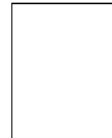


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## *Municipal Matters*

Timely news in the area of municipal law  
promotional material

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**INSIDE THIS ISSUE**

Zukowski, Rogers, Flood & McArdle's quarterly newsletter that allows units of government and their employees to stay up-to-date on legal matters in an ever-changing legal climate.

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**GOVERNMENT IN THE SUNSHINE:  
Open Meetings Act and Freedom of Information Act (Part 1)**

By Ruth Schlossberg

As we head into Fall, a new school year and a time of renewal, we thought it would be appropriate to revisit and offer a “refresher course” in an area that you are called to deal with as public officials, namely the so-called *Sunshine Laws*. While one hundred years ago it may have been possible to conduct government in an “open” fashion by meeting in a public place with the doors open, compliance with sunshine laws is a much more complicated undertaking today. The theoretical starting point of sunshine laws is that government should be of, by and for the people and that the functioning of government should be open and accessible to the public. This is supposed to lead to improved public confidence, better decision making and fact finding, more control over governmental functions, improved responsiveness and better participation by the public. Of course, these benefits must be weighed against competing public interests in efficiency, confidentiality and, more recently, security. As a government official, however, these theoretical concerns may seem less important to you than learning the actual rules you must follow under those laws. Thus, this article is intended as a brief guide on some important concepts in the Open Meetings Act (OMA) and Freedom of Information Act (FOIA) issues of which you should be most aware.

**THE ILLINOIS OPEN MEETINGS ACT**

The Illinois Open Meetings Act provides that public business is to be conducted in the public view. This includes both deliberation about policy as well as final action. The Act prescribes rules to ensure this happens. Although, it is relatively easy to inadvertently violate the terms of the Open

Meetings Act, the good news is that your staff (as well as your lawyers) are generally well versed in the Act and should be able to steer you away from the most obvious violations.

**Public Meetings:** All public meetings are subject to the Open Meetings Act: The trick here is that many more things constitute “public meetings” than you might initially suspect. Under the Act, a “public meeting” is any gathering of a majority of a quorum of the members of the public body for purposes of discussing public business. This means that if you have a Board made up of seven people, and three of you (a majority of a quorum) are all invited to the same birthday party or a Labor Day cookout where you begin discussing public business (as opposed to the gifts that you have bought for the birthday honoree or how the Cubs are doing this late in the season) you have just violated the Open Meetings Act. Why? Because you were not in a properly noticed, public forum. Did you mean to? No, of course not. But this is the type of inadvertent mistakes you should avoid. Equally surprising is that your physical presence is not required under the Act. If you find yourself on an unplanned conference call discussing your plan to finance a new sewer treatment plan with the same two other trustees from the party, you will have just held a meeting. That same conference call with only one other trustee, however, would not be a violation because you did not have a majority of a quorum.

**SIDEBAR: Do you have a majority of a quorum?**

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# Welcome

Government in the Sunshine: - continued from page 1

It never hurts to have a refresher on a topic that affects elected officials. In this issue, we feature the first of a two part article in which Ruth Schlossberg reviews the basics of Illinois Sunshine laws.

Also included in this issue are important dates from August to November 2008.

If you have any questions, comments, or suggestions for articles in upcoming issues, please contact us.

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This does not mean you cannot greet your fellow trustees in the barber shop or be civil to each other on the street. It does not even mean that you cannot meet for political party strategy sessions to discuss how to win the next election – as long as you are careful to discuss elections and not “the public business”. The Act only requires that discussion of public business by a majority of a quorum must take place in a properly noticed public forum. The public policy merits and demerits of this law are beyond the scope of this article, but it is worth thinking about as you seek to work with your colleagues to build responsible and responsive public policy.

Remember that you inadvertently also could violate the Open Meetings Act with a serial discussion by e-mail with your fellow board members. Thus, it is good practice to avoid copying all of the Board on your e-mail correspondence relating to public business. If you have opinions about a policy matter, send your comments to a staff member. If you must communicate with another member of your board (or with a member small enough to avoid creating a majority of a quorum) try to remember to ask that person not to forward the message to other members and thereby risk creating a discussion of public policy outside of a public forum.

**Public Business:** How do you know if something is public business? Ask yourself if it is within the scope of your authority as an elected official. If you think something is “public business” under the Act, then it probably is. Err on the side of being conservative about this.

**Notice:** The public must get advance notice of meetings and should be given the right to attend all meetings at which any business of the public body is discussed or acted upon. Part of your clerk’s job is to make sure that meetings are properly noticed under the Act including posting agendas at least 48 hours before a meeting. Except in limited emergency circumstances, your public body may not act on any item that has not been included in the agenda because the public will not have received sufficient notice under the Act.

**Minutes and Records:** Your public body must keep written minutes of your meetings which must be available for public inspection. You must also permit reasonable recording by the public of your meetings including video taping and filming as well as tape recording or otherwise recording the meeting. However, you may set rules to keep this from interfering with your meetings or to protect a witness who does not want to be recorded giving testimony.

**Electronic Attendance:** You can only attend public meetings electronically if your public body has adopted rules for such attendance, if a quorum is physically present and if you are unable to attend because of illness or disability, for employment purposes or as a

result of your work for the public body or for a family or other emergency. Notably missing from this list of permitted reasons is vacation. So if you are away on vacation, you may not participate in a public meeting via telephone or any electronic or digital medium even though new technology makes such participation possible.

**Executive or Closed Sessions:** There are exceptions to the requirement that all matters be discussed in open session. These exceptions, which must be narrowly constructed, are permitted to be discussed in closed session – although all votes (except those relating to the minutes of a closed session) must be taken in public session. Closed or executive sessions are permitted for twenty-four reasons. Here is a summary of those you are most likely to encounter as a municipal official:

**Employment:**

- The appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body.
- This includes hearing testimony on a complaint lodged against an employee or against legal counsel to determine its validity.
- This only applies to discussions about specific employees and not to general employment policy discussions.
- Collective negotiating matters between the public body and its employees or their representatives.
- Deliberations concerning salary schedules for one or more classes of employees.

**Vacancies:** The selection of a person to fill a vacant public office.

**Discipline:** Consideration of discipline, performance or removal of the occupant of a public office.

**Self Review:** Self evaluation, practices and procedures or professional ethics, when meeting with a representative of a statewide association of which the public body is a member (most commonly the IML).

**Real Estate:** Real estate matters such as purchase, lease and pricing of property.

**Security:** Security procedures and the use of personnel and equipment to respond to an actual, a threatened, or a reasonably potential danger to the safety of employees, students, staff, the public, or public property.

**Litigation:** Litigation when an action against, affecting or on behalf of the particular public body has been filed and is pending before a court or administrative tribunal, or when the public body finds that an action is probable or imminent.

# Q's and A's of Municipal Government

*At the beginning of the year we increased vending machine license fees and were recently told by a vending machine company that the fees are illegal because we didn't hold a public hearing. Is the vending machine company correct?*

Yes, a municipality is required to hold a public hearing before increasing any license fees for vending machines. Notice of the hearing has to be mailed at least 30 days before the hearing date to the last known address of each person holding a current license. Effective June 30, 2006, the statute (65 ILCS 5/11-55-2) was amended limiting the amount of an annual increase. The amendment states the amount "shall not exceed the greater of (i) \$25, (ii) the amount of the fee multiplied by 5%, or (iii) the amount of the fee multiplied by the percentage increase in the Consumer Price Index for All Urban Consumers for all items published by the United States Department of Labor during the 12-month calendar year preceding the year in which the fee is increased." This statute is applicable to both home rule and non-home rule municipalities with a population under 1,000,000.

## Important Deadlines to Remember:

At least every 6 months: review executive session minutes in closed session to see if they can be released to the public. If any minutes can be released, this must be done in open session.

Within 30 days after the passage of a municipal ordinance that imposes any fine, penalty, imprisonment or forfeiture, or making an appropriation, it must be published in either pamphlet form or in a newspaper with general circulation in the municipality. Ordinances that impose a fine, penalty, etc., are not effective until 10 days after publication.

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**Minute Review:** Discussion of closed session minutes whether for purposes of approval by the body of the minutes or semi-annual review of the minutes.

In order to properly hold a closed session you must first hold a legally valid open meeting. A member must then move to go into closed session and a roll call vote must be taken in open session. The motion must mention the specific exemption which allows your body to go into closed session. In closed session you should be sure only to discuss the subject for which you went into the closed session, do not wander into topics more properly discussed in an open meeting. You must exit your closed session to take formal action although you can direct your staff to take certain actions while still in closed session, such as directions to continue negotiations with a real estate seller but to go no higher than X dollars. At the close of your closed session, you should return to your open meeting with a roll call and state for the public in generality that a discussion was held pursuant to the exception and state whether any formal action is necessary.

You must create minutes of closed meeting that must be approved in a later closed session (which is the only time that you can take formal action in closed session) so do not throw out the clerk from your meetings. You also must make and keep a video or audio recording of the meeting for at least eighteen months. This recording cannot be destroyed until minutes are approved and the public body approves the destruction. Recordings will remain confidential unless and until the public body finds confidentiality is no longer needed or if a court orders the release. Generally confidential material remains con-

## Dates to Remember:

**Sept. 2:** Last day for local governing boards to adopt a resolution or ordinance to allow a binding public question to appear on the Nov. 4 general election ballot.

**Sept. 2:** Last day for county, municipal, township and park boards to place advisory referenda on the Nov. 4 ballot by resolution.

**Sept. 4:** Last day for the local election official to certify any binding public question on the ballot.

**Sept. 16:** First day for circulating petitions for the April 7, 2009, consolidated election.

**Oct. 1:** Last day to file a certified copy of any ordinance or resolution imposing or discontinuing a retailer's occupation tax (or home rule sales tax), or changing the rate, with the Dept. of Revenue to take effect Jan. 1.

**Oct. 9:** The April 7, 2009, consolidated election is 180 days from now. If compensation is going to be changed for newly elected officials, it must be done by ordinance 180 days before they take office.

**Oct. 31:** If your fiscal year started May 1, the municipal treasurer should have filed an annual account of moneys received and expenditures incurred during the preceding fiscal year with the municipal clerk. The clerk is required to publish the annual account if your population exceeds 500. (If your fiscal year started Jan. 1, the deadline is June 30.)

**Oct. 7:** Except for grace period registration, the last day to register to vote for the Nov. 4, 2008.

**Nov. 27 & 28:** The law offices of Zukowski, Rogers, Flood & McArdle are closed in observance of the Thanksgiving holiday.

fidential until the reasons for such confidentiality pass. Closed session meeting minutes must be reviewed semi-annually, and if there is no longer a reason to remain confidential, the minutes must be released.

*In our next issue, look for Part II of this article discussing the Freedom of Information Act.*

## ZRFM Attorney News

Kelly Cahill and Ruth Schlossberg will be speaking at a *Lorman* seminar on September 24, 2008. Their topic will be on Open Meetings Act, Freedom of Information Act and the Local Records Act.

Rich Flood and Ruth Schlossberg are featured speakers for the Illinois Municipal League Conference on September 25 – 28, 2008, discussing impact fees and economic development. Carlos Arévalo will also speak at the IML Conference on the topic of pensions and catastrophic injuries to police and firefighter personnel.

