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FILE NO. 95-004

SCHOOLS AND SCHOOL DISTRICTS:
Reconsideration of Consolidation
of Educational Service Region

MEETINGS:
Validity of Action Deliberated
at Informational Meeting

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Honorable Charles R. Garnati
State's Attorney, Williamson County
Williamson County Courthouse
Marion, Illinois 62959-9989

Dear Mr. Garnati:

I have your letter wherein you inquire whether the Williamson County Board of Commissioners can reverse or rescind its resolution authorizing the consolidation of its educational service region with that of Franklin County after the county board of Franklin County has adopted the joint resolution and the voters have elected a superintendent for the consolidated educational service region. I also have your subsequent correspondence wherein you inquire whether attendance of members of the two county boards at an informational meeting on the new legislation requiring consolidation violated the Open Meetings

Act (5 ILCS 120/1 et seq. (West 1994)) and thereby voided the subsequently passed resolutions. For the reasons hereinafter stated, it is my opinion that: (1) the county board of Williamson County does not now have the authority to rescind the resolution authorizing the consolidation; and (2) that discussion of the matter at the joint meeting did not void the resolution, notwithstanding that the meeting was held in violation of the Open Meetings Act.

Section 3A-1 of the School Code (105 ILCS 5/3A-1 (West 1994)) provides that each county of the State shall, except as otherwise provided in article 3A, be designated as an educational service region. Public Act 88-89, sec. 3-10, effective July 14, 1993, amended section 3A-4 of the School Code (105 ILCS 5/3A-4 (West 1994)) to provide:

> "3A-4. Mandatory consolidation of educational service regions.
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> (a) After October 15, 1993, and until the first Monday of August, 1999, each region must contain at least 43,000 inhabitants. Regions may be consolidated voluntarily under Section 3A-3 or by joint resolution of the county boards of regions seeking to join a voluntary consolidation to meet these population requirements. The boundaries or regions already meeting these population requirements on the effective date of this amendatory Act of 1993 may not be changed except to consolidate with another region or a whole county portion of another region which does not meet these population requirements. * * *
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> * * *

> (c) If any region does not meet the population requirements of this Section the State Board of Education, within 15 days after the above said dates, shall direct such consolidation of that region with another region or regions to which it is contiguous as will result in a region conforming to these population requirements.
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> (d) All population determinations shall be based on the most recent federal census."

Prior to October 15, 1993, the population of Williamson County exceeded the 43,000 minimum population required for an educational service region, but Franklin County's did not. The county boards of the two counties chose to consolidate by joint resolution into one educational service region that would meet the population requirement of section 3A-4. Pursuant to section 3A-5 of the School Code (105 ILCS 5/3A-5 (West 1994)), this consolidation becomes effective on August 7, 1995, the date of the expiration of the terms of office of the regional superintendents serving at the time the consolidation was directed by the joint resolution. Section 3A-5 also required that a regional superintendent be elected to take office on the effective date of the consolidation, and prohibited the election of separate superintendents for each region at the regular election immediately preceding the effective date of the consolidation. In accordance with statute, a superintendent for the consolidated region was elected in November, 1994, who is scheduled to take office on August 7, 1995.

The commissioners of Williamson County have, apparently, reconsidered the decision to consolidate and recently voted to rescind the resolution authorizing consolidation. In Ceresa v. City of Peru (1971), 133 Ill. App. 2d 748 the court discussed the concept of reconsideration of actions at pages 751-52:

" * * *

> * * * it appears that there is some confusion in the use of the term 'reconsider'. In one sense reconsider is a parliamentary term which in its strict sense enables a deliberative body by a favorable vote on such a motion, to vote again on a prior action of the deliberate body. (People v. Davis, 284 Ill. 439, 120 N.E. 326 and City of Kankakee v. Small, 317 Ill. 55, 147 N.E. 404.) In its general non-technical sense reconsider refers to the further or renewed opportunity to think again about a matter and take some action with regard thereto. In this latter sense a deliberative body such as a city council, has continuing power and authority to consider from time to time matters within its jurisdiction and generally speaking any such reconsideration or renewed consideration may be independent of any action which it has taken or not taken in the past. * * *

* * * "

It is my opinion that the Williamson County Board of Commissioners does not now possess the power to reconsider its decision to adopt the consolidation resolution in either the parliamentary or substantive sense.

In City of Kankakee v. Small (1925), 317 Ill. 55, the court reviewed cases from a number of jurisdictions and

concluded, at pages 63-64:

" * * *

> Under the decisions here quoted and the general rules relating to powers of deliberative bodies of the character of city councils, we are of the opinion that where such a body has finally voted upon a proposition and no motion for reconsideration or other motion is pending thereon, the city council, upon adjournment of its meeting, has no power to reconsider its action where the rights of other persons have intervened. * * *

* * * "

A county board is such a deliberative assembly, about which it has been said:

" * * *

> * * * If for want of due deliberation, ill advised action is taken, the interests of the public require that it should be permitted, at least at the same meeting, to reconsider and annul such action. It would be intolerable that such a public corporation should be restricted from so doing. There is more reason for sustaining such right in such a body than in such corporations as cities, where the mayor has a veto power. The inherent right of the board to rescind, may fairly rest on the theory that its deliberation as to any measure acted upon or under consideration extends over the whole period of such meeting. It has been held that 'all deliberative assemblies, during their session, have a right to do and undo, consider and reconsider, as often as they think proper, and it is the result only which is done,' that is, of that session. [Citations omitted.] * * *" (Neal v. County of Franklin (1892), 43 Ill. App. 267, 269-70.) [Emphasis in original.]

A county board clearly has authority to reconsider a resolution

before it becomes a record of the board and before any rights have accrued under it or duties have been imposed by it. Beckwith v. English (1869), 51 Ill. 147, 148.

The information which you have presented, however, gives no indication that any motion for reconsideration of the resolution to consolidate was raised during the meeting at which it was adopted, or that the adoption of the resolution by the Williamson County Board at its meeting of October 14, 1993, was anything but a final action. In fact, the board did not purport to rescind its resolution until May 2, 1995. It is also apparent that the rights of others had intervened before the resolution was rescinded. Had the board not taken final action by October 15, 1993, then the State Board of Education would have had 15 days within which to have directed the Franklin County educational service region to consolidate with some other region. Because of the adoption of the resolution, no action was taken to compel consolidation. Moreover, duties were imposed upon election officials with respect to the election of a regional superintendent for the consolidated region, which duties were carried out, and the voters of Franklin and Williamson counties elected a person to fill that post. As soon a majority of votes are cast for a candidate at an election held in pursuance of law, the candidate becomes legally and fully entitled to the office. (Emery v. Hennessey (1928), 331 Ill. 296, 306.) Thus, assuming that he is qualified, the duly elected superintendent has a right

to assume office on the appointed day, which right intervened before the resolution was rescinded.

It is clear, therefore, that the Williamson County Board did not validly reconsider its resolution to consolidate its educational service region with that of Franklin County, in the parliamentary sense. It remains to determine whether the Williamson County Board had continuing power to act with respect to the county's status as or in an educational service region.

A county that is not a home rule unit can exercise only those powers which are expressly delegated to it by the constitution or the General Assembly (Ill. Const. 1970, art. VII, sec. 7), together with those that arise by necessary implication from those expressly delegated powers (Tavern Owners Ass'n of Lake County, Illinois, Inc. v. County of Lake (1977), 52 Ill. App. 3rd 542, 544). The apparent purpose of the Williamson County Board's action in rescinding its resolution was to dissolve or detach from the consolidated educational service region it had established with Franklin County. Section 3A-9 of the School Code (105 ILCS 5/3A-9 (West 1994)) specifically provides for the restructuring of educational service regions. It allows for the disconnection of a county from an educational service region only by referendum on petition of 10% of the "legal resident voters" of the county. (I note that petitions seeking such a referendum were, in fact, filed prior to the November, 1994, general election, but were successfully objected

to by opponents.) No provision is made for disconnection by action of the county board, either expressly or by implication.

In the absence of a statute authorizing the county board to dissolve or disconnect from the consolidated region, a county board has no such authority. (See 1982 Ill. Att'y Gen. Op. 90 (where the only method to discontinue a tax and to abolish a tuberculosis care and treatment board was by referendum, the county board had no authority to discontinue the tax or to abolish the board).) It is my opinion, therefore, that the Williamson County Board's resolution of May 2, 1995, purporting to rescind its resolution of October 14, 1993, to join in a consolidation of educational service regions with Franklin County, is void because the board had no authority to adopt it. Consequently, the resolution of May 2, 1995, was not effective to serve the consolidated Franklin and Williamson County educational service regions.

You have also inquired concerning alleged violations of the Open Meetings Act relating to the decision to consolidate the educational service regions, and the effects thereof. According to the documents you have provided, one State legislator invited the members of the county boards of Franklin and Williamson counties, other legislators representing the area, the regional superintendent of each county, a representative of the State Board of Election and a representative of an association of regional superintendents "to discuss continued local control of

our schools". Your documentation also indicates that the chair of each county board expressed the idea that the meeting was "informational in nature"; a presentation was to be made to the county boards' members regarding the new requirements for consolidation and how they would affect the two counties. The meeting was attended by all three Williamson County Board members and by six or seven of the nine Franklin County Board members. No final action was taken by either board at the meeting. You inquire whether the consolidation resolution passed by each county board subsequent to this meeting is void by reason of the failure of either county board to follow the notice provisions of the Open Meetings Act with respect to the joint "informational" meeting.

The first issue raised by your inquiry is whether the meeting in question was subject to the Open Meetings Act. The Act requires that meetings of public bodies be open to the public, except where the holding of a closed meeting is specifically authorized by law, and that public notice of all such meetings be given in the manner prescribed therein. (5 ILCS 120/2 and 2.02 (West 1994).) For purposes of the Act, the term "meeting" "means any gathering of a majority of a quorum of the members of a public body held for the purpose of discussing public business." (5 ILCS 120/1.02 (West 1994).) The meeting in question constituted a gathering of a majority of a quorum of the members of each county board. The Act does not, however, apply

to every gathering of a majority of a quorum of a public body. It is not intended to apply, for example, to such things as bona fide social gatherings of public officials or political meetings at which only party business is discussed. Rather, the requirements of the Act are applicable only to gatherings of a majority of a quorum of public bodies which are held for the purpose of discussing public business. People ex rel. Difanis v. Barr (1980), 83 Ill. 2d 191, 202.

In theory, there is no absolute prohibition against the members of a public body attending an "informational meeting" without triggering the application of the Open Meetings Act. The mere fact that a majority of a quorum of the members of a public body attend and participate in a bona fide presentation on new legislative developments in an area of public concern within the scope of the body's power to act is not, in my opinion, sufficient to invoke the requirements of the Act. Based upon the information you have provided, including a partial transcript of the proceedings, however, it is equally apparent that the meeting in question did constitute a meeting for which notice should have been given as required by the Open Meetings Act.

The call to the meeting itself announces a meeting "to discuss" continued local control of schools. Although the meeting began with a description of the options available to the counties, including consolidation with other educational service regions, it is clear from the transcript that the host of the

meeting called it for the purpose of persuading the boards of the two counties that it was in the counties' best interests to consolidate with each other. Deliberational statements of a few county board members are recorded, and it appears that much more deliberation went on that is not reflected in the transcript. A rough diagram you supplied shows that the three Williamson County board members sat next to each other and that the Franklin County board members also sat in close proximity to each other. The transcript indicates that there were unrecorded discussions ongoing in several groups for an extended period of time which was interrupted by various questions, answers, and statements. Under the circumstances, it is clear that the purpose of the meeting was to discuss public business and that public business was, in fact, discussed at the meeting. It is my opinion, therefore, that the joint meeting did constitute a meeting of each county board which was subject to the Open Meetings Act, and that notice should have been given as required by the Act.

To conclude that the subject of consolidation was discussed at an illegal meeting does not necessarily mean, however, that the joint resolution for consolidation is void or even voidable. Sections 3 and 4 of the Act (5 ILCS 120/3, 4 (West 1994)) provide for civil and criminal enforcement, respectively, but only section 3 refers to the possible invalidation of actions. As amended by Public Act 88-621, effective January 1, 1995, section 3 provides:

> "(a) Where the provisions of this Act are not complied with, or where there is probable cause to believe that the provisions of this Act will not be complied with, any person, including the State's Attorney of the county in which such noncompliance may occur, may bring a civil action in the circuit court for the judicial circuit in which the alleged noncompliance has occurred or is about to occur, or in which the affected public body has its principal office, prior to or within 60 days of the meeting alleged to be in violation of this Act or, if facts concerning the meeting are not discovered within the 60-day period, within 60 days of the discovery of a violation by the State's Attorney.
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> (c) The court, having due regard for orderly administration and the public interest, as well as for the interests of the parties, may grant such relief as it deems appropriate, including granting a relief by mandamus requiring that a meeting be open to the public, granting an injunction against future violations of this Act, ordering the public body to make available to the public such portion of the minutes of a meeting as is not authorized to be kept confidential under this Act, or declaring null and void any final action taken at a closed meeting in violation of this Act.
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> * * * ."

At the time of the violation, subsection 3(a) authorized the bringing of a civil action within 45 days after the meeting or within 45 days of the discovery of a violation by the State's Attorney. (See 5 ILCS 120/3 (West 1992).) More than 45 days have passed since the meeting and since the State's Attorney became aware of a possible violation. Consequently, no action could be brought under the Open Meetings Act to invalidate

the joint resolution. Moreover, should the issue now arise in a different proceeding attacking the consolidation, the issue of invalidity based upon failure to comply with the Open Meetings Act would, in all likelihood, be deemed to have been waived by failure to raise the issue in a timely fashion. (Verticchio v. Divernon Community Unit School Dist. No. 13 (1990), 198 Ill. App. 3d 202, 206; Bromberek School Dist. No. 65 v. Sanders (1988), 174 Ill. App. 3d 301, 312-13.) Therefore, I do not believe that the validity of the joint resolution can be attacked on the basis of a failure to comply with the Open Meetings Act.

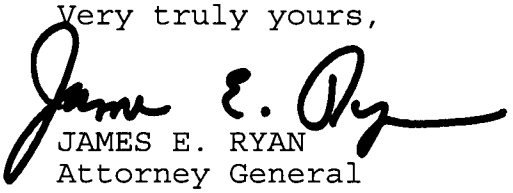
Even if the issue of the violation of the Open Meetings Act could be raised, however, there would still be no basis upon which to declare the joint resolution invalid. Prior to its amendment by Public Act 82-378, effective January 1, 1982, the Act contained no provision authorizing the invalidation of actions taken by public bodies at or subsequent to meetings that were held in violation of the Act. (See, Ill. Rev. Stat. 1979 ch. 102, par. 41 et seq.) Consequently, in Board of Education of Community Unit School Dist. No. 300 v. County Board of School Trustees (1978), 60 Ill. App. 3d 415, 420-21, the court refused to reverse orders granting a petition for detachment and annexation, where evidence with respect to the petition had been discussed in a closed session by two county boards of school trustees before they voted to grant the petition in open session. The court declared that nothing in the Act or in case law

mandated the invalididation of public action allegedly taken during closed proceedings, and declined to construe the Act to do so in the absence of a clear legislative mandate or judicial precedent. Thereafter, the General Assembly amended section 3, expressly granting the courts the authority to declare null and void any final action taken at a closed meeting in violation of the Act. The debates of the General Assembly with respect to that amendment strongly indicate a legislative intention that final actions of a public body could be invalidated by a court only when taken at a closed session. (Remarks of Representatives Reilly and Katz, May 20, 1981, House Debate on House Bill No. 411, at 4 and 29; Remarks of Senator Bruce, June 19, 1981, Senate Debate on House Bill No. 411, at 21; Remarks of Representatives Reilly and Bluthardt, June 28, 1981, House Debate on House Bill No. 411, at 4-5.) In the situation you have presented, the county boards discussed and deliberated, but took no action with respect to the matter in the illegal meeting, apparently leaving final action to be taken at open meetings for which notice was properly given. Therefore, it is my opinion that the joint resolutions to consolidate could not have been invalidated based solely upon deliberations being conducted at the meeting in question even if an enforcement action had been timely filed.

By this conclusion, I do not mean to minimize the importance of compliance with the dictates, policy and spirit of the Open Meetings Act. The county board members who attended the

"informational meeting" clearly violated both the letter and the spirit of the Act, and could have been subject to criminal and civil sanctions. The validity of the resolution, however, is the issue here, not the propriety of the county board members' conduct. Based upon the information you have presented, the resolution appears to have been adopted at a public meeting for which notice was properly given. Consequently, it is my opinion that the resolution is not invalid by reason of the noncompliance of the county board with the provisions of the Open Meetings Act.

Very truly yours,



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