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FILE NO. S-647

COUNTIES:
Public Meetings Act

Honorable Martin Rudman
State's Attorney
Will County Courthouse
Joliet, Illinois 60431

Dear Mr. Rudman:

I have your letter wherein you state, in part,
as follows:

"I would appreciate your opinion as to whether or not a meeting of a committee of a county board, which is properly closed to the public in accordance with Chapter 102, Section 42, Illinois Revised Statutes, 1971, can be closed to another member of the board who is not a member of the committee."

Section 2 of An Act in relation to meetings [hereinafter referred to as the Public Meetings Act] (Ill. Rev. Stat., 1971, ch. 102, par. 42) reads in part as follows:

"All meetings of any legislative, executive, administrative or advisory bodies of the State, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, and any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue, shall be public meetings except for (a) collective negotiating matters between public employers and their employees or representatives, * * * (d) meetings where the acquisition of real property is being considered, or where a pending court proceeding against or on behalf of the particular governmental unit is being considered, but no other portion of such meetings may be closed to the public, * * * (f) where the constitution provides that a governmental unit can hold secret meetings, * * * .

This Section does not prevent any body covered by this Act from holding closed sessions to consider information regarding appointment, employment or dismissal of an employee or officer or to hear testimony on a complaint lodged against an employee or officer to determine its validity, but no final action may be taken at a closed session. This Section does not prevent an agency of government from holding a closed session when Federal regulation requires it. * * * This Section does not prevent an advisory committee appointed to provide a public body with professional consultation on matters germane to its field of competence from holding a closed session to consider matters of professional ethics or performance. * * * This Section does not prohibit any body covered by this Act from holding closed sessions to consider the appointment of a member to fill a vacancy on that body, but no final action may be taken at a closed session."

Will County has only those expressed powers granted to it by the Constitution or by law plus those powers that are necessarily implied to carry out these express powers.

(Ill. Const., art. VII, sec. 7; Heidenreich v. Ronske, 26 Ill. 2d 360) A county is a body corporate and politic (Ill. Rev. Stat., 1971, ch. 34, par. 301) and its powers are to be exercised by the county board. Ill. Rev. Stat., 1971, ch. 34, par. 302.

The county board may delegate the execution of certain powers to committees or agents. (Consolidated Chemical Lab v. Cass County, 322 Ill. App. 53) Pursuant thereto, the county board may pass reasonable rules and regulations controlling the delegation of its powers to committees and agents.

This matter of a county board delegating its powers was discussed by my predecessor, Attorney General George F. Barrett: (1945 Ill. Atty. Gen. Ops. 32, 38)

" * * * it is my opinion that while the functions of the county board are to be exercised by the board as a corporate body, it is not unlawful for the board to appoint committees to expedite the performance of its duties. Such committees may lawfully act as advisory bodies to the board. A committee may be delegated to consider a subject and make recommendations, and after the board has approved the same the committee may be further authorized to carry them out, but the committee may not, in the first instance, be authorized to supplant the board in determining purchases, contracts and employments or in approving claims. The county board has no lawful authority to strip itself of its statutory powers or duties in connection with any of its various functions which

require the exercise of discretion or judgment and vest the unlimited exercise of such powers or duties in a committee.

Of course, where a statute expressly so provides, the county board may delegate to a committee or agent a function which otherwise might be considered as requiring the exercise of judgment or discretion. * * * "

It is clear that meetings of the county board and the meetings of committees of the county board must be open to the public subject only to those exceptions delineated in section 2 of the Public Meetings Act. A perusal of those exceptions that might possibly pertain to a committee of a county board reveals nothing that would indicate an intent to prevent a member of the county board, who is not a member of the particular committee, from attending a closed session of the committee meeting.

Since a committee of the county board is primarily organized to gather facts, and make recommendations to the county board upon which the board may be called to act, it makes no sense to prevent a fellow board member from attending the closed session of the committee meeting. Each board member is entitled to know what procedures were followed by the committee and what evidence or information was considered as a basis for the committee's recommendations. Even when

the committee is exercising a ministerial function, it is still acting as the agent of the entire board and a fellow board member ought not to be prevented from attending meetings of a committee. It is a well known principle of statutory construction that when a statute is capable of two constructions, the one that will produce mischievous or ludicrous results should be avoided. (People ex rel. Brenza v. Edwards, 413 Ill. 514; Ill. National Bank v. Chegin, 35 Ill. 2d 375; 34 I.L.P. Statutes Sec. 116, page 99 (1958)) Therefore, I am of the opinion that a meeting of a committee of a county board that is properly closed to the public pursuant to the provisions of section 2 of the Public Meetings Act may be closed to only those persons who are not members of the county board.

Additionally, the purposes for allowing committees of a county board to hold closed sessions will not be defeated by the attendance of a fellow member of the county board. The purposes for authorizing closed meetings were generally discussed at page 210 of Notes and Comments, An Extension of The Public Meeting Principle, 46 Chicago-Kent Law Review, 207;

"Naturally, some matters occasionally come before various governmental bodies which must be free from immediate public scrutiny because of sensitivity, possible embarrassment to some individual persons or the possibility that the purpose of the particular inquiry could be defeated by public exposure. The Illinois Public Meetings Act recognizes this. 'Governmental employees should not be put in a more public position than employees of private organizations when their personal attributes are being discussed.' Similarly, 'When possible disciplinary action or dismissal is being considered, premature publicity can cause great and often unjustified damage to personal reputations.' Obviously, some bodies, such as parole boards, juries, crime investigating boards, commerce commissions, youth commissions and school disciplinary boards must because of their very nature deliberate in secret. The Act recognizes that governmental units have an attorney-client privilege. The Act protects against land speculation at the public's expense and removes temptation from possible double dealing officials by providing that meetings to consider the purchase of, but not meetings to acquire real property may be secret. * * * "

In direct answer to your question, I am of the opinion that a meeting of a committee of the county board that is properly closed to the public pursuant to the provisions of section 2 of the Public Meetings Act may not be closed to a member of the county board who is not a member of the committee.

Very truly yours,

A T T O R N E Y G E N E R A L