



## ***Open Meetings Act Update***

By: Trisha Olson

All public bodies, including school districts, should review their *Open Meetings Act* (the “OMA”) practices in light of recent amendments to the OMA and a recent Illinois Appellate court decision.

### **Public Act 96-542**

In addition to making sweeping changes to the *Illinois Freedom of Information Act* (“FOIA”), Public Act 96-542 made changes to the OMA. While the core procedures for conducting open and closed meetings have not changed, the OMA was amended to require every public body to designate two or more employees, officers or members to receive training on compliance with the OMA, by June 30, 2010. The names of designees must be submitted to the Public Access Counselor of the Illinois Attorney General’s Office. Trainings will be available for free on the Illinois Attorney General’s website starting on February 1, 2010. We recommend that at least one district-level administrator, as well as the individual responsible for posting notices of meetings and meeting agendas, be designated to receive the training. After June 30, 2010, whenever a public body designates an additional employee, officer or member to receive the training, that individual must successfully complete the training within 30 days.

The OMA was also amended to provide that when the State’s Attorney reviews a public body’s meeting records for non-compliance, those records may not be disclosed to the public while in the State’s Attorney’s possession. Further, those records are exempt from disclosure under FOIA while in the possession of the State’s Attorney.

The OMA was also amended to establish a Public Access Counselor (“PAC”) within the office of the Attorney General who must investigate reports of non-compliance with the OMA. The PAC will review written complaints and determine what further action, if any, is warranted. If an investigation is initiated, the amended OMA sets timelines for the investigation, including requesting and furnishing records to facilitate the review of the complaint. Any records received by the PAC in the course of an investigation may not be disclosed to the public, and are exempt from FOIA disclosure. The PAC must issue its findings and conclusions within 60 days after the review was initiated. The PAC’s conclusion is binding upon the requester and the public body, but is subject to review under the *Administrative Review Law*. The Attorney General may also file a civil action to compel compliance with the PAC’s determination.

### **Second District Decision: *In Re Foxfield Subdivision***

Recently, the Appellate Court of Illinois (Second District) clarified certain posting, meeting and agenda requirements under the OMA. In the case of *In Re Petition to Disconnect Certain Territory Commonly Known as the Foxfield Subdivision and Adjoining Properties from the Village of Campton Hills*, the Village gave the required 48-hour notice for a special meeting, but the notice was posted in a building that was closed to the public and locked during non-business hours. The court determined the notice was appropriate and stated that notice is not required to be continuously available during those 48 hours prior to a meeting.

The court also determined that the Village did not violate the OMA when it waited until “the wee hours of morning” in “cold and blustery” weather to bring a meeting out of closed session. The court determined that the Illinois legislature has not required that closed meetings be held at certain times and only during good weather.

Finally, the court determined that where the agenda for a special meeting includes language that is “closely related to,” “germane,” and “pertinent” to the topics discussed, notice is sufficient.

This case and the recently enacted changes to the *OMA* serve as a useful reminder to remain vigilant in complying with the Act's procedural requirements. Despite the Second District's decision in favor of the public body in the case of *In Re Foxfield Subdivision*, public bodies should not relax their practices regarding *OMA* posting, meeting and agenda requirements because Illinois courts conduct fact-specific examinations of board actions under the *OMA*. If you would like assistance interpreting the *OMA* or reviewing your *OMA* policy or procedures, please do not hesitate to contact Scariano, Himes and Petrarca.

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**CHICAGO OFFICE**

Two Prudential Plaza  
180 N. Stetson, Suite 3100  
Chicago, Illinois 60601-6702  
Phone 312.565.3100 / Fax 312.565.0000

**CHICAGO HEIGHTS OFFICE**

1450 Aberdeen  
Chicago Heights, Illinois 60411  
Phone 708.755.1900 / Fax 708.755.0000

**WAUKEGAN OFFICE**

209 W. Madison Street  
Waukegan, Illinois 60085  
Phone 847.662.5800 / Fax 847.662.6813

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