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Open Meeting Act – Appellate Court Reverses Attorney General's Rulings on Final Action and Public Recital

In an opinion issued on December 15, 2015, the Illinois Appellate Court rebuffed the Illinois Attorney General (AG) with regard to her office's rulings on the propriety of the procedures by which a school board approved a severance agreement. The decision in the case of *Board of Education of Springfield School District No. 186 v. The Attorney General of Illinois* is significant because it restores some common sense in this area of law, demonstrates that the courts will not always rubber stamp the Attorney General's opinions on Open Meetings Act issues, and because it calls into question some of that office's recent opinions.

The case involved the approval by the Board of Education of Springfield School District 186 of a severance agreement with

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its superintendent. At its meeting on February 4, 2013, the Board discussed the agreement in closed session and six of the seven members signed it, but no public action was taken at that meeting. For the March 5 board meeting, the publicly posted agenda listed approval of the agreement and a link to the entire agreement on the district's website. Then the Board publicly voted six-to-one to approve the agreement. After complaints from a private citizen, the AG investigated and issued binding opinions ruling that (1) the signing of the agreement in the closed session of the February meeting constituted an illegal final action, and (2) the March vote came without adequately informing the public of the nature of the matter under consideration.

Upon administrative review, the Sangamon County Circuit Court reversed the AG on both points and an appeal was taken. The Appellate Court agreed with the Circuit Court and upheld its reversal of the AG's rulings.

> The provisions of the Open Meetings Act at issue are both in Section 2(e):
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> "No final action may be taken at a closed meeting. Final

> action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted." 5 ILCS 120/2(e).

With regard to the February signing, the Appellate Court found that this action was part of a proper closed session consideration of a personnel action which was not finally approved until the March meeting. The court noted other reported court decisions which had permitted a preliminary closed session vote so long as that was followed by formal open session vote.

With regard to the public recital preceding the March vote, the court first observed the lengths to which the District had made information about the proposed agreement available to the public before the Board's vote, including the language of the posted agenda item and the website link. At the March meeting itself, the Board president introduced the agreement consistent with the general terms of the agenda and recommended approval by the Board. This, the Appellate Court held, was enough to inform the public about the "general nature of the final action". It was not necessary, as the AG would have it, to provide a detailed

explanation about the significance or impact of the proposed final action. Such details were simply not required under the plain provisions of the Act. (What is not so clear is whether the court was suggesting that the details in a written agenda and on a website can cure, or in some way mollify, an inadequate verbal recitation about a final action during the public meeting itself.)

We believe that the AG's rulings in this case, if allowed to stand, would have been difficult to apply because they did not provide meaningful standards for public officials to follow. Did the AG mean to suggest that board members could never sign a document in advance of a formal action to ratify the action? If they did sign first, how could they fix the error? And in voting to approve a contract, how much had to be said about the contract's terms to inform the public? Which terms were important enough to mention? Would reading the contract verbatim be necessary? Would it be enough? It is hard to imagine how boards should have been advised to proceed had the AG's position in this case been vindicated.

This case is also important because of the court's independent review of the AG's rulings. The AG had argued that, because of

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her legal role in administering and enforcing the Open Meetings Act, her rulings were entitled to substantial weight before the court. However, the Appellate Court determined that such deference only applied where there had been disputed factual findings or where a statutory provision was ambiguous. Here, where the facts were not in dispute and the statutory language seemed clear to the court, no deference was owed and the court was free to disagree with the AG, as in fact it did. This point highlights the fact that, while school officials should be aware of the AG's interpretations of the Open Meetings Act, the Freedom of Information Act, and other laws, those interpretations are merely advisory and may well differ from how the courts will eventually view an issue.

To provide a very pertinent example, the AG has ruled that the public recital requirement of Section 2(e) of the Open Meetings Act requires that a school board specifically identify an employee by name when taking a personnel action with regard to that employee. (See Public Access Opinion 13-016 and our Priority Briefing, *Naming Names: PAC Issues an Opinion Requiring Employee Names in Board Actions*, issued October 2013.) But in light of this Appellate Court opinion, we view it unlikely that

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a court would actually uphold the AG's position on the need to publicly name the employee. The language of the Act, after all, says nothing about identifying employees by name. Of course, board members should be made aware of the issue and, from a legal perspective, it would still be safer at this point to verbally name the employee before the vote. However, after the *Springfield* case, the risk of being found in violation of the Act if employees are not named is significantly smaller.

If you have questions regarding this opinion or anything relating to the Open Meetings Act, please contact one of our attorneys in Oak Brook (630-928-1200) or Flossmoor (708-799-6766).