

Agenda Items

The Illinois Appellate Court - Fourth District affirmed a decision of a trial court in regards to *Rice v. Adams County*. The result of this decision is that **items must be listed on a local government's meeting agenda** before final action can be taken. This requirement is identical to statutory requirements for special meetings under the Illinois Open Meetings Act.

The Illinois Open Meetings Act states, "*the requirement of a regular meeting agenda shall not preclude the consideration of items not specifically set forth in the agenda.*" However, the effect of the court's action is to mandate that all local governments have items on their applicable meeting agendas prior to taking final action. The item of "New Business" can only be used to discuss new items and is not sufficient to take final action on an item. Local governments need to have detailed meeting agenda which encompass all items the body wishes to take action.

APPELLATE COURT NARROWS INTERPRETATION OF OPEN MEETINGS ACT PROVISIONS FRANCZEK SULLIVAN EMPLOYMENT LAW BULLETIN - March 13, 2002

In an Illinois Open Meetings Act decision that may have a significant impact on the meeting practices of many boards of education, an Illinois Appellate Court has recently held that a public body cannot take action on an item at a regular meeting unless that item specifically appears on the agenda for the meeting. In *<<Rice v. Board of Trustees of Adams County>>*, 2002 WL 110427 (4th Dist. 2002), the Board of Trustees of Adams County adopted a resolution at a regular meeting that established an alternative benefit plan for county officers. The agenda for the meeting did not include the benefit plan, but only a general item for "New Business" under which the benefit resolution was adopted. The resolution was declared void by a trial court, and the Illinois Appellate Court agreed.

The County claimed that even though the resolution did not appear on its agenda, the resolution was still properly adopted because Section 2.02 of the Open Meetings Act permits "the consideration of" an item not specifically set forth in the agenda at a regular public meeting. However, the Appellate Court disagreed and held that Section 2.02 only allows public bodies to engage in "deliberations and discussions" of such items, and not to take final action.

The Court's decision in *<<Rice>>* runs contrary to the customary practices of many public bodies. In effect, *<<Rice>>* requires school administrators and other public officers who prepare board agendas to treat regular meetings much like they would treat special meetings, and to make certain that any item upon which the board may wish to take final action appears explicitly on the agenda. The final mandate has issued in this case and no appeal will be filed.

“ACTION ITEMS” MUST BE SPECIFIED ON AGENDA

The Illinois Appellate Court - Fourth District recently affirmed a decision of a trial court related to public bodies taking final action on items during their public meeting. The result of the decision in this case, *Rice v. Adams County*, is that local governments must have items specifically on meeting agendas prior to taking final action.

A summary of the facts of the case follows. The county board posted a meeting agenda which included a subject item titled “New Business.” At the meeting, the board passed a resolution providing for an alternative benefit program for elected county officers (ECO) pursuant to section 7-145.1 of the Illinois Pension Code [40 ILCS 5/7-145.1] under the “New Business” action item. The plaintiff of the case sought and was successful in having the action of the board voided.

The Court stated that “it is the intent of the Act to protect the citizen's right to know.” The Illinois Open Meetings Act requires that an agenda for each regular meeting of a public body be posted at the principal office of the public body and at the location where the meeting is to be held and at least 48 hours in advance of the holding of the meeting. [5 ILCS 120/2.02(a)]. According to the decision, the portion of the Act at issue is the section that reads: "the requirement of a regular meeting agenda shall not preclude the consideration of items not specifically set forth in the agenda."

The effect of the court's action is to mandate that all local governments have items on their applicable meeting agendas prior to taking final action. The item of "New Business" can only be used to discuss new items and is not sufficient to take final action on an item. Local governments are required to post and publish a detailed meeting agenda that

encompasses all items the body wishes to take action. Items must be listed on a local government's meeting agenda before final action can be taken. This requirement is identical to statutory requirements for special meetings under the Illinois Open Meetings Act.

For Example: If a township has an item come forth after the meeting agenda has been posted and the topic is not specified on the agenda, the township board may only discuss the item, not take final action. If final action is desired, the township board is required to hold a special meeting with the item on the posted agenda, or take action at the next board meeting only after the item is placed on the posted agenda

PRESIDING JUSTICE McCULLOUGH delivered the opinion of the court:

On January 7, 1999, plaintiff, Bruce A. Rice, filed a complaint against defendants, the Board of Trustees of Adams County, Illinois (Board), and the County of Adams, Illinois (County), and an amended complaint on May 18, 1999, alleging a failure by the Board to comply with the Open Meetings Act (Act) (5 ILCS 120/1 through 6 (West 1998)). Plaintiff sought an order voiding a resolution adopted by the Board. The resolution provided for an alternative benefit program for elected county officers (ECO) pursuant to section 7-145.1 of the Illinois Pension Code (40 ILCS 5/7-145.1 (West 1998)). Plaintiff and defendants filed motions for summary judgment. On May 10, 2000, the trial court granted summary judgment in favor of plaintiff, declaring the actions of the Board in adopting the resolution null and void. On March 16, 2001, the trial court entered an order denying defendants' motion for reconsideration. Defendants appeal the grant of summary judgment for plaintiff. We affirm.

It is the intent of the Act to protect the citizen's right to know. The Act requires an agenda for each regular meeting of a public body, the agenda to be posted at the principal office of the public body and at the location where the meeting is to be held and at least 48 hours in advance of the holding of the meeting. 5 ILCS 120/2.02(a) (West 1998). The portion of the Act at issue in the present case provides that "[t]he requirement of a regular meeting agenda shall not preclude the consideration of items not specifically set forth in the agenda." (Emphasis added.) 5 ILCS 120/2.02(a) (West 1998).

The agenda in the present case, dated November 10, 1998, provides for 34 items, 25 of which appear to be the reports of various individuals. Item No. 32 references "NEW BUSINESS." We find also in the record agendas dated September 8, 1998, and October 13, 1998. They are, in appearance, nearly identical to the agenda dated November 10, 1998.

The minutes of the meeting held November 10, 1998, provide that, under "NEW BUSINESS," a Mr. Heidbreder stated "there is another resolution to present." The resolution, providing for an alternative benefit program for ECO pursuant to section 7-145.1 of the Illinois Pension Code, was read aloud, and Mr. Heidbreder "moved to adopt." A discussion was had and sufficient affirmative votes carried the motion.

Defendants acknowledge that the alternative benefit program for ECO was not specifically set forth in the agenda. Defendants argue, however, that pursuant to section 2.02 of the Act, "the consideration of" an item not specifically set forth in the agenda references an opportunity for action by the public body. 5 ILCS 120/2.02(a) (West 1998). We disagree. In County of Knox, 188 Ill. 2d at 556, 723 N.E.2d at 263, the supreme court opined:

"The fundamental rule of statutory interpretation is to give effect to the intention of the legislature. A court first looks to the words of the statute. The language of the statute is the best indication of the legislative intent. When the statutory language is clear, it must be given effect without resort to other tools of interpretation. In interpreting a statute, it is never proper for a court to depart from plain language by reading into a statute exceptions, limitations, or conditions which conflict with the clearly expressed legislative intent."

The Act, in setting forth the policy, provides:

"It is the public policy of this State that public bodies exist to aid in the conduct of the people's business and that the people have a right to be informed as to the conduct of their business. In order that the people shall be informed, the General Assembly finds and declares that it is the intent of this Act to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly.

The General Assembly further declares it to be the public policy of this State that its citizens shall be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 1998).

The Act references the "actions of public bodies" and, in a separate reference, "their deliberations," and also "business *** discussed" and, in a separate reference, business "acted upon." We find "the consideration of" items not specifically set forth in the agenda to be in the nature of deliberations and discussion and not actions taken.

We do not find the item "NEW BUSINESS" to provide sufficient advance notice to the people of a resolution providing for an alternative benefit program for ECO. We note also a reference in the minutes of the meeting held November 10, 1998, that "several years ago this was discussed," contrary to the Board's assertion of "new" business.

Defendants also argue that the ECO who chose to participate in the alternative benefit program are not bound by the judgment declaring the actions of the Board, in adopting the resolution, null and void because they were not made parties to the suit. On May 10, 2000, the trial court held that defendants' actions, "in adopting the resolution approving the ECO Plan, as taken on November 10, 1998, are herewith declared null and void." The "pension rights" referenced by defendants have no force, binding power, or validity.

For the reasons stated above, we affirm the trial court's judgment. Affirmed. KNECHT and STEIGMANN, JJ., concur.