



*Township Officials of Illinois Annual  
Education Conference*

Practices & Procedures

*Questions & Answers*

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1. **Q: What can the Township Board do if no quorum is present?**

A: Very little. Quorum for a township consists of three members. Two of those members can discuss public business without violating the Open Meetings Act since townships are made up of five-member boards. However, it takes three affirmative votes to adopt any motion, resolution or ordinance (unless a greater number is required). Accordingly, absent a quorum, no official actions can be taken by the two member(s) present. Where a quorum is not present and there are citizens who wish to address the public body, it is probably permissible—and certainly practical—to tell the members of the public that you will be happy to listen to their comments but that you will do so as private citizens. In order to incorporate their comments into the actual record, they would need to come to the public meeting at which their item of interest is being discussed. They may also be told when the matter will be discussed again and if they are sure of the new date, they can announce when a special meeting or an emergency meeting will be called.

2. **Q. Our office manager handles the agenda and forgot to add the approval of an important contract. Can we still vote on it?**

A: No. Any items can be DISCUSSED at a meeting, even if it was not on the published agenda. However, appellate court decisions have held that it is improper to VOTE on an item which is not on the agenda. We advise our clients not to vote on matters which do not appear on the agenda. If it is absolutely necessary to act on some matter, a special meeting or even an emergency meeting can be convened, on proper notice, with the crucial item, for action, being shown on the agenda.

3. **Q: What is the earliest possible time we can erase the tape of a closed session meeting?**

A: Eighteen months, if the minutes of that meeting have been approved and the destruction has been approved. The statutes require that minutes be taken of all meetings, whether open or closed to the public. Minutes of closed meetings should be approved in closed session. Every six months, the corporate authorities are required to review the minutes of closed session meetings which have not previously been released to the public to determine whether the minutes still need to be kept in confidence or whether such minutes, or portions thereof, no longer require confidential treatment and should be available for public inspection. That determination should be formalized by resolution in open session. (5 ILCS 120/2.06(c)). Governments are also required to record closed sessions on audio or video tape. The tapes can be erased after 18 months if the written minutes of the meeting have been approved and there has been no lawsuit filed to contest the validity of the closed session. The tapes may also be available for discovery in a federal court suit, having nothing to do with the open meetings issue. In that case, the township will be entitled to the attorney-client privilege for comments made by the attorney or relating to strategy.

4. **Q: What do you do if the clerk is sick and cannot take the minutes?**

A: If the clerk is ill and cannot take the minutes, then the board can and should appoint a recording secretary to take the minutes of the meeting. Clerks are also permitted to

attend all meetings of the corporate authorities, both open and closed meetings. The clerk can be barred from attendance at a closed meeting only when the matter being discussed is one in which the clerk's position is adverse to that of the township, such as in litigation involving the clerk.

**5. Q: Should the public comment section of the meeting be held at the beginning or the end of the meeting?**

A: Different townships handle this issue in different ways. There is actually no lawful right of citizens to address their council or board at a meeting of that body. Nonetheless, most units of local government allow citizen participation at its meetings. In most public bodies, citizens are allowed to speak at the beginning of the meeting. That way, the citizen who wishes to address an item not on the agenda may leave after he or she has made a comment. If you allow citizens to speak during the meeting, or require them to hold their comments to the end, chatty citizens may well want to address many items on the agenda about which they had no opinion until they sat there and thought about the matter. Under these circumstances, meetings may go much longer than planned. If, however, the members of the council or board have a sadistic streak, they may wish to force citizens to wait until the end of the meeting to make their comments. That would require them to sit through the entire meeting with the possibility that they will get tired and leave before they are allowed to say anything.

**6. Q: One of our contractor's is suing us over a bid issue. Can we invite the contractor into closed session and negotiate a settlement?**

A: No. Although a township is free to invite potential witnesses, attorneys, consultants and other persons into a closed session to discuss litigation, the attendance list cannot include the person suing the public body. Closed sessions for the purpose of discussing litigation are to prevent the opponent from gaining an improper advantage. The reason is lost if, even to avoid public embarrassment, your opponent is allowed into the closed session. The only people then being kept in the dark are the public.

**7. Q: Several members of our board want to reschedule a regular board meeting set for the Wednesday before Thanksgiving. How do we do that?**

A: Where the township board wishes to cancel or reschedule a specific board meeting, it should be done publicly at a prior meeting. That action is sufficient notice to the public, although an agenda for any rescheduled meeting must still be posted 48 hours prior to the meeting. If during the year, the public body wishes to change the dates of all of its regularly scheduled meetings, it must publish a notice in the newspaper informing the public of this continuing change, at least ten (10) days prior to the change, or, in a community with a population of less than 500, where no newspaper is published, post a notice in three permanent places in the township, and also send notice to the media that have formally requested notifications pursuant to Section 2.02 of the Open Meetings Act.

**8. Q: What do you do if all your meetings run until midnight?**

A: Governmental bodies rarely do their best work late in the evening. If you find that your meetings are perennially running into the wee hours of the morning, it may be desirable

to call additional meetings and break up the agenda. The board could also look at ways to limit debate and comment. A board retreat might also be in order!

**9. Q: Do all board meetings have to be held at the Township Hall?**

A: No. Many townships do not even have township halls or formal meeting places. Governmental bodies in Illinois are given broad discretion as to the frequency, time, and place of their meetings. Meetings must be noticed in accordance with the Open Meetings Act, and they must be conducted at a time and place that is convenient for the public to attend. Occasionally, governmental bodies may wish to meet outside of the township boundaries to gain access to better facilities or to a larger meeting room. If properly noticed, townships can also hold open session retreats outside of the township.

**10. Q: The Township Board would like to expand its health insurance coverage to immediately include the board members. Can we do that at our next meeting?**

A: No. The Constitution provides that the salary of elected officials cannot be increased or decreased during their term. Health expenses are considered part of salary, if offered, and ordinances establishing premium payments should allow for group increases during the term.

**11. Q: What about increasing expense accounts or reimbursements for seminars?**

A: Probably yes. As noted, the Constitution provides that the salary of elected officials cannot be increased or decreased during their term. Expenses are not considered items of salary, and can be increased to match inflation, or when the officials are asked to perform additional services for which out-of-pocket expenditures are likely to occur. Officials should keep good records of the amount spent since, under federal law, reimbursements which are in excess of expenses are considered income.

**12. Q: The township's office manager would like to work on one of the trustee's re-election campaigns. Is that ok?**

A: Employees of local governments (including townships) are permitted to work for candidates running for election to office in the governmental unit which employs them, but not while they are "on the clock." Township employees may not be required to work for candidates during compensated time. The "State Officials and Employees Ethics Act," 5 ILCS 430-15, which local governments must make applicable to their employees, sets out "Prohibited Political Activities." Employees may not engage in these political activities during any hours for which they are receiving compensation. No employee may be rewarded for engaging in political activities for a candidate. The law does not prohibit employees from engaging in political activity voluntarily off duty, without governmental compensation.

Specific prohibitions include the following:

- (a) No officer or employee shall intentionally perform any prohibited political activity during any compensated time.

(b) No officer or employee shall intentionally use any property or resource of the governmental entity in connection with any prohibited political activity.

(c) No officer or employee shall intentionally require any other officer or employee to perform any prohibited political activity (i) as part of that officer or employee's duties, (ii) as a condition of employment, or (iii) during any compensated time off (such as holidays, vacation or personal time off).

(d) No officer or employee shall be required at any time to participate in any prohibited political activity in consideration for that officer or employee being awarded additional compensation or any benefit, whether in the form of a salary adjustment, bonus, compensatory time off, continued employment or otherwise, nor shall any officer or employee be awarded additional compensation or any benefit in consideration for his or her participation in any prohibited political activity.

**13. Q: A board meeting runs past midnight on a Thursday. Can the board adjourn the meeting to the following Wednesday without publishing notice?**

A: Yes. If an announcement of the time and place of a reconvened meeting was made at the original meeting and there was no change in the agenda, there would be no need to publish notice. However, if both these conditions have not been met, then the notice must be posted and given to the registered news media at least 48 hours before the reconvened meeting. 5 ILCS 120/2.02.

**14. Q: Does a trustee violate the Open Meetings Act if he e-mails his position on an upcoming vote to the other board members?**

A: No. The Open Meetings Act prohibits contemporary electronic communication. Unless a majority of a quorum is involved in a chat room or communicates by e-mail every few minutes to replicate a multi-party conversation, a single e-mail should not be problematic.

**15. Q: Can a trustee who misses an Executive Session ask to listen to the tape recording of the closed session minutes?**

A: Yes, this would be the best practice. The normal keeper of the tapes can utilize security measures to assure that the tape will not be altered, such as having someone present while the tape is being reviewed.

**16. Q: Can staff listen to closed session tapes?**

A: No. Closed session tapes should be kept private and only disclosed pursuant to statute.

**17. Q: If the Township Supervisor doesn't like the way a meeting is going, can she simply adjourn the meeting and walk out?**

A: The Supervisor can walk out at any time, but unless that person's departure causes the loss of a quorum in attendance, the meeting can go on with the remaining trustees choosing a temporary chairman.

**18. Q: Our personnel policy is only in draft form and has not been formally approved. Is it subject to FOIA?**

A: No. Only final drafts of public documents are subject to FOIA. However, the new provisions of FOIA do require the Public Access Counselor be notified when this exemption is claimed.

**19. Q: What right does the press have to notice of public meetings?**

A: Although the press holds governmental bodies to very high standards, many newspapers do not follow the required statutory procedure to receive notices. In order for a newspaper or other media outlet to be entitled to receive the notice of meetings and the agenda, they must file an annual written request with the township giving an address or phone number within the community where such notice may be sent. Most governmental bodies will send notice to any media outlet which expresses an interest even if it has not complied with the statutory regulations.

**20. Q: Jerry Smith, who represents the loyal opposition, recently came to one of our meetings and video taped it. He then put embarrassing parts on YouTube. Can he do that?**

A: Yes. Anyone has the right to audio or video record a public meeting as long as he or she follow reasonable regulations as to the location of the equipment and non-interference with the meeting. If people are able to distort what you say by running snippets that are unrepresentative of your position, there is little you can do about it. In an extreme case where, for example, tapes are spliced to completely misstate your position, you may have a cause of action for slander. But, since you are a public official, you must prove that the slander was not only false, but also malicious rather than, for example, a poor attempt at humor.

**21. Q: One of the trustees wants to run for another office. Can she do that and still serve on our board?**

A: Maybe. The basic legal rule is that you cannot serve in offices in two governments if you might be called upon to take an action in one government which would hurt the interests of another government. This concept is called "incompatibility of office." The Attorney General has written many opinions about offices which he or she believes are incompatible. Unfortunately, with the advent of the Intergovernmental Cooperation Act in the Illinois Constitution, all governments may and are encouraged to contract with one another. This fact is making multiple office holders endangered species. If you accept an incompatible office, the legal effect is to strip you of your prior office automatically. Before you run for another office that you plan to hold simultaneously with your township office, make sure you seek legal advice regarding any potential conflict of interest.

**22. Q: Our office is getting cluttered and we want to go through and start pitching records that are over five years old. Can we do that?**

A: Not unless destruction is authorized in accordance with the Local Records Act, 50 ILCS 205/1. Section 10 of that Act provides that documents which fall within the definition of “public records” (which includes anything pertaining to the business of the governmental unit), may be discarded only after review and approval of the Local Records Commission, a State agency. Information about the LRC is available on the State of Illinois web site, the Illinois State Archives, in the office of the Secretary of State. To obtain approval to destroy local records, the head of the governmental unit must apply to the Commission, listing all of the documents to be discarded.

**23. Q: Who is the Public Access Counselor and why do I care?**

A: The powers of the Attorney General were amended to provide the power to give “written binding and advisory public access opinions” with regard to the Freedom of Information Act and the Open Meetings Act. 15 ILCS 205/4. These opinions are provided through the newly created office of the Public Access Counselor to be housed within the Attorney General’s office. Accordingly, the Public Access Counselor will have the authority to issue binding opinions on whether violations of the Open Meetings Act occurred in your community and to order the release of documents otherwise believed by your community to be exempt from disclosure. The Attorney General is also given subpoena power to enforce the Public Access Counselor’s powers. Accordingly, the Public Access Counselor will be a watchdog, with teeth, ensuring that your public body is complying with all public access laws.

**24. Q: Jerry Smith, the loyal oppositionist, thinks we go into closed session just to talk about him. Under the new laws, what could he do about his fear?**

A: If a person believes a violation of the OMA has occurred, the new provisions allow such individuals to file a request for review with the Public Access Counselor. This request must be made within 60 days after the alleged violation and must be: (1) in writing; (2) signed by the requester; and (3) include a summary of the facts supporting the allegation. See 5 ILCS 120/3.5. The Public Access Counselor will either tell the requester the allegation is unfounded or otherwise forward a copy of the request to the public body within 7 working days. The public body thereafter has 7 working days after receipt of the Public Access Counselor’s request to provide the documents for review. Within that same timeframe, the public body may also “answer the allegations” of the request for review. The “answer” is also sent to the requester who may also file a response within 7 working days after receipt.

**25. Q: Are e-mails considered “public records” under the new provisions?**

A: Yes. Although the Attorney General’s office has taken the position for some time that the e-mails of a township are covered by the Act, “electronic communications” has now been added to the definition of public records. 5 ILCS 140/2(c). However, it is unclear how far this definition goes and whether it extends to emails from a personal or private account. Although the Act now clearly includes e-mails from and between public officials made from, or received by, a public body computer server, it likely does not include e-mails that are not contained within the public server or otherwise in the possession and control of the public body. Additionally, if the content is personal and not related to public business, it is arguably not a

public record and can be destroyed without the approval of the Local Records Commission. However, if the e-mail discusses public business, then it should only be destroyed in accordance with the Local Records Act.

**26. Q: One of our part-time workers accidentally hit Jerry Smith's car with the edge of a snow plow. The damage was minimal, but Jerry is very litigious and outspoken so we quickly settled it. Even though the settlement agreement contains a confidentiality clause, will it be subject to disclosure under the new laws?**

A: Yes. Section 2.20 provides that all settlement agreements entered into by or on behalf of a public body are public records subject to inspection and copying by the public, provided that information exempt from disclosure under Section 7 may be redacted.

**27. Q: Historically, our township required individuals seeking information under FOIA to use a standard request form we created. Can we continue this process under the new provisions?**

A: No. Although Section 3(c) requires that requests must be made in writing, it prohibits public bodies from requiring that a request be submitted on a standard form. Basically, the request can be submitted by any means available to the public body (i.e., mail, facsimile, e-mail, etc.). If a public body desires, it can also decide to honor oral requests.

**28. Q: If we cannot provide the records even by the extension, what should we do?**

A: If the public body needs additional time beyond the first five days and then the five-day extension, the Act allows the public body and the requester to set a new date for compliance if both parties can agree in writing. 5 ICLS 140/3(e). Accordingly, you should contact the requester, explain the reasons for the expected delay and try to work out an agreed-upon extension date. A simple letter signed by both parties stating the new extension date should be sufficient to comply with the Act.

**29. Q: Currently, when our township denies a FOIA request, the individual can appeal the decision to the supervisor as the head of the public body. Will this process continue?**

No. Appeals of any denial will now be handled directly by the Public Access Counselor (or the court). An appeal to the Public Access Counselor must be made within 60 days of the denial and must: (1) include a copy of the request for access to records; and (2) any responses from the public body. 5 ILCS 140/9.5(a).

**30. Q: Even though Ancel Glink advised us that charging \$1.00 a page was too high for copies, we still want to do it. Is that ok?**

A: No. The new provisions require that no fee may be charged for the first 50 pages of black and white, letter or legal sized copies requested by a requester. 5 ILCS 140/6(b). After 50 pages, the fee cannot exceed 15 cents per page. Color and oversize copies beyond legal may

not be charged more than its actual cost for reproduction. The cost for certifying a document cannot exceed \$1.