



from your Associate Director

By Jerry B. Crabtree

TOI Associate Director / Education Coordinator

WELL, MAY IS HERE and summer is on its way! I hope that you all have time to promote your local SPRING and SUMMER township events by making time to promote them in local media outlets. As we continue to move forward during talks of consolidation of township government, now is the time to promote the value and community dependence on township programs across the state. Don't forget to send a copy of any photos to us at the TOI office to promote in future issues of *Perspective* magazine.

I will soon see my second child, Caroline, graduating from high school. She is starting her academic studies as a freshman at Southern Illinois University – Edwardsville in August. As a parent, you are always proud to tell those who ask the future academic plans of your kids. I have been blessed with three great kids that have achieved so much and I am always talking about them because they are my legacy. I have to tell you

when discussing it in my township circle of friends, it was encouraging to hear them say that “their offices are close to SIU-E and if she needs anything to give them a call.” This made me realize the value of township communities and the relationship bonds that form among township officials and communities. Township government truly keeps it going. I hope we do not need assistance in an “emergency situation” but I am sure that if I did—township neighbors would be ready to assist. The conversation just drove home the 2016 Theme – Township Government – neighbors serving neighbors! Congratulations, Caroline Crabtree, I look forward to watching your future unfold.

EDUCATION PROGRAM UPDATE

Thank you to everyone who attended the Lisle event last month. It was a great event. We are looking forward to a great event in Rockford on May 13. We have included registration information in this edition of *Perspective* magazine. Challenge your local township officials to attend the event. The agenda is aimed at helping your prepare for the 2017 election cycle and beyond. Come and check it out!

RAFFLE TICKET:

| | | | |
|------------|--------|-------|--|
| Name | _____ | | |
| Address | _____ | | |
| City | State | _____ | |
| Township | County | _____ | |
| Phone | _____ | | |
| Cell Phone | _____ | | |
| E-mail | _____ | | |

Win a **\$2500** Travel Voucher to Travel **ANYWHERE**

\$10 per Ticket or 3 Tickets for \$20
 Drawing held during the Annual Educational Conference
 November 15, 2016 at the TOI Annual Conference Banquet
Please Make Checks Payable to: TOIPAC

Need not be present to win. Details on the other side.

2016

TOI will be selling raffle tickets at all of the upcoming District Education Programs. This year, a winner to take home a \$2500 travel voucher will be chosen in a drawing held during the November conference. Pricing is \$10/ticket or 3 tickets for \$20. Don't miss out on this opportunity to support TOIPAC and the chance to win this great prize!

LUNCH and LEARN WEBINAR SERIES

The program so far in 2016 has been a great success! We have topics scheduled for the next several months to

M&M PUMP CO.
1-800-237-1379

Featuring Alkota Cleaning Systems
For Your Information
We Work on ALL American Made Pressure Washers

We can service any of the following units:

- Alkota
- Aqua Blast
- Aladdin
- Excell
- Landa
- Mighty M
- Farley
- Northern
- Hydraulics

- Shellcom
- Seabring
- Delco
- Hotsy
- Hydrotek
- Simpson
- Whiteco
- Rhino

Facts About M&M Pump, Inc.

- 1) We carry a complete line of replacement parts.
- 2) We can convert or rebuild units to fit your needs.
- 3) We have a large variety of reconditioned units with warranty in stock.
- 4) We have special discounts for State, County, City, Townships, and Municipalities.

M&M PUMP CO.
CLINTON, IL • 1-800-237-1379

consider. Please review the list of live webinars as well as the library of pre-recorded educational opportunities. The objective of the program is to provide cost effective educational opportunities to township officials across the state. If you have participated in a webinar that you would like to share with our program calendar please send the specifics to me at the TOI office.

2016 ANNUAL EDUCATIONAL CONFERENCE PLANNING UNDERWAY!

The Education Committee is scheduled to meet later this month and plans are being calculated and outlined for the November conference. As a valued member of the township community if you have any educational course offerings you would like to recommend for the conference line up in 2016 please forward the information to me. I can be reached by e-mail at jerry@toi.org.

My second speaker spotlight is on Jeffrey Jurgens. Jeff offers the following responses:

Jeff R. Jurgens, Attorney



Sorling Northrup Attorneys
Springfield Office:
1 North Old State Capitol Plaza
Suite 200
P.O. Box 5131
Springfield, IL 62705

Phone 217.544.1144

Bio: Jeffrey R. Jurgens originally joined Sorling Northrup in 2000. In 2006, he began working with the Chicago-based law firm of Ancel, Glink, Diamond, Bush, DiCianni and Krafthefer, P.C., wherein he concentrated in working with units of local government. In 2011, he returned to Sorling Northrup as a shareholder to continue his practice in local government and other concentrated areas.

Mr. Jurgens received his undergraduate degree in Political Science from Illinois State University and his Juris Doctor degree from the American University Washington College of Law. While attending law school, Mr. Jurgens worked in the White House Counsel's Office and with numerous other federal agencies. Prior to attending law school, Mr. Jurgens interned on former Governor Jim Edgar's policy staff and worked in the Illinois General Assembly for legislators in both the State House of Representatives and the State Senate. This legislative background often provides an added benefit to his diverse client base.

Mr. Jurgens has spent a large part of his legal career representing units of local government, including municipalities, townships, and park districts. He advises these bodies on issues that arise on a daily basis, includ-

ing matters involving board practices and procedures, real estate, zoning and statutory compliance. He is also well versed in matters involving the Freedom of Information Act and the Open Meetings Act and has taught numerous seminars and authored several publications on those laws.

What is your message to township officials in 2016?

Step out of the norm and think outside of the box this year. Take a look at what your township is accomplishing and make sure it cannot be doing either more to serve your citizens or serving them in a more efficient and effective manner. As the unit of local government closest to the people, make sure your township is serving those people with honor and valuable services.

What do you think is the biggest obstacle for township government in 2016?

Perception. In this atmosphere of budget cuts and constant talk of consolidation, township government is often attacked as an "unnecessary" unit of local government. Township officials and the citizens they serve know differently. Highway commissioners throughout the State of Illinois know and understand that they can best take care of the local roads, whether through maintenance or snow plowing, at significantly less costs than the counties. Supervisors throughout the State know they can efficiently administer general assistance and township trustees know that their hands-on approach to auditing the bills and overseeing programs to help the citizenry provides not only the most accountability, but also the best value for needed programs. Whether it's local control of cemeteries, the assessment of property or the creation of food banks, townships throughout the state provide so much for a great value to the citizens. Township officials are therefore on the front line to ensure the people of this state know and understand what they do and what they provide to the people. Making people aware of everything that your township does is key to fighting the perception that township government is past its prime.

What do you hope that your program provides to attendees of the TOI Education District Program?

A general understanding and overview of the township election process. Since township elections only take place every four years, and the caucus rules are quite convoluted, my program offers a plain and simple overview of the election process.

What advice would you give to newly appointed township officials or those interested in seeking office?

My first advice would be to simply do it. Service to

community is vital in this day and age. If you want to make a difference, you have to get involved and serve your community. Holding a township office is a great way to do this. Second, once you are involved, keep politics and petty differences out of township government. Focus on working as a team and moving toward goals that make your township all it can be.

POLICY INTERPRETATION 2016-02 now available.

TGEN Policy Memorandum 2016-02

DISCLAIMER: *The information contained herein is provided by the Township Officials of Illinois and has been reviewed by legal counsel by publication of the 2015 Laws and Duties Handbook. It is intended to provide timely general information of interest, but should not be considered a substitute for legal advice.*

This Interpretation addresses the following:

ISSUE: What is an emergency Township Board meeting?

ISSUE: Special meetings; Executive Sessions; Closed Sessions

ISSUE: When is it appropriate to enter into an executive or closed session during regular township board or special township board meetings?

ISSUE: What are the guidelines for recording minutes during an executive or closed session?

What is an emergency Township Board Meeting?

A clear statutory definition of what constitutes an “**emergency board meeting**” is not available. Our best practice application is an event or circumstance that requires immediate attention and cannot be delayed until the next available scheduled regular township board meeting. In most events the final declaration of what constitutes an “emergency” is determined by the supervisor in their capacity as the chief executive officer of the township.

One of the first clarifications to establish when considering a special township BOARD meeting or a special township meeting of electors is the applicability of each (1) a special township BOARD meeting only requires a 48 hour posting.

The Illinois Open Meetings Act (5 ILCS 120/2-02) requires townships to provide public notice of all meetings. When two (2) or more elected township officials are meeting and discussing township business an open

meeting is established. A special TOWN meeting follows the same established procedure as the Annual town Meeting.

Special Town Meetings (of Electors)

Special town meetings are held when the township board (or a group of at least 15 voters of the township) files in the office of the township clerk a written statement that a special meeting is necessary for the interests of the township and sets forth the object of the meeting. 60 ILCS 1/35-5. The special town meeting must be held no less than 14 nor more than 45 days after the written request is filed in the office of township clerk. (Note: this requirement does not apply to special township board meetings.) Notice of a special town meeting is given in the same manner and for the same length of time as for the annual town meeting 60 ILCS 1/35-10. The electors may fix the hour at which special township meetings are held, but special township meetings may not begin before 6 p.m. 60 ILCS 1/35-5; 60 ILCS 1/35-30.

No special township meeting shall be convened unless 15 or more electors are present. An elector is a person who has registered to vote within the township no less than 28 days before the special township meeting. If a special township meeting is not convened because of an absence of 15 or more electors, that special township meeting shall not be re-convened unless all procedures for a special township meeting are again completed. 60 ILCS 1/35-15.

Postponed Subjects/Agendas

A special meeting of the township is required to be accompanied with a notice of special meeting stating the purpose that the special meeting is called. No business may be conducted at a special meeting other than why the meeting was called. This is verified by the issued meeting notice.

When the special town meeting is called, the electors may take any action that could have been taken at a annual town meeting. 60 ILCS 1/35-25. This includes matters that may have been postponed for want of time at the preceding annual meeting to be considered at a future town meeting. 60 ILCS 1/35-20. The Illinois Appellate Court, in an Adams County matter, held that government can discuss, but cannot act on matters unless they are specified on the regular or special meeting agenda. Rice v. Board of Trustees of Adams County, 326 Ill. App. 3d 1120 (4th Dist. 2002). While this requirement would probably apply to a township board meeting, it is questionable as to whether it would apply to electors at a special town meeting, for the only items of business to be discussed at a special town meeting are those which have been set forth in the written statement

filed in the office of the township clerk. As the ability to add agenda items on the night of an annual town meeting has been nullified as of July 2008 when the Township Code was amended to require that fifteen registered voters of a township submit agenda items to the board for consideration by March 1st any new agenda items may NOT be added at a special town meeting that were not included in the original notice to the clerk. 60 ILCS 1/30-10(b). The Township Code now requires that a special town meeting may be held when the township board (or at least 15 voters of the township) files in the office of the township clerk a written statement that a special meeting is necessary for the interests of the township, and the statement sets forth the objects of the meeting, which must be relevant to powers granted to electors under the Township Code. Consequently, items not approved by the township board or listed in the written statement of 15 or more registered voters filed with the clerk would not appear on the agenda. 60 ILCS 1/35-5, 60 ILCS1/35-10.

What happens if a Township Board meeting needs to be reconvened or postponed?

The Open Meetings Act (5 ILCS 120/2.02 (a)) clarifies that if a meeting is already in place, notice is not required to reconvene an original scheduled meeting when open to the public and (1) reconvened within 24 hours, or (2) notice was given when original posting was made (5 ILCS 120/2-02 (a)).

What happens if a Township Board meeting needs to be cancelled?

There are times when uncontrollable circumstances make it necessary to cancel a scheduled township board meeting. (i.e.: snow storm, death, illness). Should a valid reason occur, all that is required is for the supervisor to place a notice of the cancellation at the township/or meeting location indicating that the meeting has been cancelled. If the new meeting date is available it may be included on the meeting cancellation notice. There is a minimum of 48 hours to convene the new date/time.

Why a meeting would be determined to be closed to public participation?

Although local government continues to become more transparent, there are statutorily established exceptions that require meetings to be closed. However, the exceptions are strictly constructed by the Open Meetings Act (5 ILCS 120/2 (b)). A township board meeting may have sections of the meeting closed only under the following exceptions:

- ✓ The subject to be discussed at that meeting is one of the enumerated exceptions listed in Section 2(c)

of the Act, 5 ILCS 120/2(c); and

- ✓ A majority of a quorum at a meeting open to the public has voted to have such a closed meeting, 5 ILCS 120/2a; and
- ✓ Proper notice was given for the meeting at which the vote was taken, 5 ILCS 120/2(a), 2.02, 2.03; and
- ✓ The vote of each member on the question of holding the meeting closed is recorded and entered in the minutes of the open meeting, 5 ILCS 120/2a, 2.06(a)(3); and
- ✓ The motion to hold the closed session and the minutes of the meeting contain a citation to the specific exception which authorizes the closing of the meeting to the public, 5 ILCS 120/2a (but see *Henry v. Anderson*, 356 Ill. App. 3d 952 (4th Dist. 2005), in which the court ruled that a board’s citation to subject matter constituting a statutory exception sufficed and the closed meeting was therefore not illegal merely because the board failed to cite the specific, numerical statutory citation; and *Wyman v. Schweighart*, 385 Ill. App. 3d 1099 (4th Dist. 2008), which clarified that if the subject matter is pending litigation, stating “pending litigation” suffices, but if the lawsuit at issue has not been filed, then the public body must specify that the litigation is imminent and provide the reasons for such a finding); and
- ✓ The closed session must be recorded in its entirety through a verbatim audio or video recording, and such tape must be maintained for at least 18 months following the closed session as discussed above, 5 ILCS 120/2.06(a) and (c).

(Source: 2015 Laws and Duties Handbook, page 102)

If a township board complies with the above procedures and the subject matter to be discussed at the closed meeting is a permissible basis for a closed meeting, then the township may legally hold a closed meeting. Only those topics specified in the motion to go into a closed meeting may be discussed at the closed session, 5 ILCS 120/2(a). Closed sessions authorized by a properly established vote may take place as part of a properly noticed regular, special or emergency meeting open to the public without the need for any further notice or an indication in the agenda that a closed session will be held during the course of the meeting. (After all, in some cases the need for the closed session may not become apparent until during a meeting.)

A public body (township) may, by a single vote, authorize a series of meetings, portions that are pro-

posed to be closed to the public, provided each meeting in the series involves the same particular matters and is scheduled to be held within three months of the vote, 5 ILCS 120/2(a).

(Source: 2015 Laws and Duties Handbook page 102)

Exceptions Allowing Closed Meetings

Full meetings, or portions of meetings concerning certain subjects, **may be** closed to the public, although such exceptions are to be construed narrowly in light of their derogation from the overarching public policy favoring governmental transparency. See, *People ex rel. Ryan v. Village of Villa Park*, 212 Ill. App. 3d 187, 191 (2d Dist. 1991). The following list is a compilation of statutory exceptions that may be considered in closed sessions (only those subjects most relevant to townships are mentioned, but all exceptions can be found in Section 2(c) of the Open Meetings Act):

- Collective negotiating matters between public employers and their employees or representatives, 5 ILCS 120/2(c) (2) (since the passage of the Illinois Public Labor Relations Act, 5 ILCS 315/, and the Illinois Educational Labor Relations Act, 115 ILCS 5/, which grant collective bargaining rights to various public employees, it appears that collective bargaining negotiations and grievance arbitration are simply not subject to the OMA and, consequently, no notice of such meetings);
- Deliberations concerning salary schedules for one or more classes of township employees, 5 ILCS 120/2(c) (2);
- Meetings where the purchase or lease of real property for the use of the public body (township) is being considered, including meetings held for the purpose of discussing whether a particular parcel should be acquired, or where the public body is considering the setting of a price for sale or lease of its property, 5 ILCS 120/2(c)(5), (6) (these discussions must involve a specific piece of property, rather than just the general idea of buying land or selling land in a particular area, *Ryan v. Village of Villa Park*, 212 Ill. App. 3d 187 (2d Dist. 1991));
- Meetings held to discuss litigation when an action against, affecting, or on behalf of the particular body has been filed and is pending in a court or administrative tribunal, or when the public body finds that such an action is probable or imminent, in which case the basis for such a finding shall be recorded and entered into the minutes of the closed meeting. 5 ILCS 120/2(c) (11). Where prospective litigation is concerned, there must be a real case or controversy involved rather than a policy or philosophical debate over a matter that, if not handled properly, could result in litigation, see *Wyman v. Schweighart*, 385 Ill. App. 3d 1099 (4th Dist. 2008). When a public body holds a closed meeting to discuss probable or imminent litigation, it must include in the minutes of that meeting a statement asserting the reasons why the litigation is believed to be probable or imminent.
- Meetings to consider the appointment, employment, compensation, discipline, performance, or dismissal of specific township employees, including the township's legal counsel, or to hear testimony on a complaint lodged against an employee to determine its validity (5 ILCS 120/2(c)(1)). These discussions may involve the entire employment relationship, including the renewal or continuation of employment and compensation (*People v. Board of Education of District 170*, 40 Ill. App. 3d 819 (2d Dist. 1976)); The Act now allows closed sessions only to discuss the relationship with an independent contractor legal counsel, but not any other independent contractor (5 ILCS 120/2(c)(1) together with the definition of "employee" contained in 5 ILCS 120/2(d)); Merely claiming that the basis for a closed session is a discussion of an overly generalized employment or personnel matter is not sufficient and violates the OMA, as this exception only justifies the discussion of a specific, individual employee and may not be used to discuss employment generally or an entire class of employees. Although such discussions are allowed in a closed meeting, it is important to remember that any final action taken on those subjects must occur in a public meeting following the closed session.
- Meetings to discuss professional ethics or performance when considered by an advisory body appointed to advise a licensing or regulatory agency on matters germane to its field of competence, 5 ILCS 120/2(c)(15);
- Meetings to consider the appointment of a person to fill a public office or vacancy in a public office where the body has the appointing authority, and to consider removal from office where the body has the equivalent power, 5 ILCS 120/2(c)(3). However, when nominees for appointment to a public office are discussed in closed session, the final action of voting on the actual nomination or appointment must take place in a public meeting following the closed session. Please Note: The township board

may meet in closed session to discuss a candidate's qualifications. However, the final vote must be made in an open meeting setting.

- Meetings to establish reserves or settle claims as provided in the Local Government and Governmental Employees Tort Immunity Act, if the disposition of a claim or potential claim otherwise might be prejudiced, or to discuss information regarding or from an insurer or self-insurance pool of which the government is a member, 5 ILCS 120/2(c)(12);
- Meetings to review closed session minutes, including the semi-annual review of closed session minutes pursuant to Section 2.06 of the OMA, discussed above, 5 ILCS 120/2(c)(21) (there is still a question unanswered by the courts or PAC as to whether a vote to approve individual closed-session minutes may be held in closed session);
- Meetings to discuss self-evaluation, practices and procedures, or professional ethics then meeting with a representative of a statewide association of which the body is a member, 5 ILCS 120/2(c)(16); and

- Meetings to consider security procedures and the use of personnel and equipment to respond to an actual, threatened, or reasonably potential danger to the safety of employees and public property, and public bodies may now also hold closed meetings to discuss threats or danger to the security of the public itself, 5 ILCS 120/2(c)(8). Illinois courts, the Illinois Attorney General and its Public Access Counselor have construed the exceptions to the Open Meetings Act quite narrowly so as to ensure these exceptions may not be used to avoid the general policy of the Act. *Illinois News Broadcasters v. City of Springfield*, 22 Ill. App. 3d 226 (5th Dist. 1974). See also, ILL.ATT'Y. GEN. OP.No. I-01-003 (which finds that a county board may not discuss the imposition of a "cap" on a public works project in closed session in order to avoid having the amount influence the bidding process, because the Act does not include such a topic among its exceptions).

Sources: Public Access Opinion Nos. 12-013 and 13-008; Ill. Att'y. Gen. Op. No. S-726 (1974); Public Access Opinion No. 12-011 ; Public Access Opinion Nos. 13-003 and 13-007; Public Access Opinion 13-006



Ancel Glink understands the value of working together.

**Ancel
Glink**

DIAMOND BUSH
DiCIANNI
& KRAFTHEFER

Think Ancel Glink

As township attorneys and special counsel, Ancel Glink assists clients statewide in complex and mixed questions of law, public policy, finance and other issues.

Ancel Glink offers Illinois townships effective and comprehensive representation at a reasonable cost, matching legal services and strategies with local needs and resources.

Please contact Keri-Lyn Krafthefer at 312-782-7606. Visit our website to download pamphlets of the ten-volume Ancel Glink Library. www.ancelglink.com

Serving Illinois with offices in Chicago, Vernon Hills, Naperville, Crystal Lake & Bloomington | 312 782-7606 | www.ancelglink.com