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SPRINGFIELD

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FILE NO. 83-004

MEETINGS:
Deliberations of Public Bodies
Acting in a Quasi-Judicial Capacity -
Pending Litigation Exception

Honorable Fred L. Foreman
State's Attorney, Lake County
18 North County Street
Waukegan, Illinois 60085

Dear Mr. Foreman:

I have your letter wherein you inquire whether certain public bodies are required to deliberate publicly when they are acting in a quasi-judicial capacity and their decisions are subject to review by another administrative tribunal or a court. For reasons stated below, it is my opinion that the Open Meetings Act (Ill. Rev. Stat. 1981, ch. 102, par. 41 et seq.) requires such bodies to deliberate in public.

In your letter you cite two specific circumstances in which this issue has arisen. The first situation involves hearings conducted by county boards and governing bodies of municipalities on applications for site location approval of regional pollution control facilities pursuant to section 39.2 of the Environmental Protection Act (P. A. 82-783, effective July 13, 1982, to be codified at Ill. Rev. Stat., ch. 111 1/2, par. 1039.2). After holding at least one public hearing on such applications, the county board or the governing body of the municipality renders a written decision either granting or denying the application. (P. A. 82-783, effective July 13, 1982, to be codified at Ill. Rev. Stat., ch. 111 1/2, par. 1039.2.) Decisions of these bodies are appealable to the Illinois Pollution Control Board. (Ill. Rev. Stat. 1981, ch. 111 1/2, par. 1040.1.) The second situation involves hearings conducted by regional boards of school trustees on petitions filed pursuant to article 7 of The School Code (Ill. Rev. Stat. 1981, ch. 122, par. 7-01 et seq.). Decisions of these boards are subject to judicial review in accordance with the Administrative Review Act. (Ill. Rev. Stat., 1981, ch. 122, par. 7-7.)

The Open Meetings Act requires that "[a]ll meetings of public bodies shall be public meetings * * *" (Ill. Rev. Stat. 1981, ch. 102, par. 42). There is no question that each of the

governmental entities in question is a public body subject to the Act. (Ill. Rev. Stat. 1981, ch. 102, par. 41.02.) A gathering of a majority of a quorum of the members of a public body held for the purpose of deliberating for a decision is a meeting for purposes of the Act. (Ill. Rev. Stat. 1981, ch. 102, pars. 41, 41.02.) Therefore, unless the meetings in question come within one of the exceptions contained in section 2 of the Act (Ill. Rev. Stat. 1981, ch. 102, par. 42), or unless there is some other statutory authority which specifically authorizes the closing of such meetings, the deliberations must be conducted publicly.

You inquire whether deliberation on the evidence at the close of a hearing falls within subsection 2(h) of the Act (Ill. Rev. Stat. 1981, ch. 102, par. 42(h)), which excepts from the public meetings requirement:

"* * * meetings held to discuss litigation when an action against or on behalf of the particular public body has been filed and is pending in a court or administrative tribunal, or when the public body finds that such an action is probable or imminent
* * *

* * *

(Emphasis added.)

Statutory provisions must be given effect in accordance with their plain language. (People ex rel. Cruz v. Fitzgerald (1977), 66 Ill. 2d 546, 551.) Further, a narrow construction of the above language is appropriate since it is an exception

which derogates from the general policy of open meetings.

Illinois News Broadcasters Ass'n v. City of Springfield (1975), 22 Ill. App. 2d 226, 228. See also 1980 Ill. Att'y Gen. Op. 102, 104; 1977 Ill. Att'y Gen. Op. 185, 186; 1976 Ill. Att'y Gen. Op. 65, 66.

Subsection 2(h) contains two prerequisites to its application: firstly, the public body must be considering litigation against or on behalf of itself, and secondly, such litigation must be pending, probable or imminent. The first prerequisite is not satisfied in the circumstances presented. The public bodies in question are not meeting to consider litigation against or on behalf of themselves, but rather, are meeting to consider evidence which has been submitted to them for initial adjudication. Because a public body acting as an adjudicator is not, when functioning in that capacity, "* * * meeting to discuss litigation * * * against or on behalf of itself * * *", subsection 2(h) is not applicable in the situation described.

You note in your letter that a public body may find, in some circumstances, that an administrative or judicial appeal of its decision by the adversely affected party is a virtual certainty, and that the public body may be made a party to the appeal. In such circumstances, subsection 2(h) would be applicable only if the public body were to meet for the purpose

of discussing the litigation to which it would be made a party as a result of its decision, upon a finding that such litigation is probable or imminent. Such a meeting is, however, clearly distinguishable from the body's own deliberations on the evidence in order to reach its decision on the matter which has been submitted to it for adjudication in the first instance.

The conclusions above are in accordance with the underlying purpose of subsection 2(h), which is to prevent a public body from being at a litigious disadvantage when it is a party or probable party to litigation in a court or administrative tribunal. (Remarks of Representative Barkhausen, May 15, 1981, House Debate on House Bill No. 411, at 19; People ex rel. Hopf v. Barger (1975), 30 Ill. App. 3d 525.) Consequently, it is my opinion that subsection 2(h), properly construed, does not apply to meetings of a public body which are held to deliberate for decision at the close of a hearing.

I next turn to your general question: are public bodies required to deliberate publicly when they are functioning in a quasi-judicial capacity? It is my opinion that, in the absence of a specific exception, open deliberation is required when a public body is functioning in a quasi-judicial capacity.

At the outset, it should be noted that, unlike some public meetings laws, the Illinois Open Meetings Act specifically manifests, in its public policy statement, the intent

that its provisions be applicable to the deliberations, as well as the actions, of public bodies. (Ill. Rev. Stat. 1981, ch. 102, par. 41.) There is only one exception to the Act which provides for closed deliberations for decision. (Ill. Rev. Stat. 1981, ch. 102, par. 42(b).) That exception, however, is limited in its scope to the two public bodies specified therein. It is a primary rule of statutory construction that the expression of certain exceptions in a statute is construed as an exclusion of all others. (Landfill, Inc. v. Pollution Control Board (1978), 74 Ill. 2d 541, 557.) This rule has been applied to the Open Meetings Act (see People ex rel. Difanis v. Barr (1980), 83 Ill. 2d 191, 199), and this office, along with the courts, has consistently refused to imply any exceptions other than those specifically provided by law. See 1977 Ill. Att'y Gen. Op. 185, 186; 1970 Ill. Att'y Gen. Op. 185, 187.

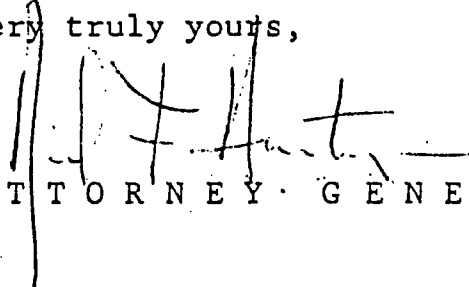
Courts have held, in the absence of an express statutory exception, that the deliberations of public bodies acting in a quasi-judicial capacity must be conducted publicly. (See Canney v. Board of Public Instruction of Alachua County (Fla. 1973), 278 So.2d. 260; Citizens Action Coalition of Indiana, Inc. v. Public Service Commission (Ind. Ct. App. 1981), 425 N.E.2d 178; Appeal of Emmanuel Baptist Church (Pa. Commw. Ct. 1976), 364 A.2d 536.) The great majority of State public meetings laws, like the Illinois Open Meetings Act, contain no

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express exception pertaining to the quasi-judicial proceedings of administrative bodies. In such circumstances, public meetings laws have generally been found applicable to all quasi-judicial proceedings. See generally, National Association of Attorneys General, Open Meetings: Exceptions to State Laws, 63-4 (1979).

Therefore, it is my opinion that, in the absence of an express statutory exception for such meetings, the Open Meetings Act requires public bodies to deliberate in public when they are functioning in a quasi-judicial capacity.

Very truly yours,



A T T O R N E Y · G E N E R A L