

**Office of Rick Amato  
DeKalb County State's Attorney**

DeKalb County Courthouse  
133 W. State Street  
Sycamore, Illinois 60178

*Stephanie Klein, First Assistant  
David Berault, Chief of Civil Bureau  
Ali Friend, Assistant State's Attorney  
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Brooks Locke, Assistant State's Attorney  
Stephen Harrell, Assistant State's Attorney  
Julie Beach, Office Manager*

September 6, 2019

**Via E-Mail to [wspynews@gmail.com](mailto:wspynews@gmail.com)**

WSPY News

To whom it may concern,

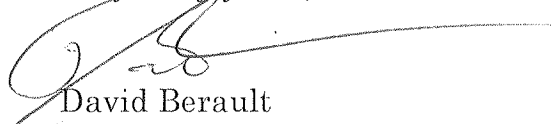
I am in receipt of your FOIA request delivered to our office on September 6, 2019. Your request sought:

“Letter sent to Hinckley Big-Rock CUSD #429 regarding violations of OMA regarding keeping of building and grounds committee meeting minutes.”

Your request is granted and the subject correspondence is enclosed. There is no cost for copies of these documents. The person who is responsible for this response to your request for records is: David Berault, DeKalb County Assistant State's Attorney and FOIA Officer. I may be contacted at the address above.

Although this is not a denial of your request, you have the right to file a request for review by the Public Access Counselor of the Office of the Illinois Attorney General. The Public Access Counselor may be contacted at 500 South 2nd Street, Springfield, Illinois 62706, or by telephone at (217) 558-0486. Pursuant to the Illinois Freedom of Information Act, you also have the right to seek judicial review.

Very truly yours,

  
David Berault  
Chief Civil Assistant State's Attorney  
DeKalb County State's Attorney's Office

Encl.

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Julie Beach, Office Manager*

September 3, 2019

Superintendent Travis McGuire  
Hinckley-Big Rock CUSD #429  
700 E Lincoln Highway,  
Hinckley, IL 60520

Superintendent McGuire,

This office recently received complaints as to Hinckley-Big Rock CUSD #429 not properly following the Open Meetings Act (5 ILCS 120/1, *et seq.*) in regard to the keeping of minutes for meetings involving the topic of building a new baseball field at Hinckley-Big Rock High School. Upon having this issue brought to my attention, I listened to audio posted on wspy.com, wherein you discussed the failure of your Board of Education's Building, Grounds and Transportation SubCommittee to properly compile meeting minutes. I appreciate you advising the public of this error and am writing this letter in hope of avoiding such problems in the future.

In regard to keeping minutes of each meeting held, the obligation is plainly stated in the Act itself. 5 ILCS 120/2.06, explains that a public body must prepare and keep written minutes of each meeting that they engage in. This is in regard to both open meetings, and those closed based on 5 ILCS 120/2(c). This mandate equally applies to any committee as well as its parent body. See 5 ILCS 120/1.02 & AG Opinion 82-030 (September 13, 1982), which is enclosed. The minutes themselves must contain: (1) the date, time and place of the meeting; (2) the members of the public body recorded as either present or absent and whether the members were physically present or present by means of video or audio conference; and (3) a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken.

Upon completion of drafting such minutes, the public body must approve the minutes of the open meetings *within 30 days after that meeting or at the public body's second subsequent regular meeting, whichever is later.*<sup>1</sup> Online is a list of the meetings that you have held in

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<sup>1</sup> There are further rules in regard to minutes and audio for closed meetings, which I remind you to review and adhere to.

2019, and while there are minutes posted for the School Board and Committee of the Whole, there are none for the subject committee (or any other committees). This is the case in years past as well. As such, there are no means by which the public can be informed of what took place at the subject meetings. Yet, since the School Board has otherwise been preparing minutes, it is our opinion that not keeping this (sub)committee minutes was most likely an error unlikely to repeat. As such, there is probably little that could be garnered by filing an OMA Violation proceeding with the Circuit Court. Nevertheless, there is an opportunity to enhance your knowledge of the Act for future meetings.

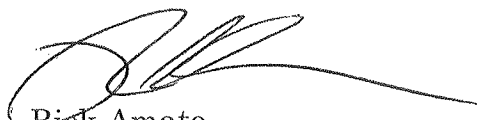
In reviewing your website, my office found that you have some training certificates for members posted. Of course, I understand that there are some different methods of OMA training that can be utilized when formed under 105 ILCS 5/23-1, *et seq.* Within the posted certificates, I see that there were some FOIA/OMA training that occurred in the past (2012 & 2013), but none recently. Changes have occurred in the law over the last six years, and it is always good to refresh oneself. It is especially helpful to review the formal opinions posted each year by the Public Access Counselor of the Attorney General's Office.

As such, I am asking that each member of the Hinckley-Big Rock CUSD #429 School Board take some time to also complete the Illinois Attorney General's 2019 OMA training, which was recently updated and made available online. I understand that OMA itself does not demand that elected officials *retake* the OMA training after they have initially done so. *See* 5 ILCS 120/1.05(b). Yet, it is important that each public body's members *continue* to stay informed as to the law. Therefore, I would urge you to institute a policy wherein members of the School Board, and their OMA/FOIA staff, retake the training yearly so that they do not have issues arise again.<sup>2</sup> I think you will find that this will be beneficial for you all.

Lastly, I want to remind you, your Board and staff that the Attorney General and DeKalb County State's Attorney's Office are hosting an annual training event, where questions may be posed to the Public Access Counselor's Office in person. That will be held on Thursday, September 12, 2019 at 6:00 P.M., located at the DeKalb County Farm Bureau, 1350 West Prairie Drive, Sycamore, IL. All government officials are encouraged to attend and the public is welcome as well. An invite is enclosed to post for interested members of the staff and public.

With that all being said, I am closing my file on this matter. Please do not hesitate to contact me should you have any questions or wish to discuss the matter further.

Very truly yours,



Rick Amato  
DeKalb County State's Attorney

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<sup>2</sup> The Open Meetings Act Training can be found at the Illinois Attorney General website:  
<http://foia.ilattorneygeneral.net/Default.aspx>.

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# 2019 DEKALB COUNTY FREEDOM OF INFORMATION ACT & OPEN MEETINGS ACT TRAINING FOR LOCAL GOVERNMENTS

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THURSDAY, SEPTEMBER 12, 2019  
6:00 P.M.

**Location: DeKalb County Farm Bureau,  
1350 West Prairie Drive, Sycamore, IL**

*Presented by: Rick Amato, DeKalb County State's Attorney, Leah Bartelt of the Illinois Attorney General's Office & DeKalb County Board Chairman Mark Pietrowski, Jr.*

All local government officials and employees are invited to attend a seminar focusing on the Freedom of Information Act (FOIA) and Open Meetings Act (OMA). There will be discussions on both laws, and their enforcement, followed by a question and answer session with Public Access Counselor (PAC) staff, who are entrusted with their enforcement.

This is the second year in a row that such training has been offered in DeKalb County, and we are encouraging all local governments to choose to participate!

For any questions, please contact Tasha Sims at 815-895-1630 or Chief Civil Assistant State's Attorney David Berault at 815-895-7164.

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*The PAC has confirmed that attendance at this event is not in violation of the Open Meetings Act itself. It is also open to the media and public. (See Ill. Att'y Gen. Op. No. 95-004 and Nobani v Conglianse, 552 F. Supp 657, 661 (N.D. Ill. 1982)). The PAC may be reached at 1-877-299-FOIA with any questions on government training.*

## 5 ILCS 120/2.06

Statutes current through P.A. 101-220, except for portions of P.A. 101-31 and P.A. 101-48, of the 2019 Regular Session of the 101st General Assembly

***Illinois Compiled Statutes Annotated > Chapter 5 GENERAL PROVISIONS (§§ 5/0.01 — 99) > OPEN MEETINGS (§§ 120/1 — 120/7.5) > Open Meetings Act (§§ 120/1 — 120/7.5)***

### **5 ILCS 120/2.06 Minutes; Right to Speak**

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(a) All public bodies shall keep written minutes of all their meetings, whether open or closed, and a verbatim record of all their closed meetings in the form of an audio or video recording. Minutes shall include, but need not be limited to:

- (1) the date, time and place of the meeting;
- (2) the members of the public body recorded as either present or absent and whether the members were physically present or present by means of video or audio conference; and
- (3) a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken.

(b) A public body shall approve the minutes of its open meeting within 30 days after that meeting or at the public body's second subsequent regular meeting, whichever is later. The minutes of meetings open to the public shall be available for public inspection within 10 days after the approval of such minutes by the public body. Beginning July 1, 2006, at the time it complies with the other requirements of this subsection, a public body that has a website that the full-time staff of the public body maintains shall post the minutes of a regular meeting of its governing body open to the public on the public body's website within 10 days after the approval of the minutes by the public body. Beginning July 1, 2006, any minutes of meetings open to the public posted on the public body's website shall remain posted on the website for at least 60 days after their initial posting.

(c) The verbatim record may be destroyed without notification to or the approval of a records commission or the State Archivist under the Local Records Act [50 ILCS 205/1 et seq.] or the State Records Act [5 ILCS 160/1 et seq.] no less than 18 months after the completion of the meeting recorded but only after:

- (1) the public body approves the destruction of a particular recording; and
- (2) the public body approves minutes of the closed meeting that meet the written minutes requirements of subsection (a) of this Section.

(d) Each public body shall periodically, but no less than semi-annually, meet to review minutes of all closed meetings. At such meetings a determination shall be made, and reported in an open session that (1) the need for confidentiality still exists as to all or part of those minutes or (2) that the minutes or portions thereof no longer require confidential treatment and are available for public inspection. The failure of a public body to strictly comply with the semi-annual review of closed session written minutes, whether before or after the effective date of this amendatory Act of the 94th General Assembly [P.A. 94-542], shall not cause the written minutes or related verbatim record to become public or available for inspection in any judicial proceeding, other than a proceeding involving an alleged violation of this Act, if the public body, within 60 days of discovering its failure to strictly comply with the technical requirements of this subsection, reviews the closed session minutes and determines and thereafter reports in open session that either (1) the need for confidentiality still exists as to all or part of the minutes or verbatim record, or (2) that the minutes or recordings or portions thereof no longer require confidential treatment and are available for public inspection.

## 5 ILCS 120/2.06

**(e)**Unless the public body has made a determination that the verbatim recording no longer requires confidential treatment or otherwise consents to disclosure, the verbatim record of a meeting closed to the public shall not be open for public inspection or subject to discovery in any administrative or judicial proceeding other than one brought to enforce this Act. In the case of a civil action brought to enforce this Act, the court, if the judge believes such an examination is necessary, must conduct such in camera examination of the verbatim record as it finds appropriate in order to determine whether there has been a violation of this Act. In the case of a criminal proceeding, the court may conduct an examination in order to determine what portions, if any, must be made available to the parties for use as evidence in the prosecution. Any such initial inspection must be held in camera. If the court determines that a complaint or suit brought for noncompliance under this Act is valid it may, for the purposes of discovery, redact from the minutes of the meeting closed to the public any information deemed to qualify under the attorney-client privilege. The provisions of this subsection do not supersede the privacy or confidentiality provisions of State or federal law. Access to verbatim recordings shall be provided to duly elected officials or appointed officials filling a vacancy of an elected office in a public body, and access shall be granted in the public body's main office or official storage location, in the presence of a records secretary, an administrative official of the public body, or any elected official of the public body. No verbatim recordings shall be recorded or removed from the public body's main office or official storage location, except by vote of the public body or by court order. Nothing in this subsection (e) is intended to limit the Public Access Counselor's access to those records necessary to address a request for administrative review under Section 7.5 of this Act [5 ILCS 120/7.5].

**(f)**Minutes of meetings closed to the public shall be available only after the public body determines that it is no longer necessary to protect the public interest or the privacy of an individual by keeping them confidential, except that duly elected officials or appointed officials filling a vacancy of an elected office in a public body shall be provided access to minutes of meetings closed to the public. Access to minutes shall be granted in the public body's main office or official storage location, in the presence of a records secretary, an administrative official of the public body, or any elected official of the public body. No minutes of meetings closed to the public shall be removed from the public body's main office or official storage location, except by vote of the public body or by court order. Nothing in this subsection (f) is intended to limit the Public Access Counselor's access to those records necessary to address a request for administrative review under Section 7.5 of this Act.

**(g)**Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body.

## History

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P.A. 85-1355; 88-621, § 5; 93-523, § 5; 93-974, § 5; 94-28, § 5; 94-542, § 5; 94-1058, § 5; 96-1473, § 5; 99-515, § 5.



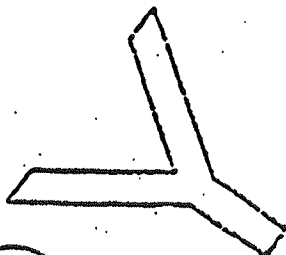
TYRONE C. FAHNER  
ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

September 13, 1982

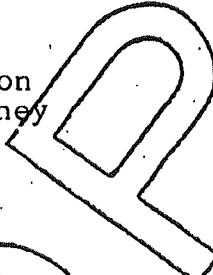
FILE NO. 82-030

MEETINGS:

Open Meetings Act - Application to  
Committees of a Public Body

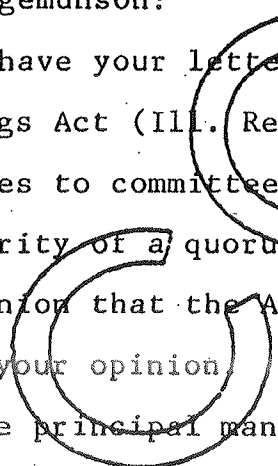


Honorable Dallas C. Ingemunson  
Kendall County State's Attorney  
Post Office Box M  
Yorkville, Illinois 60560



Dear Mr. Ingemunson:

I have your letter wherein you inquire whether the  
Open Meetings Act (Ill. Rev. Stat. 1981, ch. 102, par. 41 et  
seq.) applies to committees of a public body consisting of less  
than a majority of a quorum of such body. You advise that it  
is your opinion that the Act applies to such committees. I  
agree with your opinion



The principal mandate of the Open Meetings Act is  
that, with certain exceptions not relevant here, "all meetings  
of public bodies shall be public meetings \* \* \*". (Ill. Rev.  
Stat. 1981, ch. 102, par. 42.) The Act also contains provi-  
sions establishing procedures for lawfully closing meetings to

Honorable Dallas C. Ingemunson - 2.

the public (Ill. Rev. Stat. 1981, ch. 102, par. 42a), the proper time and place for public meetings (Ill. Rev. Stat. 1981, ch. 102, par. 42.01), the requisite public notice for such meetings (Ill. Rev. Stat. 1981, ch. 102, par. 42.02), and other requirements governing public access to the conduct of public business by governmental bodies. (Ill. Rev. Stat. 1981, ch. 102, pars. 42.03 through 42.06.)

Section 1.02 of the Act (Ill. Rev. Stat. 1981, ch. 102, par. 41.02) defines the term "meeting" as "any gathering of a majority of a quorum of the members of a public body held for the purpose of discussing public business". The issue raised in your letter centers on the meaning of the term "public body", as used in the definition of "meeting" and other provisions of the Act, which is also defined in section 1.02 of the Act:

" \* \* \*

'Public body' includes all legislative, executive, administrative or advisory bodies of the state, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, and any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue, except the General Assembly and committees or commissions thereof." (Emphasis added.)

The language of the above definition is plain and unequivocal. Plain and unambiguous provisions of a statute do



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not need construction, and exceptions or limitations which depart from a statute's plain meaning may not be read into its provisions. (Nordine v. Illinois Power Company (1965), 32 Ill. 2d 421.) Because a subsidiary body of any public body is expressly included within the Act's definition of public body, each subsidiary body of another public body is considered a separate public body under the Act. Therefore, the Act's principal mandate as well as all other requirements of the Act apply to such subsidiary bodies.

This conclusion is consistent with judicial interpretation of the Open Meetings Act. In People ex rel. Difanis v. Barr (1980), 83 Ill. 2d 191, the supreme court gave an expansive interpretation to the definition of public body in holding the Act applicable to a "political caucus" of city council members. In Pope v. Parkinson (1977), 48 Ill. App. 3d 797, the Open Meetings Act was held not to apply to an advisory committee but this was because the committee had neither been appointed by nor was subsidiary to any public body. In contrast to that case, there is no question on these facts that the committee at issue is a subsidiary body of a public body.

Because each subsidiary body of a public body is a separate public body under the Open Meetings Act, the Act is applicable any time there is a gathering of a majority of a quorum of the members of such subsidiary body held for the

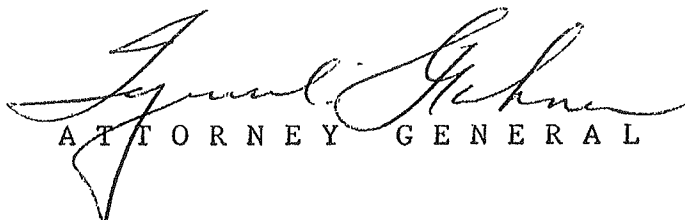
Honorable Dallas C. Ingemunson - 4.

purpose of discussing business. (Ill. Rev. Stat. 1981, ch. 102, pars. 41.02, 42.) Whether the Act's requirements are applicable is therefore not dependent upon the total number of members of the principal public body, but upon the membership of each subsidiary body thereof.

An example of the Act's application is best drawn by reference to a seven member principal public body. A majority of the quorum of such a body is three and thus, two members of the body could discuss the body's business without complying with the requirements of the Open Meetings Act. However, if the two members are members of a committee or other subsidiary body of the principal public body, and if such committee or subsidiary body consists of five or fewer members, the Act would apply to the discussion of the two members relative to the business of the committee or subsidiary body. Thus, the creation of two member committees by a seven member public body does not operate to circumvent the provisions of the Open Meetings Act since the Act applies separately to the committees.

For these reasons, it is my opinion that the Open Meetings Act applies to a meeting of a committee or any other subsidiary body consisting of less than a majority of a quorum of the members of the public body to which it is subsidiary.

Very truly yours,

  
ATTORNEY GENERAL