Law Offices of
Peregrine, Stime, Newman, Ritzman & Bruckner, Ltd.

221 EAST ILLINOIS STREET
P.O. BOX 564
WHEATON, ILLINOIS 60187-0564
PHONE (630) 665-1900
FAX (630) 665-0407
E-MAIL: rritzman@psnrb.com

HARTMAN E. STIME (1927-1991)
ROY I. PEREGRINE
THOMAS M. NEWMAN
ROGER A. RITZMAN
MARK A. RITZMAN

FOLLOW UP RE: OMA AND NEED FOR

A PUBLIC RECITAL OF THE NATURE OF A MATTER BEING CONSIDERED

TO: Public Library Clients

FROM: Roger Ritzman/Mark Ritzman

DATE: February 17, 2017

This Memorandum supplements our Memoranda dated December 16, 2016 re: the need for a public recital prior to Board action.

In our December 16, 2016 Memorandum (copy attached) we advised we would monitor the Springfield case which was pending before the Illinois Supreme Court.

The Illinois Supreme Court, in an Opinion released January 20, 2017, upheld the actions of the Springfield School District Board.[1] In so doing, the Court rejected the PAC's interpretation of the relevant portion of the OMA.

THE ISSUE

What level of detail must a Board provide to the public prior to taking final action?

THE RELEVANT STATUTE (OMA)

Final Action. No final action may be taken at a closed meeting. Final action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted. 5 ILCS 120/2(e).

THE SCHOOL BOARD'S "RECITAL"

The School Board considered a separation agreement with the school's superintendent.

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[1] *The Board of Education of Springfield School District No. 186 v. The Attorney General of Illinois,* 2017 Ill. 120343, (2017).

The Board's Agenda included an item entitled "Approval of a Resolution regarding the Separation Agreement between Dr. Walter Milton, Jr. and the Board."

The Board President introduced the Agenda item as follows:

> "I have item 9.1, approval of a resolution regarding the Separation Agreement. The Board president recommends that the Board vote to approve the Separation Agreement between Dr. Walter Milton, Jr. and the Board."

THE PAC'S POSITION

According to the Public Access Counselor (PAC), the School Board's "public recital" was inadequate. According to the PAC, the School Board should have summarized the "key terms" of the separation agreement and should have explained the significance of its proposed action.

THE COURT'S OPINION

The Court rejected the PAC's interpretation of the statute vis-à-vis requiring an explanation of "key terms" and the "significance of the action."

The Court provided its interpretation of the "public recital" requirement as follows:

> The language of section 2 (e) does not mention an explanation, the significance of the action being considered, or the attendees' understanding. Rather, the plain meaning of the phrase "public recital of the nature of the matter being considered" is that the public body must state the essence of the matter under consideration, its character, or its identity.
>
> A public recital must take place at the open meeting before the matter is voted upon; the recital must announce the nature of the matter under consideration, with sufficient detail to identify the particular transaction or issue, but need not provide an explanation of its terms or its significance.
>
> Because we agree with the Board that identifying key terms would be time consuming and impractical, we reject any suggestion that a public recital of "key terms" is required.

THE TAKEAWAY

A description of "key terms" or "the significance" of the Board's proposed action is not required.

The Board's Agenda should include a general description of the document or proposed Board action. Before Board action on the Agenda item, the Board President (or other Trustee) should simply recite in general terms the nature of the document or nature of the proposed Board action, i.e., "the recital must announce the nature of the matter under consideration, with sufficient detail to identify the particular transaction or issue, but need not provide an explanation of its terms or its significance."

Note on Votes in Closed Session

Of interest in the Opinion is the Court's acknowledgement and apparent approval of the practice of "preliminary votes" in closed session prior to final action in open session.

Prior to the School Board's approval of the separation agreement in open session on March 5, 2013, the School Board met in closed session, i.e.:

> Beginning in November 2012, the Board of Education of Springfield School District No. 186 (Board) met in several closed sessions to discuss the possibility of entering into a separation agreement with the then-superintendent of schools, Dr. Walter Milton, Jr. At the January 31, 2013, closed meeting, Milton signed and dated a proposed agreement.
>
> At a closed session during the February 4, 2013, meeting, six of the seven board members signed the agreement but did not date it. At that meeting and on several later occasions, the Board's attorney explained to the Board members that they would have to take a public vote on the agreement but that they were bound by its terms not to publicly disclose the details of their discussions or to publicly discuss the terms of the agreement.

In addressing the propriety of the Board's "vote" in closed session, the Court noted:

> (We) note that the statute contains no bar to a public body's taking a preliminary vote at a closed meeting. See, e.g., *Grissom v. Board of Education of Buckley-Loda Community School District No. 8,* 75 Ill. 2d 314, 326-27 (1979) (observing that the Open meetings Act does not prohibit a board from adjourning to closed session to draw up signed findings and then returning to open session to publicly record individual members' votes on the findings); *Jewell v. Board of Education, DuQuoin Community Unit Schools, District No. 300*, 19 Ill. App. 3d 1091, 1094-95 (1974) (finding no violation of the Open Meetings Act where the board agreed in closed session not to rehire a teacher and prepared a motion to that effect, returned to open session, read the motion, and held a roll call vote, which approved the motion).
>
> Indeed, if a majority of the Board had not been in favor of approving the proposed separation agreement, it would not have been necessary to place the item on the agenda for a public vote.

Roger A. Ritzman
PEREGRINE, STIME, NEWMAN,
RITZMAN & BRUCKNER, LTD.
221 E. Illinois Street, P.O. Box 564
Wheaton, Illinois 60187-0564
Phone (630) 665-1900
Facsimile (630) 665-0407
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Peregrine, Stime, Newman, Ritzman & Bruckner, Ltd.

221 EAST ILLINOIS STREET
P.O. BOX 564
WHEATON, ILLINOIS 60187-0564
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OMA REMINDER

NEED FOR A PUBLIC RECITAL OF THE NATURE OF THE MATTER BEING CONSIDERED

TO: Public Library Clients

FROM: Roger Ritzman/Mark Ritzman

DATE: December 16, 2016

A recent Appellate Court opinion (11/16/16)[1] illustrates the importance of reciting, before Board action, "the nature of the matter considered" with detail sufficient to "inform the public of the business being conducted."

THE ISSUE

What level of detail must the Board provide to the public prior to taking final action?

THE STATUTE

Section 2(e) of the Open Meetings Act states:

> "Final Action. No final action may be taken at a closed meeting. Final action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted."[2]

DISCUSSION

Two Appellate Court opinions address the issue, i.e., *Board of Education of Springfield School District No. 186 v. Attorney General of Illinois,* 2015 IL App (4th) 140941, 44 N.E.3d 1245 (hereinafter "*Springfield*") and *Allen v. Clark County Park District Board of Commissions,* 2016 IL App (4th) 150963 (hereinafter "*Allen*"). While neither case formulates a clear rule, theses opinions provide examples and discussion as to the level of detail needed to satisfy Section 2(e). Note the Illinois Supreme Court has *Springfield* under review. A decision from the Supreme Court is not expected for several months. Perhaps the Illinois Supreme Court will provide further guidance on Section 2(e).

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[1] *Allen v. Clark County Park District Board of Commissions,* 2016 IL App (4th) 150963.
[2] 5 ILCS 120/2(e).

I. *Springfield*

In *Springfield*, the Board of Education of Springfield School District No. 186 ("Board") considered a separation agreement with the school's superintendent. The Board's agenda included an item entitled "Approval of a Resolution regarding the Separation Agreement between Dr. Walter Milton, Jr. and the Board," along with a link to the entire separation agreement on the Board's website. The Board President introduced the agenda item as follows:

> "I have item 9.1, approval of a resolution regarding the Separation Agreement. The Board president recommends that the Board vote to approve the Separation Agreement between Dr. Walter Milton, Jr. and the Board."

The Board approved the Separation Agreement. Thereafter, the Attorney General of Illinois ("AG") filed suit alleging several OMA violations, including a violation of Section 2(e).

With respect to the Board's compliance with Section 2(e), the Court found no OMA violation. The Court noted that the Board provided an agenda item titled "Approval of a Resolution regarding the Separation Agreement between Dr. Walter Milton, Jr. and the Board," and a link to the School District's website where the public could view the entire agreement.

In finding no OMA violation, the Court stated:

> "As written, Section 2(e) of the Act requires that the public entity advise the public about the general nature of the final action to be taken and does not, as the AG claims, require that the public body provide a detailed explanation about the significance or impact of the proposed final action."

II. Allen

In *Allen*, the agenda of the Clark County Park District Board included the following two items: "X. Board Approval of Lease Rates" and "XI. Board Approval of Revised Covenants." The agenda included no further explanation of those two items.

At the Board meeting, the following discussion occurred concerning these 2 agenda items:

> Board Vice President Ron Stone said "[A]pproval of * * * of the lease rates * * * entertain a motion."
>
> Board Commissioner Larry Yargus then moved for the Board to approve the "rates that came from appraisal."
>
> The Board voted to approve the rates and President Stone said, "[O]k, uh board approval for the revised covenants."
>
> Commissioner Yargus moved for the Board to "accept the revised covenants" and the Board voted to accept the covenants.

In ruling that the Board did not satisfy the requirements of Section 2(e), the Court found that the Board provided no explanation informing the public of what was being leased.[3] In reaching its decision, the Court referred to the *Springfield* opinion, i.e.:

> "In *Springfield,* we held that the public-recital requirement "does not * * * require that the public body provide a detailed explanation about the significance or impact of the proposed final action. . . We stand by that holding. However, *Springfield* does not stand for the proposition that the public body may provide no details at all. The overarching concern is whether the recital sufficiently informed the public of the nature of the matter being considered."

COMMENT

Neither *Allen* nor *Springfield* provide a clear rule as to the level of detail a public body must provide to the public prior to taking final action. The statute simply recites that a public body must provide a level of detail sufficient to inform the public of the nature of the matter being considered.

We recommend erring on the side of caution. We recommend providing more detail rather than less detail prior to taking final action.

We will monitor *Springfield* as to possible guidance from the Illinois Supreme Court.

Roger A. Ritzman
PEREGRINE, STIME, NEWMAN,
RITZMAN & BRUCKNER, LTD.
221 E. Illinois Street, P.O. Box 564
Wheaton, Illinois 60187-0564
Phone (630) 665-1900
Facsimile (630) 665-0407
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[3] "The public recital did not provide the public any of the key terms of the lease agreement or covenants. The public was uninformed of what was being leased. Was it canoes? Was it camping equipment? Was it real property being developed into a housing subdivision? Who knows? Nor did the recital indicate who was leasing the property or for how long or how the Park District was going to be compensated." *Springfield* at ¶ 30.