

PUBLIC ACCESS COUNSELOR OPINION 15-003 IS A REMINDER TO SCHOOLS/ MUNICIPALITIES THAT CLOSED MEETING DISCUSSIONS NEED TO BE LIMITED TO THE NARROW TOPIC OF THE EXEMPTION

On March 20, 2015 the Public Access Counselor (“PAC”) issued a binding opinion regarding closed sessions under the Open Meetings Act (“OMA”). In the situation raised to the PAC, the public body went into closed session to discuss the “appointment, employment, compensation discipline, performance, or dismissal of specific employees of the public body” pursuant to Section 2(c)(1) of OMA and to discuss the “sale or lease of specific property for use of the public body” pursuant to Section 2(c)(5) of OMA. However, once in closed session, the discussion of the public body mainly focused on the overall financial condition of the public body and various issues related thereto. This did involve a general discussion of employees, such as staffing levels and the importance of having a financial context for upcoming labor negotiations, but these discussions were part of a discussion on general budgetary issues. The PAC held that this broad, general discussion of budgetary issues does not qualify as a closed session topic, including Section 2(c)(1) of OMA. Likewise, while the public body discussed their efforts to sell or lease property owned by the public body, this subject is outside of the scope of Section 2(c) of OMA because it was not narrowly tailored to setting the price of the property.

Additionally, the public body asserted the incorrect exemption related to the sale or purchase of property. When making its motion, the public body said it was going into closed session for the “purchase or lease of real property *for the use of the public body*, including meetings held for the purpose of discussion whether a particular parcel should be acquired.” 120 ILCS 5/2(c)(5). The PAC emphasized that Section 2(c)(5) is limited to discussions related to the lease or sale of property *for use of the public body*, and that the discussions of the public body concerning the public body’s efforts to sell or lease property owned by the public body was outside of the scope of Section 2(c)(5) of OMA. However, the PAC did do an analysis under Section 2(c)(6) of OMA, which is the more

For more information about matters discussed in this issue, please feel free to contact Klein, Thorpe and Jenkins, Ltd.



Klein, Thorpe & Jenkins, Ltd.

Chicago

20 N. Wacker Drive, Suite 1660
Chicago, IL 60606
T 312.984.6400 F 312.984.6444

Orland Park

15010 S. Ravinia Avenue, Suite 10
Orland Park, IL 60462
T 708.349.3888 F 708.349.1506

www.ktjlaw.com

appropriate exemption, as it permits a public body to discuss the “setting of a price for sale or lease of property *owned by the public body*.” The PAC found that the public body’s discussion of general issues concerning the disposal of publicly-owned property exceeded the scope of the exemption, as the exemption narrowly applies the setting the price of the land or property. As such, public bodies should remember that there are two (2) exemptions for the sale or lease of property; one relating to a public body purchasing property for its own use and one for the public body selling property it owns.

As a result of the public body’s violation of OMA, the PAC ordered the public body to disclose and release the closed session minutes, the verbatim recording of the closed session and copies of any slide discussions referred to in the closed session.

This binding opinion again emphasizes the importance of staying on topic while in closed session. All exemptions are construed narrowly and specifically the exemptions relied upon in this opinion can only involve discussions about *specific* employees or pieces of property. It also emphasizes that public bodies need to careful that they are asserting the correct exemption, especially when discussing the sale or lease of property by the public body.



Klein, Thorpe & Jenkins, Ltd.

Chicago

20 N. Wacker Drive, Suite 1660
Chicago, IL 60606
T 312.984.6400 F 312.984.6444

Orland Park

15010 S. Ravinia Avenue, Suite 10
Orland Park, IL 60462
T 708.349.3888 F 708.349.1506