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General Public Recitation of Item to be Voted Upon at Public Meeting Deemed Sufficient

Springfield School District No. 186 v The Attorney General of Illinois, 2017 Il. 120343

The Illinois Supreme Court has overturned a recent binding opinion of the Attorney General that a board of education could not vote on an agreement [in that case an employment separation agreement] without first reciting the "key terms" of the agreement. The Court determined that reciting the general nature of a matter being considered by the public body prior to a vote, with adequate detail to identify the "particular transaction" being considered, satisfies the requirements of the Open Meetings Act.

The Court explained the "public recital" requirement as follows:

> "... the only additional information required in the public recital is that needed to "inform the public of the business being conducted." Thus, while the "nature of the matter" may be recited in nonspecific terms (the approval of a loan, a contract, a purchase, a policy, or a resolution), "other information" is necessary to inform the public of the specific item of business (the purpose of the loan, the subject of the contract, the type of property being purchased, the title of the policy, or the purpose of the resolution). The plain language of [the Open Meetings Act] does not require more than this.
>
> ...
>
> We, therefore, hold that under the Open Meetings Act, a public recital must take place at the open meeting before the matter is voted upon; the recital must announce the nature of the matter under consideration, with sufficient detail to identify the particular transaction or issue, but need not provide an explanation of its terms or its significance."

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Public Recital Deemed Sufficient By Federal District Court

In *Roller* the plaintiff was a non-tenured teacher who sued when her contract was not renewed, asserting several claims, including a violation of the Open Meetings Act. Roller asserted the school board unlawfully failed to publicly recite its action not to renew her contract at an open meeting. *Roller*, 2006 WL 200886, at *4.

The Board agenda for the meeting included an item "Recommendations for Employment and Dismissal,". The Board meeting minutes showed that a motion was made and seconded during the meeting to "accept the recommendation to release fourth year full-time probationary teachers at the end of the 2004-2005 school year as presented on the attached." *Id.* Roller's name was on the attached resolution. She contended that the Board violated the Open Meetings Act by failing to name her personally in the public recital before the vote. The Court noted that that was no case discussing how specific this "public recital" and notice had to be to comply with the Open Meetings Act, concluding:

> "the Act does not require as much as plaintiff] demands." *Id.* Rather, it says only that the Board must recite 'the nature of the matter being considered' and 'inform the public of the business being conducted.' The agenda posted prior to the meeting, together with the recital of the motion passed during the meeting itself, was enough to satisfy the statute." *Id.*

Roller v. Board of Education of Glen Ellyn School District #41, No. 05-C-3638, 2006 WL 200886 (N.D. Ill. Jan. 18, 2006). [This decision is an "unpublished" memorandum opinion and order].

CASE SUMMARY

Springfield School District No. 186 v The Attorney General of Illinois, 2017 Il. 120343.

Facts

The Board of Education of Springfield School District No. 186 held multiple closed sessions to discuss a possible separation agreement with its Superintendent. At a closed session on January 31, 2013, the Superintendent signed and dated a proposed separation agreement.

At a subsequent closed session on February 4, 2013, six of the seven board members signed the Agreement but did not date it. At that meeting the Board's attorney explained to the Board that the Agreement would have to be approved in public, but that due to the terms of the Agreement, the Board members could not publicly disclose or discuss the contents of the Agreement.

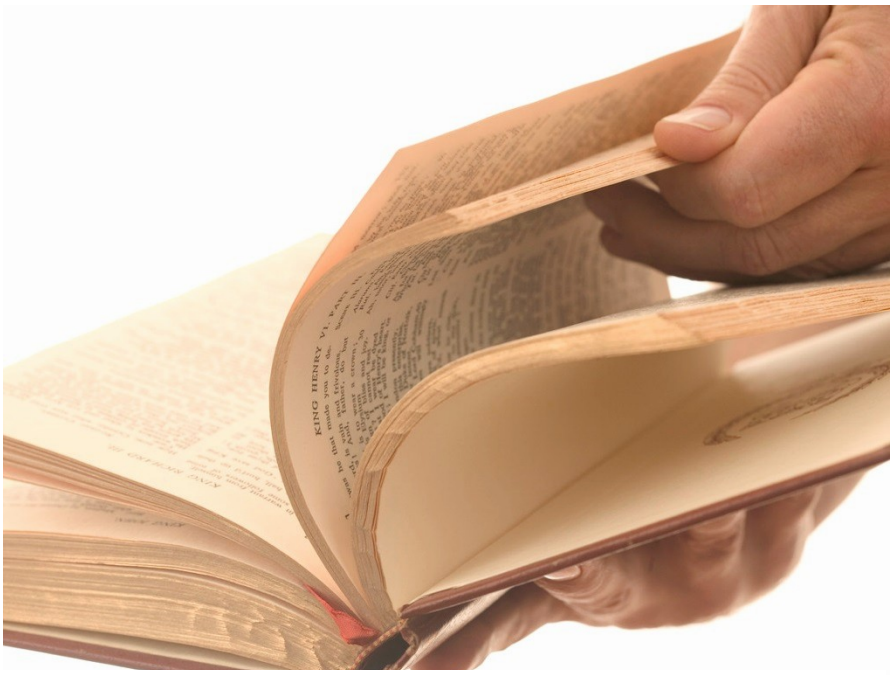
A reporter for an area newspaper, the State Journal-Register, filed a request for review with the Illinois Attorney General, requesting review of alleged violations of the Open Meetings Act, including signing the Agreement without first publicly voting to approve it.

Following the filing of that request for review, the Board of Education posted its agenda on its website for a March public meeting. Under the heading "Roll Call Action Items," the agenda read "Item 9.1, Approval of a Resolution regarding the Separation Agreement and Release between Superintendent Dr. Walter Milton, Jr., and the Board of Education." with a live link to the Resolution. The link provided the following statement: "The Board President recommends that the Board of Education of Springfield School District No. 186 vote to approve the Separation Agreement and Release between Dr. Walter Milton Jr. and the Board of Education." This item than contained another link to the separation agreement document, as executed by the Superintendent and dated "1/31/13," along with the signatures of six of the seven Board members, none of which were dated.

At its March public meeting, the Board president introduced this item for consideration and a vote by saying:

> "I have item 9.1, approval of a resolution regarding the separation agreement. The Board President recommends that the Board of Education of Springfield School District No. 186 vote to approve the separation agreement and release between Dr. Walter Milton, Jr., and the Board of Education."

One of the Board members made a motion to table the matter, indicating that she did not know the reasons for the action being proposed and that the public did not know. A motion to approve the Agreement was then seconded and the Board President asked for any discussion. The member who moved to table the matter then voiced her support for the Superintendent and another member thanked the Superintendent for his service to the District. The resolution was then approved by six of the board members and dated as of the date of the meeting.



Attorney General Issues Opinion Finding School Board to be in Violation of the Open Meetings Act

After its investigation of these actions of the School Board, the Attorney General issued a binding opinion, finding violations of the Open Meetings Act, including the following:

1. Improperly taking final action in closed session by signing the agreement in closed session;
2. Failing to "adequately inform the public of the nature of the matter under consideration or the business being conducted" when the Board voted in open session;

The Board filed an action in the circuit court contesting the opinion of the Attorney General. The circuit court reversed the determination of the Attorney General that the Board improperly took final action in a closed session, concluding the Board took its final action at an open public meeting. [The Court remanded the issue of whether the public was properly informed back to the Attorney General for further review].

Following further review, the Attorney General concluded the Board violated the Act:

> "by voting to approve the separation agreement during its March 5, 2013, meeting without adequately informing the public of the business being conducted," [because] "the Board's posting of the separation agreement on its website did not constitute a public recital during an open meeting" … [A]t the March 5, 2013, meeting, the Board described the nature of the matter under consideration only in vague, general

Public Recital Deemed Insufficient By Illinois Appellate Court

In a separate 2016 case, the Illinois Appellate Court determined a park district board violated the Open Meetings Act by failing to properly describe the nature of the matter being considered in a manner that will inform the public of the business being conducted. In that case, the park district board took action on two items at a public meeting, after posting the two items on its agenda. The agenda listed only " 'Board Approval of Lease Rates' " and " 'Board Approval of Revised Covenants.' " At its meeting, the "public recital" included only a request for a motion to approve the lease rates " 'that came from appraisal' " and a motion to " 'accept the revised covenants.' " After the votes was taken, an audience member asked the board to explain what is had voted on. The board vice president did not answer, instead stating that the items voted on could be viewed only after they " 'get recorded at the courthouse.' " Claims of violations of the Open Meetings Act were then brought against the park board, including an insufficient agenda and insufficient public recital at the open meeting. The appellate court concluded that the park board "recitals" were insufficient, stating that a recital including "key terms" of the proposed lease or covenants would have been one means to satisfy the Open Meetings Act. In *Allen*, the appellate court concluded that "[w]hatever the standard might be for a public recital, the Board failed to meet it in this case." *Allen*, 2016 IL App (4th) 150963, ¶ 31. The presiding officer of the park district board publicly recited the general nature of the

Public Recital Deemed Insufficient By Illinois Appellate Court (cont.'d)

two matters being considered: lease rates and revised covenants. He did not, however, provide sufficient other information to inform the public of the specific business being conducted: What type of real or personal property was being leased? What existing covenants were being revised? *Allen v. Clark County Park District Board of Commissioners*, 2016 IL App (4th) 150963

> terms by calling for a vote on a motion to approve a separation agreement with Dr. Milton. The public was given no specific information concerning the separation agreement or its terms. In particular, the public was not informed that the separation agreement included a substantial lump sum payment of public funds."

The Attorney General concluded that the Act requires public recitation of both the nature of the action to be taken and other information that will inform the public of the business being conducted so that the School Board was required to verbally explain "the significance" of its action publicly at the meeting before the Board can take any action on the matter in order to ensure that the persons at the meeting have enough information to understand "the business being conducted" by the Board. The Attorney General argued that the recital of the Board president was insufficient and must "at least" include a verbal description of the "key terms" of the separation agreement.

Illinois Supreme Court Reverses Attorney General Opinion Finding Public Recital Was Adequate

The Supreme Court held that the Open Meetings Act does not require a discussion or description of the "key terms" of the separation agreement. The Court concluded:

> "The board president recited the general nature of the matter under consideration—a separation agreement and release—and specific detail sufficient to identify the particular transaction—the separation agreement was between Dr. Milton and the Board. This was sufficient to serve the purpose of the public recitation requirement. It was not necessary for the board president to publicly read the 16 pages of the agreement and its several addenda or to enumerate "key points" of the agreement, which was one of 17 separate "Roll Call Action Items" on the agenda for the March 5, 2013, meeting."

Illinois Supreme Court Reverses Attorney General Opinion Finding No Final Action in Closed Session

The Court also found that the Board of Education did not improperly take final action in closed session. This alleged violation was based on the claim that the Board failed to make an adequate public recitation before taking its vote at the open meeting. The Supreme Court resolved that issue in favor of the School Board, rendering this issue moot. The Court did go on to note that the Open Meetings Act contains no bar to a public body's taking a preliminary vote at a closed meeting. See, *e.g.*, *Grissom v. Board of Education of Buckley-Loda Community School District No. 8*, 75 Ill. 2d 314, 326-27 (1979) (observing that the Open Meetings Act does not prohibit a board from adjourning to closed session to draw up signed findings and then returning to

open session to publicly record individual members' votes on the findings); *Jewell v. Board of Education, Du Quoin Community Unit Schools, District No. 300*, 19 Ill. App. 3d 1091, 1094-95 (1974) (finding no violation of the Open Meetings Act where the board agreed in closed session not to rehire a teacher and prepared a motion to that effect, returned to open session, read the motion, and held a roll call vote, which approved the motion). The Supreme Court emphasized that under the plain language of the Open Meetings Act, the public vote at an open meeting is not merely a ratification of a final action taken earlier in a closed session; it is the final action. Without the public vote, no final action has occurred. See, *e.g.*, *Lawrence v. Williams*, 2013 IL App (1st) 130757 (finding written decision of electoral board null and void because the decision was not made in an open meeting with a quorum present); *Howe v. Retirement Board of the Firemen's Annuity & Benefit Fund*, 2013 IL App (1st) 122446 (finding board's written denial of benefits invalid in absence of vote in open session).

The full Supreme Court decision is available at:

Springfield School District No. 186 v. The Attorney General of Illinois

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