

Beware Topic Creep in Closed Session

School board members, administrators, attorneys: we have all been there. The school board has voted correctly to go into closed session to talk about a topic which is a proper one, say employment of specific personnel, the sale price of district-owned property, or collective bargaining matters. But after a few minutes, board members' comments and questions veer a little off-topic. A discussion of whether to employ a particular assistant principal turns into whether there should be reductions in total staff numbers at that school. A discussion of how much to ask for an old school building changes into whether the district should expand other facilities. A discussion of the cost of union bargaining proposals becomes a general discussion on district finances. Sometimes the new discussion is appropriate for closed session, but it does not fit the particular exception cited in the board's motion. This is topic creep, and the Illinois Attorney General's office has warned us against it.



In Public Access Opinion 15-003, the Attorney General reviewed a recent closed session of the Waubensee Community College. The evidence showed that while the board had voted to go into closed session to discuss, in part, the “appointment, employment, compensation, discipline, performance, or dismissal of specific employees,” the board had, in fact, primarily discussed the financial condition of the college. The AG warned that, although fiscal matters may well have future implications with respect to the employment and compensation of employees, the specific personnel exception in the Open Meetings Act does not authorize closed session discussion of budgetary issues. Further, while that board had also cited the statutory exception for the purchase or lease of real property for public body use, the actual closed session discussion related to the college’s sale of its own property. The sales price of property owned by a public body is, of course, a different exception under the Open Meetings Act. Still, the AG found a violation of the law as a result.

The circumstances which led to the AG review in this case in the first place were avoidable: a newspaper reporter had peered through a door window, where she could see projected slides on



general finance matters. But never assume that your closed sessions will always avoid review. Anyone in the closed meeting might contact the Public Access Counselor.

Every participant in closed sessions, including board members and administrators, should be mindful of topic creep. If a discussion veers too far from a proper topic, the group should be reminded. If a different but still proper closed session topic comes up, do a quick return to open session for a new vote with the proper citation. However inconvenient or awkward, remember that Open Meetings Act violations are punishable as crimes.

If you have questions about topic creep in closed session, please contact one of our attorneys in Flossmoor (708-799-6766) or Oak Brook (630-928-1200).