

PUBLIC ACCESS COUNSELOR SETS RULES FOR REMOTE MEETING CONCERNS

Recently, the Public Access Counselor at the Illinois Attorney General's Office ("the PAC") has issued opinions on remote meeting concerns involving the Open Meetings Act. Public bodies must take efforts to ensure compliance or risk findings of a violation of the Open Meetings Act.

In a non-binding opinion, the PAC determined that a school district violated the Open Meetings Act when certain individuals were unable to access the meeting. The board of education held a meeting to discuss its school reopening plan and permitted the public to attend remotely. At the time of the meeting, the district's Zoom license only permitted 100 individuals to access the meeting at a time. Although the board anticipated that the meeting would generate significant interest among members of the public, it did not increase the limit on its license.

The PAC ruled that this situation constituted a violation of the Open Meetings Act. It did not meet the requirement that when conducting a remote meeting, the public body make alternative arrangements to "allow any interested member of the public access to contemporaneously hear all discussions, testimony and roll call votes." Districts should take care that however they may conduct remote meetings permits all interested members of the public to attend. Having a license only permitting a limited number of individuals to attend could subject a district to complaints under the Open Meetings Act.

Similarly, the PAC has also issued a binding opinion about muting the audio during meetings. A village board conducted a videoconference meeting. During the meeting, the mayor had a question for the city clerk regarding the propriety of discussing a personnel matter in the public session. In order to conduct a private "sidebar," the mayor had the audio muted to specifically ask the clerk his question. The audio was muted for approximately one minute.

As many know, it is quite common during an in-person meeting that various members of the governing board may engage in private sidebar discussions. The PAC ruled that there is no provision within the remote meeting procedures that permits muting the conversation. There is no exception to the rule that members of the governing board must be audible during a remote meeting and that by muting the conversation, the body did not permit all interested individuals "to contemporaneously hear all discussion, testimony, and roll call votes."

It is clear that the PAC is strictly construing the remote meeting procedures. Although certain exceptions may exist for in-person meetings, the PAC is not reading those into the remote procedures.

Districts should consider these rules and ensure that they are following the requirements of the remote meeting rules. The attorneys at Hauser, Izzo, Petrarca, Gleason & Stillman are available to consult on any questions you may have.