

ILLINOIS LIBRARY ASSOCIATION

Annual Conference

October 14-16, 2014

Springfield, Illinois



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Attorneys*

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WEDNESDAY, OCTOBER 15, 2014

9:00 A.M. – 10:00 A.M.

LIBRARY BOARD WARS AND POWER PLAYS: HOW TO RESOLVE THEM AND HOW TO AVOID THEM QUESTIONS AND ANSWERS

PRESENTERS:

JULIE A. TAPPENDORF

W. BRITT ISALY

1. Can a Board limit the period of time that a trustee or president can speak?
 - A. Yes, as long as the period of time is reasonable and all parties get to participate.
2. What can a board do if a member breaches the confidentiality of the closed session and passes data on to other parties including the “other side” on issues discussed in closed session?
 - A. Not much, although the Board can censure that individual by a motion or resolution. It can file an injunction lawsuit and can report the action, if properly documented, to the local State’s attorney.
3. Can several trustees leave the meeting to block the vote on an issue if they don’t like the way it is going?
 - A. Yes. If enough trustees leave, resulting in less than a quorum, the vote will be “blocked” because the meeting will have to stop because there is no longer a quorum.
4. Who sets the agenda for board meetings?
 - A. In most libraries, the board president or the director establishes the agenda. The board can establish other fair methods.
5. Are citizens allowed to speak at some point at every public meeting?
 - A. Maybe. Although the actual language of the statutes would not appear to require it, the Attorney General has issued a number of non-binding opinions stating that public bodies must provide public comment at every meeting.
6. How can we prevent a board member from repeatedly revisiting an issue after it has been decided?
 - A. One method is to present a motion to reconsider. If that motion fails, the discussion is finished and it cannot come back before the board in the same form, absent change of circumstances.
7. Do we have to allow a minority trustee to speak?

- A. On agenda items, yes. But, the president or board majority can restrict the time each board member can speak.
8. Can a member of the public demand an answer to a question from a board member or staff member during public comment?
- A. No. Members of the public have the right to address members of the public body, but they have no right to interrogate them or library staff members, and the PAC agreed in recent non-binding opinions.
9. Are citizens allowed to speak about every issue at the time it comes before the board?
- A. No. The time for citizens' questions and comments can be limited as long as the rule is fairly implemented.
10. How can we limit debate?
- A. Legislative bodies can limit debate by a motion and second to table the matter either to a time certain or indefinitely. Motions to table are usually non-debatable. In the alternative, a member of the public body can make a motion (requiring a second) to "end debate" or "call the question." The courts will not allow debate to be ended in this manner if the opportunity for the expression of the views of some Board members has been suppressed.
11. Can a member of the public effectuate a citizen's arrest of the entire board for an Open Meetings Act violation?
- A. Yes. This rarely used mechanism is starting to gain attention, so make sure you comply with the Open Meetings Act.
12. Can a public body's rules on public comment specify that most comments are fine, but any comments that are negative or critical of the public body should be submitted in writing to the President or a staff member during regular office hours?
- A. No. A recent case clarified that public comment rules are not reasonable when they attempt to regulate the content of the speech.
13. Can a public body remove a member of the public from a meeting for being disruptive?

- A. Yes. The Attorney General found no violation of the OMA where a public body removed a member of the public for disruptive behavior for a meeting. Similarly, the AG found no violation where a member of the public body interrupted a member of the public during public comment.
14. Does the Open Meetings Act require a public body to adopt rules for public comment?
- A. Maybe. The Attorney General has said yes, in a number of non-binding opinions. In fact, the PAC has stated that even subsidiary bodies must establish rules of their own.
15. What should we do if more citizens show up as spectators than our meeting room will accommodate?
- A. The library should make an effort to find another location and transfer the site of the meeting, or, if possible, a video transmission of the meeting should be available electronically in other available rooms.
16. If we have limited the time for public comment and not all members of the public have been able to speak, how can these citizens present their views?
- A. Some governmental bodies adopt a rule that permits citizens whose comments are not received at a meeting to present their questions or comments in writing. Another approach is to let them speak first at the next meeting.
17. Can a library remove negative comments on a municipal Facebook page?
- A. Comments on social media could be considered protected speech under the First Amendment. For example, a commenter who posts that he or she disagrees with a particular library policy is likely to be protected speech, just as if the commenter had made the same statement at a public meeting. However, not all comments on the municipal Facebook page would be similarly protected. Libraries can adopt social media comment policies that ban postings that include advertising, outside links, threats or personal attacks, profanity, or hate speech, and provide that any posts that violate the social media policy will be removed. If there are any questions about removal of a particular comment, a library should consult with its attorney.
18. What should we do if there is an error in a public notice?
- A. If the notice was required to be published, the improperly-scheduled meeting probably needs to be cancelled. If publication is not required, then the notice can be

corrected within 48 hours of the meeting. If there is a very minor error, such as a wrong address for the municipal building, someone can be sent to that location to re-direct attendees. You should consult with your attorney.

19. What items can we act upon at a regular meeting?
 - A. The only items that you can take final action on at a regular meeting of a public body are those which are specified on the agenda and which are described in adequate detail during a discussion before a vote is taken.
20. What items can be discussed and acted upon at a special meeting?
 - A. The only items that you can discuss and act upon are those items that are listed on the special meeting agenda and adequately described at the meeting prior to action being taken. You cannot bring us new items at a special meeting even for discussion purposes. The same holds true for emergency meetings.
21. What should we do if the tape machine or other device for recording breaks during a closed session?
 - A. You must recess the meeting until some method of recording the closed session can be worked out.
22. How many times can a matter that has already been decided be brought back before legislative body?
 - A. In general, items already decided should be ruled out of order by the presiding officer unless new facts have emerged. One way to address this is through a “motion to reconsider” – when it is defeated, it will end consideration of a matter.
23. Is it illegal to hit “reply all” when responding to emails sent among a majority of a quorum of a public body?
 - A. No, it is not illegal. However, the repeated use of “reply all” is generally discouraged because contemporaneous exchanges of communication between the majority of a quorum grow closer to falling within the definition of “meeting” under the Open Meetings Act.
24. A former library employee is now a trustee. He still has a workers' compensation case pending against the library. Can he sit in on executive session when his case is discussed?

- A. No. It is ongoing litigation, and pursuant to attorney/client privilege, he is not entitled to look at any defense reports nor listen to any discussions regarding ongoing litigation involving his case. He should step out of executive session for the time that his case is being discussed.
25. Can the board discuss matters at some length, even if there is no motion on the floor?
- A. Probably. Many libraries allow discussion which can assist in the formation of a motion. The presiding officer may wish to allow such discussion to take place until it is clear that the discussion is non-productive or should have resulted in the presentation of a motion.
26. Must the maker and seconder of a motion vote in favor of the motion when the vote is taken?
- A. It depends. Some rules of order require this to take place. If either party changes his or her mind, another approach is to withdraw the motion or the second.
27. Can a public body give public records to elected officials without requiring a Freedom of Information Act request, but require members of the public to file Freedom of Information Act requests for the same information?
- A. Yes. Members of the legislative body need access to public records on a regular basis simply to perform their elected functions. There is nothing requiring a public body to use FOIA requests to submit records to public officials. However, we suggest that when it comes to documents related to the election – nomination papers, etc., that elected officials and non-elected officials be treated the same. Either they all get the information without filing a FOIA request, or they all are required to file a FOIA request.
28. What happens if the person who seconded a motion withdraws that second?
- A. Under most rules of order, the maker of the motion can seek a substitute second.
29. What happens if the maker of the motion withdraws the motion?
- A. Under most rules of order, the motion is no longer on the floor, although the seconder may choose to renew the motion and seek a second.
30. Can our board adopt its own rules of parliamentary procedure?

- A. Yes, so long as those rules do not contravene pre-emptive provisions of State law.
31. Is a public hearing different than a public meeting?
- A. Yes. At a public hearing, presentations are generally made by the proponent or applicant and public participants must be given broad and lengthy opportunities to present their views. That is the principal purpose of a public hearing.
32. Are citizens allowed to ask questions at a public hearing?
- A. Yes. In addition, courts have allowed limited cross-examination of witnesses who present testimony.
33. Can lawyers represent citizens' groups at public hearings?
- A. Yes. Those persons conducting public hearings should encourage groups with similar views to select a single person to represent their position.
34. Can we restrict the time allowed for a public hearing?
- A. Probably not. Courts have overturned several actions of governmental bodies because the bodies made efforts to restrict public participation at public hearings. The time allowed for individual comments can be limited, but, if necessary, public hearings should be recessed to another day if it appears likely that all individuals wishing to present evidence or ask questions were denied an opportunity to do so.
35. Do we need to publish notices in English and in another language?
- A. A governmental body is certainly free to publish notices in English and in another language, but, unless required to do so by statute, the English notice will suffice.
36. Must every motion be seconded?
- A. In order to prevent legislative time from being take up by a matter that only one member is interested in, most rules of order require all motions to be seconded.
37. How can a board member raise a matter of interest if the motion is not seconded?

- A. Most governmental bodies allow some period of time at each meeting for each elected board member to raise issues important to them, such as during their reports. That is the period of time when such matters can be brought to the attention of the board.
38. Can we adjourn a meeting to another date without another notice?
- A. Yes. If the board establishes the time and place of the next meeting date, and announces such at the initial meeting, no new notice is required to be posted. The press must be notified of rescheduled or reconvened meetings.
39. How much notice must we give prior to an emergency meeting?
- A. Emergency meetings can be called on as much notice as is reasonably possible due to the emergency. The courts will invalidate meetings and actions taken at emergency meetings called for fictitious or contrived emergency purposes. The library must give statutory notice of emergency meetings to the press.
40. When must we notify the press of meetings?
- A. The statute requires all public media, which wishes to receive notice of public meetings, to provide that request each year and to provide a location or phone number within the area of the governmental body where the notice can be sent. Most governments provide statutory notice to the press even in the absence of the annual request.
41. What can we discuss at a regular meeting?
- A. You can discuss anything at a regular meeting, and you may also add new items for discussion to the agenda.