LEGAL ALERT

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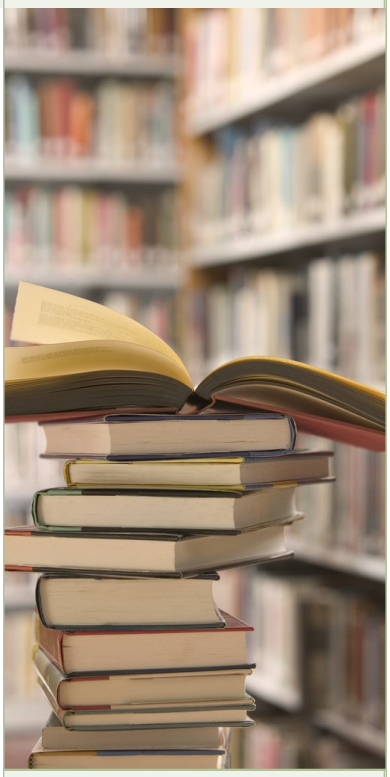
Court Finds Public Body Failed to Properly Advise Public of the Matter Being Considered Before Taking Final Action



An Illinois Appellate Court has held that a park district board violated the Open Meetings Act when it did not provide adequate information about the matter it was considering, in order for the public to reasonably understand what was being voted on, before voting on it. The agenda for the meeting included the following two items: "Board Approval of Lease Rates" and "Board Approval of Revised Covenants." During its meeting, the board made a motion for "approval of lease rates that came from appraisal". The board followed with a separate motion for "board approval for the revised covenants". The Court found that the board's agenda and motions failed to meet the express requirement of the Open Meetings Act that all final action must "be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted."

A summary of the facts of the case and the Court's full holding can be found on page 2.

The full decision of the Illinois Appellate Court in *Allen v. Clark County Park District Board of Commissioners*, 2016 IL App (4th) 150963 can be found at:

Allen v. Clark County Park District Board of Commissioners

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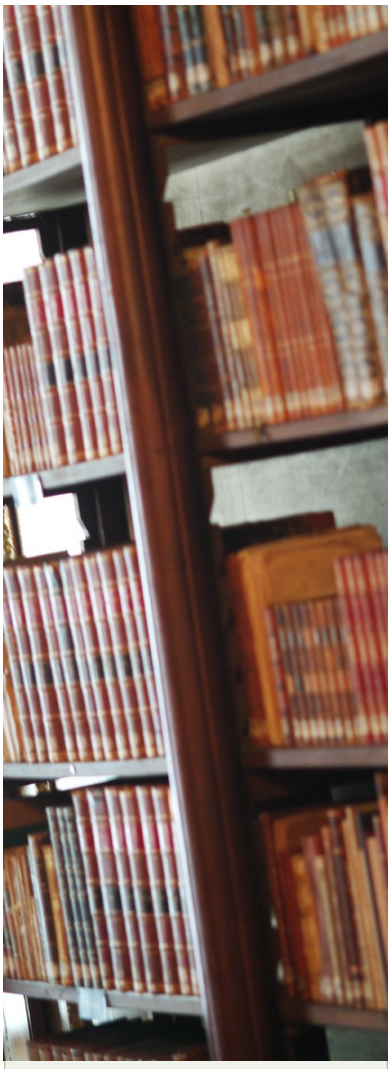


Appellate Court Finds Public Body Violated Open Meetings Act by Insufficient Public Recital of Agenda Item Before Taking Final Action

On November 16, 2016, the Illinois Fourth District Appellate Court held that the Clark County Park District Board of Commissioners ("Park Board") violated Section 2(e) of the Open Meetings Act ("OMA") by failing to provide a sufficient public recital of an agenda item before taking final action.

In *Allen v. Clark County Park District Board of Commissioners*, two agenda items that the Park Board approved were disputed: "X. Board Approval of Lease Rates" and "XI. Board Approval of Revised Covenants." 2016 IL App (4th) 150963. These two agenda items were after the following discussion:

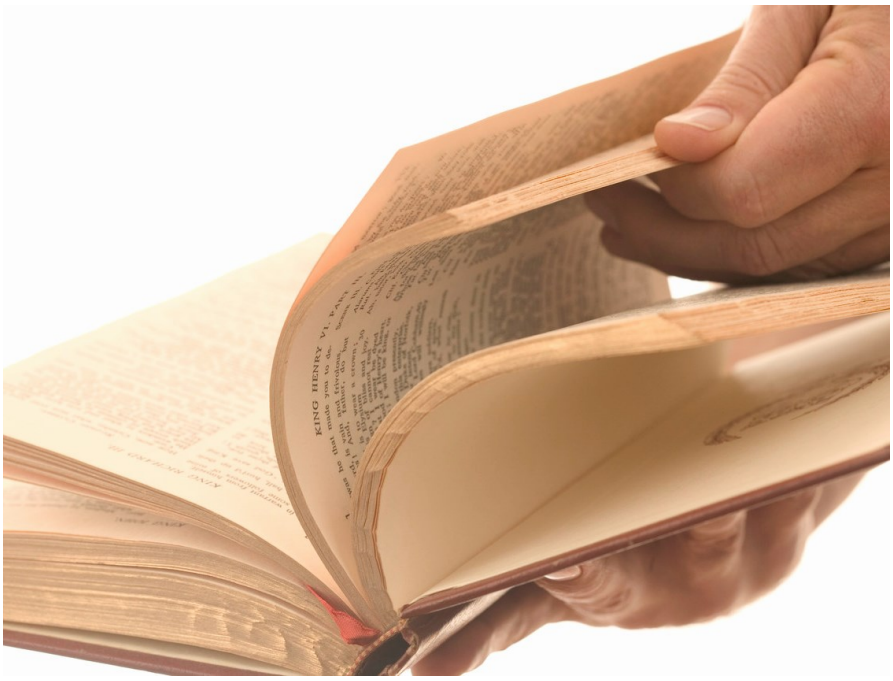
> Park Board Vice President Stone said "Approval of lease rates, entertain a motion." Park Board Commissioner Yargus then moved for the Park Board to approve the "rates that came from the appraisal." The Park Board then voted to approve the rates. Stone then said, "[O]kay, board approval for the revised covenants." Yargus moved for the Park Board to "accept the revised covenants." The Park Board voted to approve the revised covenants.

Pursuant to Section 2(e) of OMA:

> Final action. No final action may be taken at a closed meeting. **Final action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted**. 5 ILCS 120/2(e) (emphasis added).

The plaintiffs alleged that the vague description of the items as listed on the agenda, and the lack of any discussion at the meeting about even the most basic details of the lease, violated Section 2(e). The *Allen* court agreed. The court noted:

> The public recital did not provide the public with any of the key terms of the lease agreement or the



> covenants. The public was uniformed of what was being leased. Was it canoes? Was it camping equipment? Was it real property being developed into a housing subdivision? Who knows? Nor did the recital indicate who was leasing the property or for how long or how the Park District was going to be compensated. *Allen*, 2016 IL App (4th) 150963, ¶30.

Therefore, the court stated that "[a]lthough we are unsure what standard of specificity is required of a public recital, we can say with confidence that the Board's actions in this case were insufficient." *Id.* at ¶29.

The *Allen* decision does not explain the exact standard to be followed under Section 2(e) of OMA. However, the *Allen* court does discuss the Fourth District Appellate Court's decision in *Board of Education Springfield School District No. 186 v. Attorney General of Illinois* as a counterpoint to the utter failure of the Park Board to comply with Section 2 (e) of OMA. 2015 IL App (4th) 140941.

In that case, the school board posted its agenda on its website that included an agenda item entitled "Approval of a Resolution regarding the *** Agreement *** between Superintendent Milton and the Board." *Id.* at ¶7 (omissions in original). A hyperlink to the agreement was included di-

rectly underneath the agenda item. *Id.* At the meeting, the school board's president stated: "I have item 9.1, approval of resolution regarding the *** agreement. The Board president recommends that the Board *** vote to approve the *** Agreement between *** Milton *** and the Board." *Id.* In finding that the Board did not violate Section 2(e), the court held that "section 2(e) of the Act requires that public entity advise the public about the general nature of the final action to be taken and does not *** require that the public body provide a detailed explanation about the significance or impact of the proposed final action."

Thus, the *Allen* decision instructs that giving the public little to no information prior to taking action on an agenda item falls short of the transparency required by OMA. Nonetheless, as in the *Springfield School District No. 186* case, if a public body provides the public with basic information regarding the nature of an action item, so that the public is able to determine the "who, what, when, where and why" of an agenda item prior to final action, then the public body likely did its job under OMA.

For any questions or comments you might have regarding this newsletter, please feel free to contact us.

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