



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

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FILE NO. 03-006

MEETINGS:

Assignment of County Board
Members to Committees;
Appointments to Public Office

The Honorable Joseph P. Hettel
State's Attorney, LaSalle County
707 East Etna Road, Room 251
Ottawa, Illinois 61350

Dear Mr. Hettel:

I have your letter wherein you inquire whether a county board "committee on committees" may properly hold a closed meeting to consider:

(1) the appointment of members of the county board or other persons to various committees created by the county board; and

(2) the appointment of persons to fill public offices where the appointments are made by the board, or by the chairman of the county board, with the advice and consent of the board.

For the reasons stated below, it is my opinion that the appointment of county board members or other persons to county board committees is not the "selection of a person to fill a public

office," as defined in the Open Meetings Act, and, therefore, cannot properly be considered in a closed meeting. The county board, or a committee thereof, however, may properly hold a closed meeting for the purpose of considering the appointment of persons to fill public offices.

A committee of a county board is a "public body" to which the provisions of the Open Meetings Act apply. (See 5 ILCS 120/1.02 (West 2000).) Section 2 of the Open Meetings Act (5 ILCS 120/2 (West 2000)) provides that all meetings of public bodies shall be open to the public unless excepted by subsection 2(c) of the Act (5 ILCS 120/2(c) (West 2000)), which provides, in pertinent part:

(c) Exceptions. A public body may hold closed meetings to consider the following subjects:

* * *

(3) The selection of a person to fill a public office, as defined in this Act, including a vacancy in a public office, when the public body is given power to appoint under law or ordinance, or the discipline, performance or removal of the occupant of a public office, when the public body is given power to remove the occupant under law or ordinance.

The term "public office" is defined in subsection 2(d) of the Act (5 ILCS 120/2(d) (West 2000)) as follows:

(d) Definitions. For purposes of this Section:

* * *

"Public office" means a position created by or under the Constitution or laws of this State, the occupant of which is charged with the exercise of some portion of the sovereign power of this State. The term "public office" shall include members of the public body, but it shall not include organizational positions filled by members thereof, whether established by law or by a public body itself, that exist to assist the body in the conduct of its business. (Emphasis added.)

You have indicated that the committee on committees considers the appointment of both county board members and persons other than county board members to membership on county board committees. Whether these appointments fall within the exception provided for by subsection 2(c)(3) of the Act necessarily depends upon whether the position of member of a county board committee constitutes a "public office."

As defined in subsection 2(d) of the Act, a "public office" is a position created by or under the Constitution or the laws of the State, the occupant of which is charged with the exercise of some portion of the sovereign power of the State. County board committees are generally subsidiary bodies of the county board, created from time to time by resolution of the board or on an ad hoc basis for the convenience of the board.

They are not created by the Constitution or by statute and have no existence independent of the body that creates them. Such committees are generally advisory, and membership does not involve the exercise of sovereign power by committee members, nor does membership typically entail any other indicia of public office, such as continuous existence, fixed tenure, a required oath of office, liability for misfeasance or nonfeasance, or independence beyond that of employees. Midwest Television, Inc. v. Champaign-Urbana Communications, Inc. (1976), 37 Ill. App. 3d 926, 931.

Under the express language of subsections 2(c)(3) and 2(d) of the Act, the authorization to hold a closed meeting to consider the appointment of persons to fill public offices does not extend to organizational positions such as membership on county board committees or other positions to which board members may be appointed in connection with their county board duties. The board's committee organization is created to assist the body in conducting its business. For county board members, committee membership is not an office separate from board membership. Consequently, it is my opinion that it is not permissible for the county board or a committee thereof to hold a closed meeting for the purpose of assigning county board members to committee positions.

Moreover, it is clear that persons other than county board members who are appointed to serve as members of a county board committee do not thereby gain the status of a "public officer," for purposes of subsection 2(c)(3) of the Open Meetings Act. As noted above, committee membership does not carry with it the indicia of a public office. Therefore, it is my opinion that the appointment of such persons to a committee of a county board may not properly be considered in a closed meeting.

You have also stated that the committee on committees occasionally considers the appointment of persons to fill various positions that do constitute public offices. For example, the chairman of the board, with the advice and consent of the board, may be authorized by statute to appoint trustees of local fire protection districts, river conservancy districts and other public bodies with territory located within the county. Unlike county board committee membership, these are "public offices," for purposes of the Act. Consequently, when the appointment is to fill a public office such as these, it is my opinion that the appointment may properly be considered in a closed meeting pursuant to subsection 2(c)(3) of the Open Meetings Act.

I would note, however, that subsection 2(e) of the Open Meetings Act (5 ILCS 120/2(e) (West 2000)) provides that final action may not be taken in a closed meeting. Therefore, although

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appointments to public offices may be considered in a closed meeting, the final action on those appointments must be taken in a meeting that is open to the public.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa Madigan". The signature is written in a cursive, flowing style with some loops and flourishes.

LISA MADIGAN
ATTORNEY GENERAL