass, it must receive the affirmative vote of three members of the Board.

## 10. Recording Meetings

Section 2.05 of the Open Meetings Act specifies that any person may record the proceedings of a public meeting by tape, film, or other means. The township may adopt reasonable rules governing the right to make such recordings. Townships may opt to record their open meetings, and must make an audio recording of all their closed sessions.

## **BOARD vs. SUPERVISOR**

1. Who controls what appears on the agenda?

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.

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

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.

3. When can we call an emergency meeting?

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.

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

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

5. Can the Supervisor veto a legislative action?

No. Supervisors have no veto power.

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

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

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

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.

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

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.

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

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.

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

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.

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

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

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

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**

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

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

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

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

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

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.

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

We suggest the use of “time out.”

## **THE CLERK vs. EVERYBODY**

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

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.

18. I am the Township Clerk. Board members want me to change my minutes to include things that they never said. Can they do that?

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.

19. I am an elected Clerk, paid on a part-time basis, and the Board wants me to be at the Township building every day. Can they make me?

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.

20. Can a Township Clerk, on his or her own, determine that nominating petitions are invalid?

Yes. If the Clerk can tell by the face of the petitions that they are invalid, the Clerk can unilaterally decide not to send them forward to an election authority. The Clerk should notify the candidate that she is taking this action. Where there is any question about the sufficiency of the petitions, a disqualification process should be initiated by a private citizen and a decision made by an Electoral Board.

21. Must the Township Clerk record minutes of all meetings?

In most Townships, the Clerk, by tradition or ordinance, takes and keeps the minutes of all regular or special meetings, along with the tapes of closed sessions. The Clerk, by statute, is entitled to attend all meetings of the Board, and may not be excluded unless a conflict of interest exists such as a lawsuit by the Clerk against the Township. Clerks generally are not required to record minutes of township committees, but the committees must take minutes. By law, the Clerk is the keeper of all records except those for which the possession has been specifically assigned to others.

#### **THE TOWNSHIP vs. THE PRESS**

22. The newspaper keeps writing unfair stories about the Board. As Supervisor, what can I do?

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.

23. I am the Supervisor. One of the Trustees called me a crook during a public meeting and the newspaper printed his comments. What can I do?

You 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.

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

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.

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

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.

26. As a Clerk, do I have to notify a small newspaper in the next town of our meetings? That silly paper strongly supports the Supervisor's opponent in the next election.

You shouldn't base the submission of notices on the political views of the newspaper. Interestingly enough, however, a governmental body is only required to supply notices to "any news media that has filed an annual request for such notice." (5 ILCS 120/2.02) Of course, public hearing notices must be published in specific newspapers per statute.

27. In our Township, the Board members voted to reduce the Supervisor's salary because she doesn't come to meetings. Can they do that?

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**

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

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.

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

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.

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

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**

31. 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?

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.

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

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 village finances and budgetary constraints.

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

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**

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

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.

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

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

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

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.

37. Can the Supervisor only allow the first ten speakers who sign up to speak at a public meeting?

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.

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

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

39. Can the Supervisor permit a representative for a large group of people to speak for additional time?

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

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

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.

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

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.

42. Is it a violation of the Open Meetings Act for elected officials to discuss public business about their Township at a TOI conference?

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?

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

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.

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

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**

45. 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?

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.

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

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.

47. 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.

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**

1. Don't confront people at board meetings with questions that they could have been asked prior to the meeting.
2. Don't spring information on the Board for the first time at a meeting.
3. Don't reject ideas you didn't think of first.

4. Use an egg-timer to delay immediately sending nasty e-mails.
5. Write out and read your response to controversial issues and give copies of your carefully-crafted words to the press.
6. 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."
7. Praise your natural opponent when that individual surprises with a cogent idea of well thought-out position.
8. Try to creatively expand your power base.
9. Don't let anger or sarcasm use you.
10. Really listen to suggestions from people you respect.
11. Crush your opponent only when to do so really helps your cause, and when you can actually accomplish the crushing effectively.
12. Newspaper editorials or letters to the editor demanding that officials work together.
13. Open workshops with consultants to discuss Township problems and goals.
14. Workshops in closed session with representatives of the Township Officials of Illinois.
15. The normal election process.
16. Resignation because of frustration.