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BOYLE & IZZO, LLC**
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THE OPEN MEETINGS ACT IN THE AGE OF CORONAVIRUS

Pursuant to Governor Pritzker's emergency declaration and subsequent executive orders, certain requirements of the Illinois Open Meetings Act (OMA) were suspended. As part of [Executive Order 2020-7](#), Governor Pritzker suspended the OMA's requirements that: (1) members of a public body must be physically present (Section 2.01); and (2) the conditions in Section 7 that limit members' remote participation in meetings. Executive Order 2020-7 also encouraged public bodies to provide members of the public with video, audio, and/or telephonic access to meetings. These portions of Executive Order 2020-07 have since been extended by [Executive Order 2020-18](#). Along with the



Executive Orders came various questions and concerns. The Public Access Counselor (“PAC”) at the Illinois Attorney General’s office provided additional [non-regulatory guidance](#) in the days that followed.

Since that time, a complaint was filed with the PAC claiming that the McHenry County Board of Health violated the OMA. On March 23, 2020, the Board of Health held a virtual meeting and required that any public comment be sent via email to a specific address two hours prior to the meeting. The complaint alleged that this was a violation of Section 2.06(g) of the OMA, which provides that “[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body.”

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In a [non-binding letter to the complainant dated April 6, 2020](#), the PAC concluded that the OMA was not violated and that no further action was warranted. The PAC noted that pursuant to his authority under the Illinois Emergency Management Agency Act, Governor Pritzker issued a series of executive orders. The PAC then analyzed the complaint and found that the actions of the Board of Health were appropriate. It noted that Section 2.06(g) of the OMA specifically permits the public to address the body in accordance with the body's rules. It further noted that the OMA does not provide specific mechanisms for how a public body should handle public comment during those times where the body cannot meet physically. The PAC stated that it felt that it would be illogical to construe the Open Meetings Act as barring a public body from conducting virtual meetings during public health emergencies.

This non-binding letter is important as it provides some indication of how the PAC will review OMA complaints during the current public health emergency. However, it is equally important

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to note how limited the scope of this letter is – it does not address any aspect of Governor Pritzker’s suspension of the requirement that a quorum of the public body be physically present to conduct a meeting, or the suspension of the OMA’s limitations on remote participation.

Given the guidance from the Attorney General and the recent PAC letter, districts and joint agreements should consider the following with respect to any meeting:

- Avoid meeting when possible;
- If meeting is necessary, consider whether a completely virtual meeting will suffice;
- If meeting in person, social distancing requirements (six-foot separation between individuals) should be observed, and

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no more than 10 people may be in a given room (this may require opening more space to the public);

- Provide real-time video, audio, and/or telephonic access to any meeting that is conducted;
- Posting a notice of the meeting and agenda is still required;
- There should be a specific mechanism for public comment that is widely disseminated prior to the meeting; and
- Any public comment received should be read as part of the meeting.

We will be following these matters in the coming weeks. If you have any questions, please do not hesitate to contact any of our attorneys.