



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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January 31, 1996

FILE NO. 96-009

MEETINGS:
Public Aid Committee

Honorable Dick Klemm
Illinois State Senator
124 State House
Springfield, Illinois 62706

Honorable William Peterson
Illinois State Senator
3050 North Main Street
Prairie View, Illinois 60069

Gentlemen:

I have your letters wherein you have inquired whether, under the provisions of the Open Meetings Act (5 ILCS 120/1 et seq. (West 1994)), general assistance appeal hearings conducted by public aid committees are required to be open to the public. For the reasons hereinafter stated, it is my opinion that public aid committees are public bodies, for purposes of the Act, and that the general assistance appeal hearings they conduct must be open to the public.

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Pursuant to section 2 of the Open Meetings Act (5 ILCS 120/2 (West 1994) as amended by P.A. 89-86, effective June 30, 1995 and P.A. 89-177, effective July 19, 1995), "[a]ll meetings of public bodies shall be open to the public" unless the subject of the meeting is one which is excepted under subsection 2(c) of the Act and the meeting is closed in accordance with the procedure established in section 2a of the Act (5 ILCS 120/2a (West 1994), as amended by P.A. 89-86, effective June 30, 1995). The term "public body":

"* * * includes all legislative, executive, administrative or advisory bodies of the state, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, and any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue, except the General Assembly and committees or commissions thereof. * * *" (5 ILCS 120/1.02 (West 1994).)

A public aid committee is an entity to which appeals from decisions denying or terminating general assistance, or granting it in amounts deemed inadequate, may be taken. In counties under township organization outside of Cook County, the committee is comprised of the chairman of the county board and four township supervisors of general assistance who are appointed by the chairman with the advice and consent of the county board. (305 ILCS 5/11-8(1) (West 1994).) In Cook County, outside of the

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city of Chicago, the committee is comprised of two township supervisors and three persons who are knowledgeable in the area of general assistance, all of whom are appointed by the township supervisors of the county. (305 ILCS 5/11-8(2)(West 1994).) In counties not under township organization, decisions are appealed to the county board which is, for this purpose, the public aid committee of the county. (305 ILCS 5/11-8(4)(West 1994).)

Although public aid committees hear appeals from decisions made by local government officials with respect to the granting of aid, that does not mean that the committees are judicial bodies which are not included within the definition of the term "public body" in the Open Meetings Act. Administrative officers may be given reasonable discretion as to the manner of executing laws and may be called upon to investigate and make decisions in the exercise of that discretion; that they are given powers which are quasi-judicial in nature in order to make those decisions does not make them judicial, rather than administrative, officers. (See Department of Finance v. Cohen (1938), 369 Ill. 510, 514-15.) There is a clear distinction between acts of judgment and discretion that are of a judicial nature, and the exercise of judicial power that adjudicates upon and protects the rights and interests of individuals and to that end construes and applies the law. City of Aurora v. Schoeberlein (1907), 230 Ill. 496, 502.

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The "appellant" in public aid committee proceedings is entitled to appear in person, to be represented by counsel and to have an opportunity to present all relevant matter in support of his or her claim or objection. (305 ILCS 5/11-8.1 (West 1994).) The attendance and testimony of witnesses under oath and the production of books and papers may be compelled (305 ILCS 5/11-8.3 (West 1994)), but the hearings are not bound by common law or statutory rules of evidence or by technical or formal rules of procedure (305 ILCS 5/11-8.4 (West 1994)). The committees may make such additional investigations as they deem necessary and may make such decisions as to the granting of aid and the amounts thereof as in their opinion is justified and in conformity with the Public Aid Code (305 ILCS 5/1-1 et seq. (West 1994)). (305 ILCS 5/11-8.4 (West 1994).) "Executive" and "administrative" duties are those that concern the execution of existing law (People ex rel. Holvey v. Kapp (1934), 335 Ill. 596, 602); the role of the public aid committee is not the adjudication of rights, but, simply, the remaking of the administrative decision of how much aid, if any, a person should receive. Thus, it is my opinion that public aid committees are administrative, not judicial bodies, which are "public bodies" for purposes of the Open Meetings Act.

Since these committees are public bodies and the granting of public assistance is their public business, a gather-

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ing of the members of the public aid committee for the conduct of a hearing is a meeting for purposes of the Open Meetings Act.

(See 5 ILCS 120/1.02 (West 1994).) Therefore, as noted above, a hearing must be open to the public unless one of the exceptions listed in subsection 2(c) of the Open Meetings Act applies.

The only exception which is pertinent to your inquiry provides:

"(c) Exceptions. A public body may hold closed meetings to consider the following subjects:

* * *

(4) Evidence or testimony presented in open hearing, or in closed hearing where specifically authorized by law, to a quasi-adjudicative body, as defined in this Act, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning.

* * *

(5 ILCS 120/2(c)(4) (West 1994), as amended by P.A. 89-86, effective June 30, 1995 and P.A. 89-177, effective July 19, 1995.)

The term "quasi-adjudicative body" is defined as follows:

"'Quasi-adjudicative body' means an administrative body charged by law or ordinance with the responsibility to conduct hearings, receive evidence or testimony and make determinations based thereon, but does not include local electoral boards when such boards are considering petition challenges.

* * *

(5 ILCS 120/2(d) (West 1994), as amended by P.A. 89-86, effective June 30, 1995.)

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The intent of the Open Meetings Act is to ensure that the actions of public bodies are taken openly and that their deliberations are conducted openly, and the General Assembly has declared that the provisions for exceptions to open meetings requirements are to be strictly construed against closed meetings. (5 ILCS 120/1(2) (West 1994).) Thus, section 2 of the Act provides:

" * * *

(b) Construction of exceptions. The exceptions contained in subsection (c) are in derogation of the requirement that public bodies meet in the open, and therefore, the exceptions are to be strictly construed, extending only to subjects clearly within their scope. The exceptions authorize but do not require the holding of a closed meeting to discuss a subject included within an enumerated exception.

* * *

"

A public aid committee falls squarely within the definition of "quasi-adjudicative" body; subsection 2(c)(4) of the Act, however, authorizes the closing of a meeting (or hearing) by a quasi-adjudicative body only to consider the subject of evidence or testimony that has been presented in an open hearing, or that has been presented in a closed hearing where specifically authorized by law. Although it recognizes that another law may specifically provide for the closing of a hearing in its entirety, subsection 2(c)(4) only authorizes the closing of a meeting to discuss the subject of evidence or testimony taken at a

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hearing; it does not provide for, and cannot be read to allow for, the closing of a hearing to take evidence. If it were intended to have been so construed, there would have been no point in referring to evidence that was presented in open or closed hearings. The language necessarily implies that hearings conducted by public bodies are to be open to the public unless some other law specifically authorizes their closing.

It has been suggested that section 11-9 of the Public Aid Code (305 ILCS 5/11-9 (West 1994)) may authorize the closing of a public aid committee hearing. Section 11-9 provides:

"Protection of records - Exceptions.
For the protection of applicants and recipients, the Illinois Department, the county departments and local governmental units and their respective officers and employees are prohibited, except as hereinafter provided, from disclosing the contents of any records, files, papers and communications, except for purposes directly connected with the administration of public aid under this Code.

* * *

"

(Emphasis added.)

None of the provisos referred to in section 11-9 are applicable in these circumstances. The argument made is that the prohibition against disclosure operates to require the closing of the hearings. This argument is not persuasive.

The Open Meetings Act expressly requires that meetings be open to the public unless there is an exception in the Act authorizing the holding of a closed meeting, but no exception is

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applicable to these hearings. Subsection 2(c)(4) recognizes that quasi-adjudicative hearings may be held by public bodies and implies that those hearings are to be open to the public unless a law "specifically authorizes" their closing. Section 11-9 does not specify that hearings may be closed to the public. To the contrary, it establishes an exception from its own disclosure prohibition "for purposes directly connected with the administration of public aid". Nothing could be more related to this purpose than the use of records in hearings as the basis for making determinations with the respect to the granting of general assistance.

It should also be noted that, even apart from the Open Meetings Act, there is a general presumption, rooted in due process, that administrative hearings should be open to the public. In Morgan v. United States (1937), 304 U.S. 1, 14-15, the court stated:

" * * *

* * * The vast expansion of this field of administrative regulation in response to the pressure of social needs is made possible under our system by adherence to the basic principles that the legislature shall appropriately determine the standards of administrative action and that in administrative proceedings of a quasi-judicial character the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play. These demand "a fair and open hearing," - essential alike to the legal validity of the administrative regulation and to the maintenance of public confidence in

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the value and soundness of this important governmental process. Such a hearing has been described as an 'inexorable safeguard.' [Citations omitted.] * * *

This reasoning has been widely applied at the State level, as well. For example, it has been said, with respect to a legislatively-prescribed, quasi-judicial procedure for administrative action, that "a fair and open hearing is the absolute demand of all judicial inquiry". (Petition of New England Telephone & Telegraph Co. (Vt. 1957), 136 A.2d 357, 362.) In Adams v. Marshall (Kan. 1973), 512 P.2d 365, 371, another case involving the proceedings of an administrative body, the court stated:

" * * *

Passing to the question of public trial, we believe it may generally be said that proceedings of a judicial nature held behind closed doors and shielded from public scrutiny have long been repugnant to our system of justice. The concept that trials and judicial hearings be open to the public gaze is inherent in our idea of due process. * * *

* * *

"

Given the due process presumption in favor of open hearings, as well as the plain language and the clearly stated policy of the Open Meetings Act, it would be unreasonable to infer from section 11-9 of the Public Aid Code the existence of an exception from the openness requirement for hearings conducted by public aid committees. A statute that concerns only disclosure of information and not closure of hearings should not,

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without more, be read as a blanket order of closure. (Herald Co. v. Weisenberg (N.Y. 1983), 452 N.E. 2d 1190, 1192 (statute prohibiting disclosure of information in administration of unemployment insurance program does not require closing of hearings on employment insurance claims).) A rule of the Illinois Department of Public Aid, which rule provides that hearings "shall be open to such persons as" the committee deems necessary and proper (89 Ill. Adm. Code 104-20(c)(1994)), implies that public aid committee hearings could be closed, but a rule of a State agency must yield to a State statute where there is a conflict between them. Matthews v. Will County Dep't of Public Aid (1987), 152 Ill. App. 3d 400, 402.

It is my opinion, therefore, that the Open Meetings Act requires general assistance appeal hearings conducted by public aid committees to be open to the public.

Sincerely,


JAMES E. RYAN
Attorney General