

PAC EMPHASIZES CLOSED SESSION LIMITATIONS AND COMPLIANCE

The Public Access Counselor (“PAC”) has issued two recent binding opinions addressing the limited exceptions for closed session meetings of public bodies, and the need to strictly comply with the Open Meetings Act (“OMA”) when conducting a closed session meeting.

On August 4, 2015, the PAC issued binding opinion 15-005 in response to a request for review alleging a violation of the OMA by a public body at its regular monthly meeting. At that meeting, the public body voted to go into executive session without providing a description of the subject of discussion or citing the relevant exception in Section 2(c) of the OMA. The PAC reiterated the statutory prerequisites for adjourning to closed session, namely “a majority vote of a quorum present, taken at a meeting open to the public...and a citation to the specific exception contained in Section to of [OMA].” Although, in its response to the request for review, the public body described the subject of the closed session as “personnel,” the PAC concluded such a reference was not in compliance with the statutory requirement to cite the specific exception authorizing the closed session.

In addition, the PAC also evaluated the specific discussions that took place in the closed session meeting, specifically as it relates to the purported “personnel” exception. The PAC emphasized that although public bodies routinely cite “personnel” as a reference to Section 2(c)(1) of the OMA, that Section allows for a closed session meeting only to discuss the “appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body...” The discussions in the closed session meeting at issue related to a proposed contract for police services, and the scope and cost of that contract. The PAC acknowledged that a decision on said contract could ultimately affect the employment status of certain employees, but because the discussion during closed session did not relate to any specific employees, a violation of the OMA occurred.

Similarly, on September 16, 2015, the PAC issued binding opinion 15-007. The underlying facts addressed in that opinion also included a public body adjourning to closed session to discuss “personnel.” As with opinion 15-005 referenced above, the PAC determined such a reference was not sufficient to meet the statutory requirement to cite a specific exception, and therefore a violation of the OMA occurred.

With regard to the items discussed during the closed session itself, the minutes indicated the discussion centered on the elimination of a particular employment position, as well as how the elimination of that position would affect the employment of a specific employee. The PAC concluded that discussions related to the elimination of a job or position, even one held by only a single employee, for budgetary or other reasons unrelated to the performance of the employee “is a matter related to budget and management which does not carry implications for an individual employee’s reputation,” and therefore is not within the scope of the Section 2(c)(1) exception. The PAC did find that the portion of the closed

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session discussion addressing how the elimination of the position would affect the specific employee who held the position was authorized under the exception.

The remainder of the items discussed in that closed session involved a hiring freeze that the public body asserted was a proper subject for closed session under the collective bargaining exception in Section 2(c)(2). However, the public body conceded in its response to the request for review that it was not in active negotiations with its collective bargaining units at the time of the meeting, but rather was preparing for such contact if the situation arose as a result of the hiring freeze. As a result, the PAC found that the proposed hiring freeze was not a matter of collective negotiation between the public body and the union, but rather a budgetary proposal considered by the public body itself. Because, under the PAC's opinion, the Section 2(c)(2) exception does not cover discussions of such budgetary actions that would affect members of collective bargaining units outside of active or imminent collective bargaining, the closed session discussions were improper and in violation of the OMA.

Both of these binding opinions reiterate and emphasize the need for public bodies to specifically cite the statutory exception when moving to go into closed session, and to limit closed session discussions to the subject matter of that specific exception. The PAC continues to narrowly construe the closed session exceptions, thereby necessitating strict compliance by public bodies in order to avoid potential OMA violations.



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