



ARMED & READY!

Legal tools that Municipal Clerks need
to conceal and carry with them

**Municipal Clerks of Illinois
Summer Seminar – Districts I, II & III
July 19, 2013**

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Legal updates and info about:

- Keri-Lyn's & Rob's important info you can't live without;
- Freedom of Information Act;
- Open Meetings Act;
- Election Law matters for Clerks; and
- Illinois' new Concealed-Carry Gun Law



The Freedom of Information Act:

It does not necessarily mean “freedom” for municipal clerks

- In many municipalities, the Clerk also wears the hat of the local “Freedom of Information Officer”
- Even in places with separate FOIA officers, the Clerk, as the official keeper of municipal records, always plays an important role in responding to FOIA requests



FOIA Officer Training: When, Where & Will I Pass the Test?

- Every public body, including all cities, villages and towns, must designate one or more officials or employees to serve as a “Freedom of Information officer.” 5 ILCS 140/3.5(a)
- All FOIA officers must complete an electronic training program within 30 days of assuming that position and annually thereafter.
- The online training program is available on the Illinois attorney general’s Website at:
www.IllinoisAttorneyGeneral.gov.
- The training includes a test, and **yes, you will pass the test.**



What is a FOIA Directory, and What Else Must My Municipality Publish?

- Every public body must “prominently display” at each of its administrative offices, and make available for inspection and copying, certain FOIA information commonly known as a “FOIA Directory.” 5 ILCS 140/4. The Directory must include:
 - A description of the methods whereby the public may request information and records pursuant to FOIA;**
 - The name(s) of the FOIA officer(s);**
 - The address(es) where FOIA requests should be directed; and**
 - The fees charged pursuant to the FOIA.**
- This information must also be published on the municipality’s Website, if it has one.



What is a FOIA Directory, and What Else Must My Municipality Publish?

- Additionally, every public body shall maintain and make available to the public a “reasonably current list” of all types or categories of records under its control.
- The public body must also maintain and make available to the public a description of the manner in which public records are stored electronically and how that data may be obtained “in a form comprehensible to persons lacking knowledge of computer language or printout format.” 5 ILCS 145/5.



What is a FOIA Directory, and What Else Must My Municipality Publish?

- In addition to the FOIA directory, each unit of government must also publish a “brief description of itself” that must include the following:
 - A summary of the public body’s purpose;
 - A block diagram of its functional subdivisions;
 - The total amount of its operating budget;
 - The number and location of all offices;
 - The approximate number of full and part-time employees;
 - The identification and members of any board, commission, committee or council that acts in an advisory capacity to the public body, or that has control over its policies or procedures, or to which the public body is answerable for its operations (5 ILCS 140.4(a)).



How Does a Municipality Handle and Respond to FOIA Requests?

- Upon receiving a FOIA request, the FOIA officer must:

Note the date the FOIA request was received;
Compute the day upon which the response period will expire, and note that date on the written request;

Maintain a paper or electronic copy of the written request, including all documents submitted with the request, until the request has been complied with or denied; and

Create a file for the retention of the original request, a copy of the response, a record of and copies of written communications with the requester



Responding to FOIA Requests: Time Period for Issuing the Response

- A public body must respond to all FOIA requests within five (5) business days, whether said response (a) provides all requested documents, (b) is a full or partial denial of the request, or (c) is a notice of an extension of time to respond for any of the following reasons:
 - (i) The records are **stored at another location**;
 - (ii) The request requires the collection of a **substantial number of records**;
 - (iii) The request is **categorical** and requires an **extensive search** for responsive records;
 - (iv) The requested records have **not been located** after a routine search;
 - (v) The requested records require **examination by qualified personnel** to determine whether any exemptions apply;
 - (vi) The request is **unduly burdensome**; or
 - (vii) **Consultation with another public body** having a substantial interest in the subject matter of the request is needed.



Responding to FOIA Requests: Time Period for Issuing the Response

- The FOIA requester and the public body may agree in writing to extend the time beyond the statutory deadline to a date agreed upon by the parties
- Failure to notify a FOIA requester of any extension of time or denial will be deemed to be a denial of the request
- There are special exceptions to the response period for requests made for commercial purposes (5 ILCS 140/3.1) and recurrent requesters (5 ILCS 140/3.2).



What is Included in a FOIA Response?

- As noted, a written response must be provided to the FOIA requester within five business days. The request must include:
 - All responsive records in their entirety, subject to redactions permitted by the statutory exemptions;
 - If the response is a full or partial denial, an explanation of the reasons for the denial and a reference to the exemption(s) claimed; and/or
 - If the response includes an extension of time, the reason(s) for said extension and the anticipated date of compliance



What is included in a FOIA response?

- The FOIA expressly contains a stated public policy of openness and transparency in government, such that all records are deemed to be public unless they fall within one of the 26 or so exemptions in section 7 of the Act, or based on other statutory exemptions described in section 7.5 of the Act.
- Therefore, responsive records should generally be provided in their entirety, including information in those records that is not relevant to the request.
- Partial denials, or redactions of information on records otherwise provided in the response, must be strictly limited to the exemptions expressly described in the Act.
- Records stored in an electronic format should be provided to the requester in the format specified in the request, if feasible. If not feasible, the records should be produced in the electronic format in which they are stored.



So, what is a “Public Record”?

- **"Public records"** means **all records**, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials **pertaining to the transaction of public business**, regardless of physical form or characteristics, **having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body.**



Can We Charge Fees for the Copies We Produce for a FOIA Response?

- A public body may not charge any fee for the costs of any search for and review of records, or other personnel costs, except for commercial requests.
- A public body may charge fees for creating *paper* copies of documents. Such fees may not exceed 15 cents per page for black-and-white copies, and may not be charged for the first 50 pages.
- Copies provided in color, on paper other than letter or legal size, or in electronic format may include a fee for the actual cost of such copies.
- A fee of no more than \$1 may be charged for certification of a copied document.



Additional Fees for Commercial FOIA Requests

- When responding to commercial requests, the public body may charge a fee of up to \$10 for each hour spent by personnel in searching for or retrieving a requested record, but no such fee may be charge for the first eight hours.
- An additional fee may be charged for the actual cost of retrieving and transporting public records from an off-site storage facility.
- When these fees are assessed to commercial requesters, the written response must include an accounting of all such fees, costs and personnel labor hours. 5 ILCS 140/6(f)



Beware the Public Access Counselor: Violate FOIA and the PAC-Man Will Eat You Alive!

- A 2010 amendment to the FOIA established the an agency known as the Public Access Counselor (“PAC”), which is a branch of the attorney general’s office charged with the duty of enforcing the FOIA and the Open Meetings Act.
- Under that 2010 amendment, a public body was required to obtain a “pre-approval letter from the PAC before it could deny a FOIA request based on the “personal information” exemption. However, the need to obtain pre-approval letters was eliminated from the Act in a subsequent amendment in 2011.
- However, the PAC still has strong FOIA and OMA enforcement powers, and issues binding opinions any time a requester files a meritorious request for PAC review.



PAC Opinions:

How to Avoid Bad Ones by Requesting Good Ones

- Although the FOIA no longer requires pre-approval letters from the PAC, and despite most of the PAC's binding opinions going against the public bodies, it still possesses the authority to issue non-binding advisory opinions on behalf of the public bodies.
- When requested in writing by the head of the public body (*i.e.*, a mayor or president) or its attorney (*i.e.*, Adam Lasker), the PAC will assist with an analysis of the FOIA request and the documents that might be responsive.
- When a public body obtains an advisory PAC opinion and response to the FOIA requester in good-faith reliance on the PAC's opinion, the public body is not liable for any penalties under the ACT. 5 ILCS 40/9.5(h)

PAC Opinion 11-006:

AFFIRMED by Appellate Court on July 16, 2013

- **TEXT MESSAGES** ARE SUBJECT TO FOIA!
- Champaign mayor and aldermen were texting each other in a public meeting
- Texts on personal devices NOT exempt if related to public business
- Circuit court's order was stayed pending appeal, but now if the City refuses to provide the texts, it can be sanctioned up to \$2,500 - \$5,000 *for each occurrence*
- *Champaign v. Wade, et al.*, 2013 IL App (4th) 120662



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PAC Opinion 10-02

Cannot charge fees for copies of documents made for internal file.



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PAC Opinion 10-04

Settlement agreements are subject to FOIA even if procured by an insurance company and **in the insurance company's possession and control.**



PAC Opinion 11-001

- Chicago Police Department
- **Arrest Records** – NOT exempt



PAC Opinion 11-002

- Chicago Police Department
- **Number of police officers** assigned to specific areas are not exempt



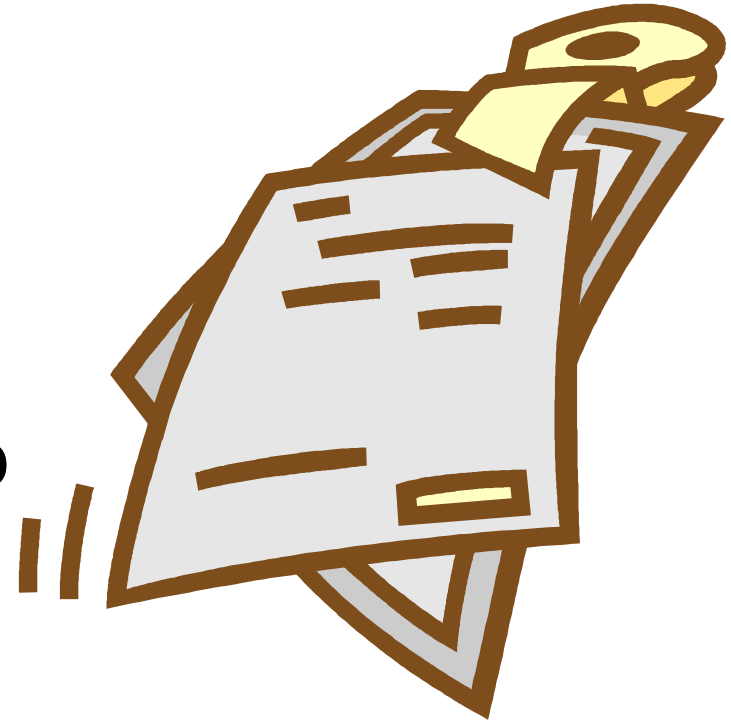


PAC Opinion 11-003

- University of Illinois
- **Unduly Burdensome Requests**
- A request cannot be considered unduly burdensome unless the records were previously produced or unless the request is properly denied

PAC Opinion 11-004

- City of Des Plaines
- **Settlement agreements** – not exempt under self-insurance claim info exemption





PAC Opinion 11-005

- Department of Central Management Services
- **Workers compensation records**
- Individual reports containing nerve conduction velocity results were not “proprietary insurance or risk management documents” so not exempt.

PAC Opinion 11-007

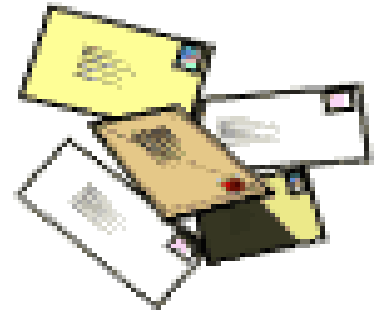
- Illinois Department of Natural Resources
- Offer to view documents on microfiche insufficient; **copies must be provided.**



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PAC Opinion 12-001



- Village of Smithfield
- Improper classification of husband and wife as **recurrent requesters**
- Cannot add requests of husband and wife together when determining whether they qualify as “recurrent requesters”

PAC Opinion 12-002

- Chicago Board of Education
- Public bodies **must respond** to FOIA requests **within 5 business days**



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PAC Opinion 12-003

- Chicago State University
- **Names of students and graduation information** are not exempt



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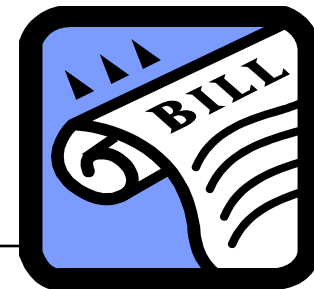
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PAC Opinion 12-004

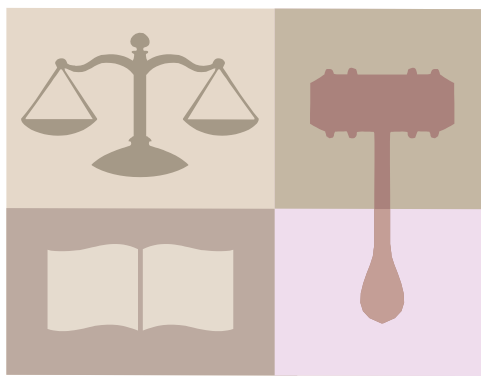
- Village of Smithfield
- FOIA request should have been **personally accepted** at a Village Board meeting



PAC Opinion 12-005



- O'Fallon Central School District #104
- Disclosure of **Invoices for Legal Services**
- Some info may be redacted, but school should have provided time worked on projects and hourly rates



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PAC Opinion 12-007

- Ignore the PAC at your own risk!
- Not responding will result in a **binding opinion** against you and your municipality, potential **court action** and possible **\$anctions**



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PAC Opinion 12-009

Surprise
Bonus!

- Cannot redact information unless exempt
- **Ancillary information** in document must be disclosed
- Bonus information for requester

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Non-PAC Opinions – Take it to Court

- **Late disclosure** but prior to judgment = no attorney's fee award
- However, delayed compliance can still result in a fine



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Special Considerations (Emails):

- What if the e-mail is on a village computer or account?
 - If it is about village business, it is a public record
 - If it is not about village business, it is not a public record



Special Considerations (Emails):

- What if the e-mail is on my home computer?
 - If it is about village business, it is a public record
 - If it is not about village business, it is not a public record





Special Considerations (Texts):

- What if I text message from my village-issued or personal cell phone?
 - If it is about village business, it is a public record
 - If it is not about village business, it is not a public record
 - See binding PAC opinion from November 15, 2012, upheld by the Appellate Court in *City of Champaign v. Wade, et al.*, 2013 IL App (4th) 120662



OPEN MEETINGS ACT:

Be Wary of Unofficial Board Meetings!

- Any gathering may be subject to the Open Meetings Act, if:
 - A majority of a quorum is present, and
 - They discuss public business
 - The OMA is located at 5 ILCS 120/1, *et seq.*

Mandatory OMA Training

(Everyone must file certificates with the Clerk)

- **For employees** and officers not a member of the public body:
 - OMA training required within 30 days
 - Annual training thereafter

- **For officers** of the public body:
 - OMA training required within 90 days of oath or assuming duties of the office
 - Annual training *not* required




All kinds of “meetings” are subject to the Open Meetings Act

“any gathering, whether in person or by video or electronic conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous communication, **of a majority of a quorum** of the members of the public body held **for the purpose of discussing public business”**

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We have informal committee meetings. Which requirements do we have to follow?

- All of the requirements!

- Notice
- Agenda
- Quorum
- Minutes

In other words, there really is no such thing as “informal” committee meetings.

E-mail: Friend or Foe?



- If the e-mail exchanges are contemporaneous, they may constitute an improper meeting
- Avoid repeated use of “reply to all”
- Consider non-voting person as message intermediary

May we let an official participate in a meeting electronically?

- Yes, but only if you have adopted a written policy
- Absence may only relate to illness, business or emergency; not vacation
- Motion required each time to authorize remote attendance





Key Elements of Remote Participation:

- Quorum must be *physically* present
- Vote on whether remote participation allowed
- Identify reason for remote participation
- If request is legitimate, allow participation

May a board member vote by proxy
when not present at the meeting?

NO.





A Few Good Meeting Tips

- Observe timeliness
- Prepare full agenda packets
- Limit Board debate (*Good luck with this one, Clerks!*)

Another Good Tip: Consider Using Committees

- Utility will depend on size of the village
- Allows for more detailed study of various issues
- Must be authorized by the Board

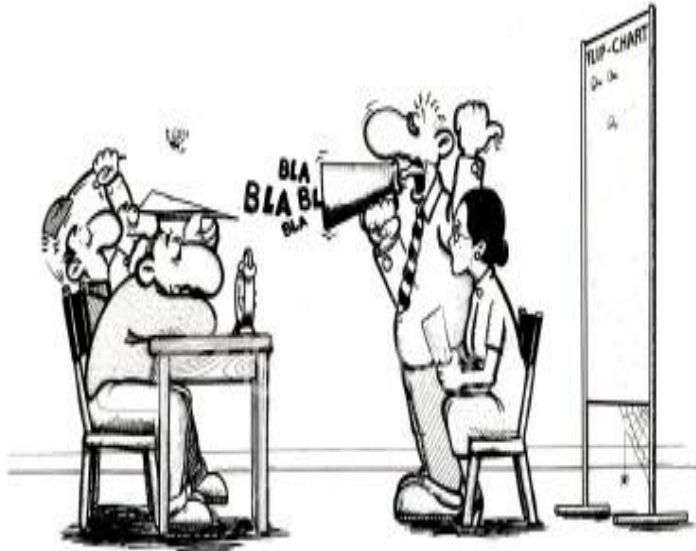


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Right to Public Comment



- “Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body.” 5 ILCS 120/2.06(g).
- Public comment can be limited, but only by previously adopted written policies



You've Got No Business Without a Quorum

- You must have a majority of the Trustees
- What can you do without a quorum?
 - Those present at the meeting may take action to compel attendance of absent Board members or to adjourn the meeting to a future date

What Happens if We Start Out With a Quorum, But it is Lost During the Meeting?

- No Quorum = No Vote
- No Quorum = No Meeting
- No Quorum = No Business





Your Agenda Serves as the Public's Notice of Meetings

- Annual notice of all regular Board meetings must be provided and posted on website (if applicable)
- Agendas must be posted no later than 48 hours before a meeting
- Agendas must be provided to news media (if requested) and posted on web site (if applicable)
- As of 1/1/2013, agendas must set forth the general subject matter of any resolution or ordinance that will be the subject of final action (5 ILCS 120/12-02(c) (P.A. 97-0827))

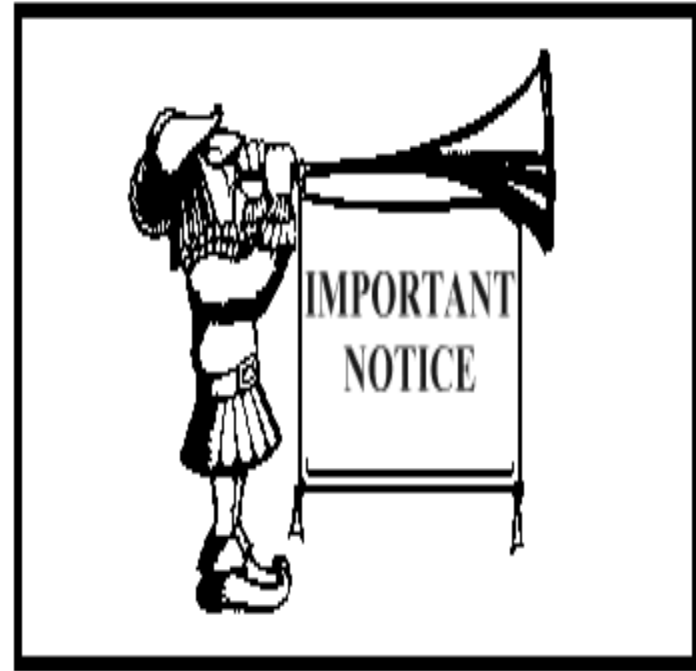


How Should a Clerk Provide Notice?

- Post notice at the village's principal office, plus at the location of a meeting held somewhere other than village hall
- Post on website (if village has one)
- Send copy to news media (if requested)
- Send copies of notice to Board members

Do I need to post a notice of all our regular meetings?

- Yes – post the date, time and place of regular meetings at the beginning of your calendar or fiscal year
- And – post additional notice 48 hours prior to *all* meetings (except emergencies)






What are the posting requirements for our village website?

- If, and only if, you have full-time in-house staff maintaining your website, you must post:
 - Regular meeting notices and agendas until the regular meeting is concluded
 - The village's annual notice of regular meetings
 - Minutes of regular meetings within 10 days after the approval of the minutes. The minutes must remain posted for at least 60 days after their initial posting



Are there any exceptions to website posting requirements?

- Notice posting is not required if the village's website is maintained by someone other than full-time in-house staff (such as part-time staff or an outside consultant)
- Even when website posting is not required, it is advisable as a courtesy to the public



We Need to Change the Meeting Time for *All* of Our Regular Meetings... Can We Do That?

- Yes, but you must provide 10 days notice before the change is permanent
- You must also publish notice of the change in at least one newspaper of general circulation in the jurisdiction




What if we need to change the meeting date for just one meeting?

- No need to publish
- Follow notice requirements for special meetings
- Notify Board members and any news media that requested notice
- Practical tip: Also notify people of the cancellation



Pay Careful Attention to Your Agenda

- Agenda must be complete and provide a reasonable description of the items to be considered
- You may only act on agenda items
- Agenda must be posted *continuously* in advance of meeting
- Remember the requirements to include general subject matters for resolutions and ordinances that will be the subject of final action



We Forgot to Include a Critical Ordinance on Our Agenda...May We Amend the Agenda at the Meeting?

- Yes, but in light of new law, only to discuss, not to take final action, on the ordinance
- If the ordinance is truly “critical,” consider holding a special meeting with proper notice



A Quick Note About Special and Emergency Meetings

- Special meetings require specific notice of each and every topic to be discussed
- Less than 48 hours notice OK for bona fide emergency meeting
- Emergency example: Village hall just burned down; self-created emergencies do not count



Remember to Keep Written Minutes of All Meetings

- Include date, time and location of meeting
- Identify all officials as either present or absent
- Provide summary of matters discussed, actions taken, and vote results for each motion



Are We Required to Disclose Our Open Meeting Minutes to the Public?

- Yes, minutes of an open meeting must be published within 30 days of the meeting or at the second subsequent meeting, whichever is later.
- Open meeting minutes must be available for public inspection within 10 days after Board approval.
- If maintaining website with full-time staff, open meeting minutes must be posted on website within 10 days after approval and remain posted for at least 60 days.



A Quick Note About Approving Minutes

- Minutes may be corrected upon approval by the Board
- Minutes should not be amended to include additional matters not actually discussed at the meeting
- Draft minutes are exempt from disclosure



Do the open portions of our meetings need to be audio or videotaped?

- Recording of open meetings not required
- The public has a right to record open meetings
- Village may adopt reasonable rules regarding recording by the public
- But, see recent PAC opinion that found advanced registration requirements a violation of OMA
- All closed sessions *must* be recorded




Closing a Meeting to the Public

- Only certain topics may be discussed
- Motion required to go into closed session
 - I make a motion that we go into closed/executive session for the purposes of discussing...
 - Do not need to include specific statutory cite, only announce one of the 25 reasons listed in Sec. 2(c) of OMA
- Discussions must be recorded in writing and by audio or video



Do we need to identify ourselves in closed session?

- Yes, a roll call is required
- Identify yourself for the audio/video recording
- Closed session minutes should reflect who was present throughout session
- Municipal Clerks are required by law to be allowed to attend closed meetings unless the Clerk is the topic of discussion



May we go into closed session on a voice vote?

- No, there must be a roll call vote



May an Item Be Discussed in Closed Session Even If It Wasn't Mentioned in the Closed Session Motion?

- The specific exceptions must be cited in the motion for closed session
- If you discuss a permissible topic in closed session that was not included in the motion, disclose that publicly when you return to open session




What Topics Are We Required to Discuss In Closed Session?

- The Open Meetings Act does not *require* you to close any meeting or portion of a meeting
- OMA Exceptions *authorize*, but do not require, closing meetings to discuss any of the 25 permitted subjects



What can we vote on in closed session?

- Approval of closed session minutes
- Approval to release closed session minutes to the public
- Authorization of direction on permissible closed session topic



What are the rules about recording closed sessions?

- Section 2.06 of the Open Meetings Act requires audio or video recording of all closed sessions.
- Closed session tapes are *usually* not discloseable under FOIA.
 - Action to enforce OMA - “in camera” inspection



The closed session tapes can only be destroyed if:

- The board has approved the minutes of the closed sessions, regardless of whether the minutes have been released for public review;
- More than 18 months have elapsed since the date of the closed session;
- There is no court order requiring the preservation of such recording; and
- The board has not passed a motion requiring the preservation of the verbatim recording of that meeting.



Can we let a board member who was not present at the meeting listen to the closed session tapes?

- Yes, if he or she was entitled to attend the meeting in the first place


What can we do about a Board member who leaks closed session materials to the press?

- Attempt to censure the Board member
- Seek an injunction
-
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Do we need to approve closed session minutes we do not plan to release?

- Yes, minutes should be reviewed for accuracy of content and then approved
- Closed-session minutes must be reviewed every 6 months to determine if the need for confidentiality still exists

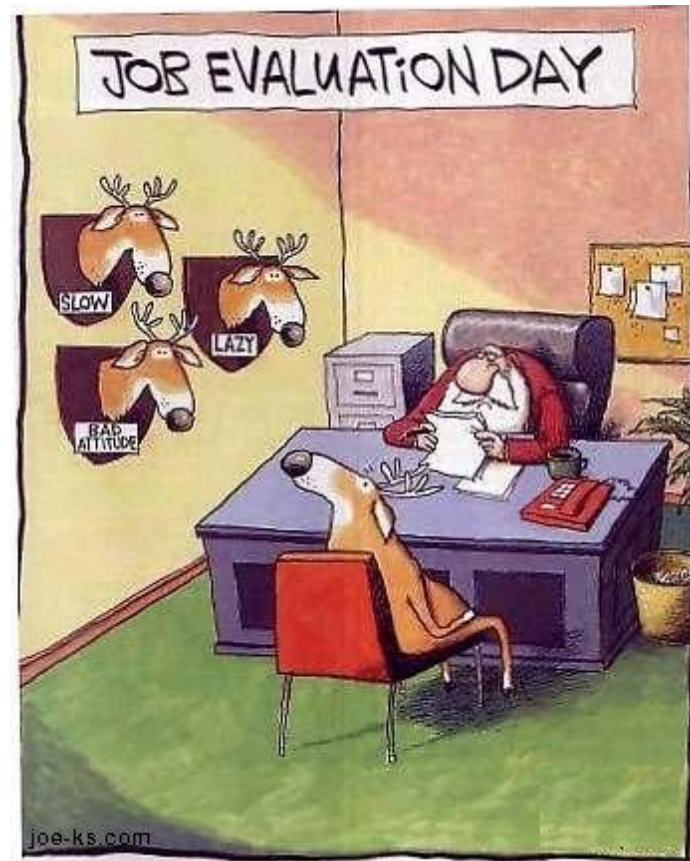


Can we talk about where a new public building should be located in closed session?

- Discussion must relate to purchase or lease of a particular parcel or parcels of real property
- Section 2(c)(5) of the Act

Can we criticize the performance of an employee in closed session?

- Yes, it is permissible to discuss the discipline, performance or dismissal of specific employees in closed session



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May we discuss whether to hire an auditor as an independent contractor during closed session?

- No. Section 2(c)(1) allows closed session discussions only relating to the appointment or employment of employees
- An independent contractor is NOT an employee
- An attorney is the only independent contractor that may be discussed in closed session

Posting of Certain Compensation Information (5 ILCS 120/7.3)

- The OMA requires IMRF employers to post total compensation packages for the following employees:
 - employees with total compensation packages exceeding \$75,000 per year must be disclosed within 6 days **after** approval of the budget; and
 - employees with total compensation packages of \$150,000 or more per year must be disclosed at least 6 days **before** approval of the compensation
- “Total compensation package” means payment by the employer to the employee for salary, health insurance, housing, vehicle and clothing allowances, bonuses, loans, vacation and sick days
- 2012 PAC opinion: Public bodies must identify employees by name, and not just by job title

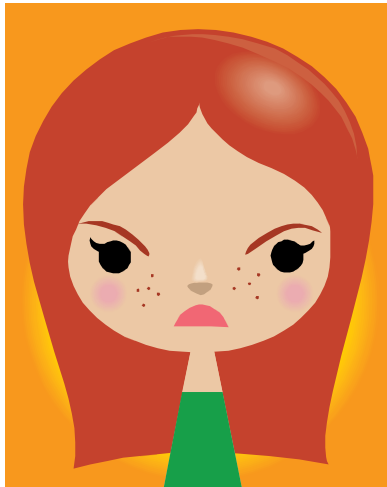


What are the 5 ILCS 120/7.3 posting requirements

- If total compensation packages exceed \$75,000/year, post within 6 business days after budget approval.
- If total compensation packages equal or exceed \$150,000/year, post 6 days before the package is approved.
- The employer *may* post the information on its website.
- If the employer does not maintain a website, the employer must post a physical copy of this information at its principal office.
- If an employer maintains a website, it *may* choose to post a physical copy of the information at its principal office and not on website. However, must post directions on its website on how to access the information.

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.

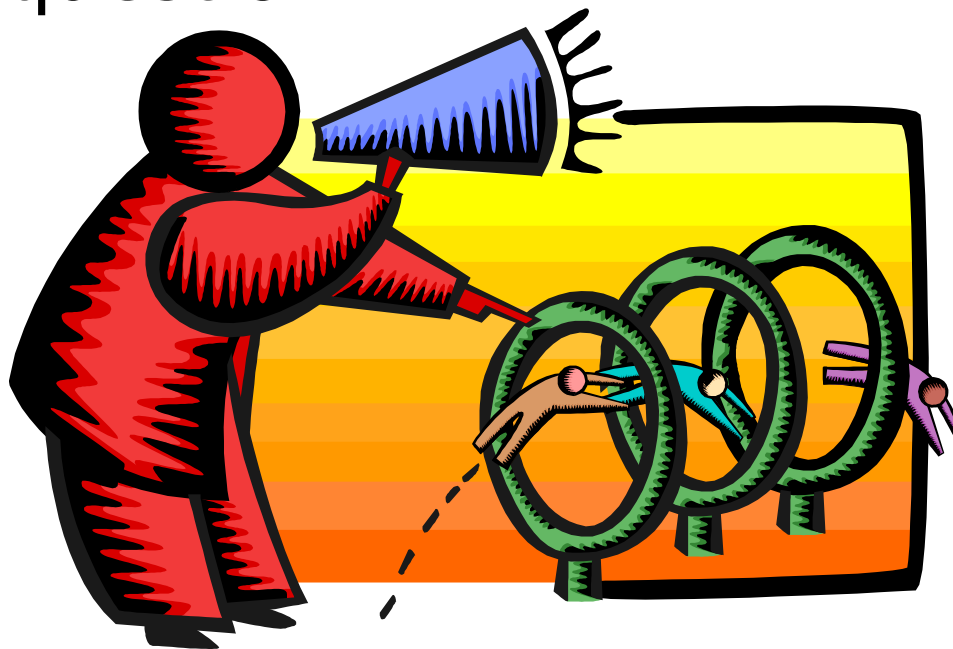


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Can one Board member demand that another Board member “answer the question?”

- Neither a Board member, nor members of the public, can demand that a Board member “answer the question.”



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Can we enact procedural rules preventing long-winded Trustees from speaking for a loooong time?

- **Yes.** Governmental bodies may adopt procedural rules limiting the duration or frequency of speeches by legislative members, so long as they are given a reasonable opportunity to be heard.
- But **NO**, you may *not* enact any rules to cut short Adam Lasker's speeches at MCI events!



ELECTION LAW UPDATE:

Yes, you still have to endure the pains of the
Municipal Officer's Electoral Board

- The Illinois General Assembly attempted – but failed – to overhaul the system for candidate objections at the local level
- They tried to eliminate the Municipal Officers Electoral Board (and others) by transferring those duties to county clerks
- The Illinois Municipal League successfully lobbied against this change
- Now, only school boards and park districts are subject to those special rules

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“Cinkus” objections not for electoral boards; Debts can be repaid prior to oath of office

- Municipal Code bars a person from *holding* office if in arrears on a debt to the village
- In its infamous 2008 “*Cinkus*” decision, the supreme court ruled that such debts must be repaid prior to signing a Statement of Candidacy form
- In a 2013 Municipal Code amendment, the legislature undid *Cinkus* by adding language to the statute that expressly says the debt can be repaid prior to taking the oath of office



Important dates for the 2014 Primary Election:

- The next Primary Election will be held on March 18, 2014
- Not all municipalities will participate
- **Petition circulation** is September 3 – December 2, 2013
- **Petition filing** is November 25 – December 2, 2013
- **Objection filing** is December 3 – 9, 2013
- (This is only true if my math is correct.)




Dates regarding Objector's Petitions for the 2014 Primary:

- Chairman of the electoral board (usually the mayor) must send a call to board members, objector and candidate within 24 hours of receiving the objector's petition
- Electoral board's first meeting must be within 3 to 5 days of receiving the objector's petition
- In no event should the electoral board convene later than December 16, 2013




Dates to certify referenda to the 2014 election ballots

- The following dates apply to *most* referenda instigated by resolution or ordinance:
- For the March 18, 2014, **Primary Election**, the resolution or ordinance must be adopted no later than **Dec. 29, 2013**, and the Municipal Clerk must certify the question to the county clerk no later than **Jan. 9, 2014**
- For the Nov. 4, 2014, **General Election**, adoption by **Aug. 17, 2014**, and certification by **Aug. 28, 2014**



Elections case law update: The notary jurat issue

- Statement of Candidacy (“SOC”) forms that fail to include the “personally known” language in the notarization, but that contain language sufficient under the Notary Act, are not grounds for removing a candidate from the ballot.
- See: *Cortez v. Calumet City MOEB*, 2013 IL App (1st) 130442, and *Akin v. Calumet City MOEB*, 2013 IL App (1st) 130441.



Elections case law update: Split decisions re: dual circulation

- The First and Fourth Appellate Court districts entered contradicting decisions regarding whether section 10-4 of the Election Code prohibits a person from circulating petitions for a political party candidate in the primary, and for an independent candidate in the corresponding general election
- The First District says the law prohibits this dual circulation. *Wilson v. Calumet City MOEB*, 2013 IL App (1st) 130957
- The Fourth District says it does not. *Sandefur v. Cunningham TOEB*, 2013 IL App (4th) 130127



Write-in candidates must file with local election official *and* county clerk

- In an uncontested primary, no election must be held unless a write-in candidate files a declaration with the “local election official” (Municipal Clerk) *and* the proper “election authority” (county clerk).
- Section 7-5(d) says the write-in declaration must be filed with the local election official
- Section 17-16.1 says no votes will be counted unless the declaration is filed with the county clerk.
- Appellate court held *both* filings must occur to force the primary. It would be the “height of absurdity” to hold an election for which votes can’t be counted.
- *Lewis v. Cook Co. Clerk*, 2013 IL App (1st) 130357



Electoral boards may not ignore the Open Meetings Act!

- Failure to issue a final written decision in a public meeting as required by Election Code section 10-10 is a violation of the OMA and completely invalidates the Board's decision
- Only one of the three Board members was present. Notably absent from this meeting were appointed Board members Rob Bush (yes, *the* Rob Bush) and Burt Odelson!
- *Lawrence v. Thornton Twp. H.S. Dist. 205 EOEB*, 2013 IL App (1st) 130757



Statement of Economic Interest can, sometimes, be filed in the wrong county

- The Governmental Ethics Act requires Statement of Economic Interest forms to be filed with the clerk for the county in which the municipality's main offices are located. But timely filing the proper form with the *other* county clerk is not a fatal flaw
- Village of Roselle is located in both Will and Cook counties, with primary offices in Will. The candidate resided and filed in Cook.
- *Atkinson v. Roselle MOEB*, 2013 IL App (2nd) 130139



Debts owed by a business do not disqualify a person from holding office

- Debts owed to a municipality by a corporate entity owned by a candidate do not qualify as the candidate's personal debts for purposes of ballot-access or office-holding eligibility
- Despite recent legislative amendments, this case could apply to people who win election with corporate debts in arrears on the day they take their oath of office
- *Burke v. Bradley MOEB*, 2013 IL App (3d) 130141



Concealed Carry in Illinois:

May I pack heat during village board meetings?

- On July 9, 2013, Illinois became the 50th state in the U.S. to enact a concealed-carry gun law
- A federal appellate court had ordered the state to enact the law
- Properly licensed gun owners are now allowed to carry concealed and partially concealed handguns
- But no, you cannot bring your gun to your city council meetings!

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DiCIANNI
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The “Firearm Concealed Carry Act” trumps local ordinances

- The regulation, licensing, possession, registration and transportation of handguns and ammo are exclusive powers of the state
- Any local ordinance or regulation of handguns inconsistent with the state law is invalid
- This is an express limitation of home rule powers under Section 6(h) of Article VII of the Illinois Constitution



Now or never:

Assault weapon bans must be enacted by **TODAY!**

- Assault weapons are not included as a firearm that may be carried concealed
- Municipalities that want to enact an assault weapons ban must do so no later than July 19, 2013
- Pre-existing assault weapon bans are grandfathered in



Gun-free zones:

Weapons are prohibited in some areas

- The Act includes several “prohibited areas”
- Standardized signs to be approved by the Illinois State Police must be “clearly and conspicuously posted at the entrance” of prohibited areas
- While waiting for the ISA to approve the signs, your village may post temporary signs at its prohibited areas



Prohibited areas for guns include:

- Schools and areas within 1,000'
- Day cares
- Government buildings
- Public transit vehicles
- Establishments primarily serving alcohol
- Playgrounds, parks, zoos & museums
- Public gatherings that require a permit
- Universities, stadiums, racetracks and casinos
- Airports, hospitals and jails



Only 30 days to object to licenses

- Local law enforcement agencies may object to the issuance of handgun licenses to people who are a danger to themselves, to others or a threat to public safety
- Such objections can be made only within 30 days after the applicant's information is entered into the Illinois State Police Database
- You will NOT receive notice when a resident applies, so be sure to monitor the ISP database on a regular basis



Thank you for participating with MCI!

Questions?

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