



**WILLIAM J. SCOTT**

ATTORNEY GENERAL  
STATE OF ILLINOIS  
500 SOUTH SECOND STREET  
SPRINGFIELD  
62706

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FILE NO. S-908

**COUNTIES:**

**Tape Recording of Open Meetings  
and the Illinois Eavesdropping Act**

Honorable Martin Rudman  
State's Attorney, Will County  
Courthouse  
Joliet, Illinois 60431

Dear Mr. Rudman:

I am in receipt of your letter wherein you state:

"With reference to your Opinion S-867 of February 4, 1975, I hereby request your opinion on the following question:

Is the electronic recording by private citizens, who are not participants, of the proceedings of County Board meetings without the consent of the County Board members, a violation of Article XIV of Chapter 38, Illinois Revised Statutes, 1973?"

In opinion S-867, I stated that a governmental body, such as a county board, may not prevent the tape recording of

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a meeting that comes under the provisions of the Illinois Open Meetings Act. (Ill. Rev. Stat. 1973, ch. 102, par. 41 et seq.) Although that question dealt specifically with a county board meeting, it was clearly indicated that tape recordings of the proceedings were to be allowed in all "Open Meetings" held in this State. Although your question deals with county board meetings, the answer is again equally applicable to all "Open Meetings".

Your inquiry calls into question the relationship between my previous opinion and Article 14 of the Illinois Criminal Code of 1961. (Ill. Rev. Stat. 1973, ch. 38, par. 14-1 et seq.) Article 14 is concerned with the crime of eavesdropping. Section 14-1 of the Act defines an eavesdropping device and an eavesdropper as:

"(a) Eavesdropping device.

An eavesdropping device is any device capable of being used to hear or record oral conversation whether such conversation is conducted in person, by telephone, or by any other means; Provided, however, that this definition shall not include devices used for the restoration of the deaf or hard-of-hearing to normal or partial hearing.

(b) Eavesdropper.

An eavesdropper is any person, including law enforcement officers, who operates or participates in the operation of any eavesdropping device contrary to the provisions of this Article."

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Section 14-2 of the Act sets forth the elements of the offense of eavesdropping:

"A person commits eavesdropping when he:

(a) Uses an eavesdropping device to hear or record all or any part of any conversation unless he does so with the consent of any one party to such conversation and at the request of a State's Attorney; or

(b) Uses or divulges, except in a criminal proceeding; any information which he knows or reasonably should know was obtained through the use of an eavesdropping device."

The initial issue is whether the legislature intended to include within the purview of the Eavesdropping Act, the tape recording of the proceedings of an "Open Meeting". (See, Op. Atty. Gen. S-736, issued April 17, 1974.) I assume such recording is made openly and not secretly. For the reasons set forth below I do not believe that the Eavesdropping Act applies to such tape recordings. An analysis of the legislative history of eavesdropping statutes in general, as well as a recognition of constitutionally protected conduct involved indicates that tape recording of "Open Meetings" is not to be construed as criminal conduct.

The crime of eavesdropping although provided for by statute in many jurisdictions finds its origins in the common

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law. Blackstone defined the common law offense of eavesdropping as, "listening under walls or windows or the eaves of a house to hearken after discourse, and thereupon to frame slanderous and mischievous tales." (4 Blackstone Commentaries 168; Pavesich v. New England Life Insurance Co., 122 Ga. 190, 50 S.E. 68, 69 L.R.A. 101.) The origins of eavesdropping legislation were thus based upon a concern with protecting the individual and his right of privacy. The Committee Comments to the Illinois law enforce this theory. The Committee states that the reason for the legislation is to protect the privacy of individuals, one of the fundamental civil liberties of our system. It is apparent that the Committee which drafted these provisions was opposed to eavesdropping as an unwarranted invasion of the privacy of individuals. See generally; People v. Kurth, 34 Ill. 2d 387.

The generally accepted definition of the term eavesdropping also lends support to the theory that the legislation is designed to protect the privacy of individuals. In the absence of a statutory definition indicating a different legislative intention, words used in a statute are presumed to have their ordinary and popularly understood meaning. (Farand Coal Co. v. Halpin,

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10 Ill. 2d 507.) Eavesdropping is defined as listening secretly to what is said in private. (Webster's Third New International Dictionary.) From the continued use of the term eavesdropping, it appears that the General Assembly intended Article 14 of the Criminal Code of 1961 to protect individuals only from secret or unknown monitoring of their conversations. People v. Kurth, supra; (Schaeffer J. concurring).

It is apparent, therefore, that before an individual may be guilty of eavesdropping, the words or conversations which he monitors must be of a private nature and the monitoring must be secret. With this prerequisite established, the words of the Illinois Open Meetings Act indicate strongly the answer to your question. Section 1 of that Act, (Ill. Rev. Stat. 1973, ch. 102, par. 41) sets forth the public policy of the State:

"[T]hat the public commissions, committees, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of this Act that their actions be taken openly and that their deliberations be conducted openly." (Emphasis added.)

The recognition of the public nature of governmental deliberations is found in numerous cases. (See Prosser, Handbook

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of the Law of Torts, sec. 117 (4th ed. 1971).) The prevailing law of invasion of privacy generally recognizes that the interests in privacy fade when the information involved already is available to the public. Cox Corporation v. Cohn, \_\_\_ U.S. \_\_\_, 95 S. Ct. 1029, \_\_\_ L. Ed. 2d \_\_\_, (1975).

Therefore, it is my opinion that the Eavesdropping Act is not applicable to electronic recording by private citizens of the proceedings of any meeting where the provisions of the Illinois Open Meetings Act are applicable. Neither the public officials participating in such a meeting nor the private citizens in attendance at the meeting can claim any right of privacy for their conduct. To allow any one individual, whether an officeholder or concerned citizen to unilaterally object to the tape recording of the proceedings of an "Open Meeting" would violate the spirit and intent of opinion S-867 and the Illinois Open Meetings Act. The recording of proceedings is not within the protected area of eavesdropping legislation, and therefore is not objectionable.

Very truly yours,

A T T O R N E Y   G E N E R A L