WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD
62706

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FILE NO. S-917

SCHOOLS AND SCHOOL DISTRICTS:
Open Meetings
Intercollegiate Athletic Board

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Honorable Paul C. Komada
State's Attorney
Coles County
P. O. Box 297
Charleston, Illinois 61920

Dear Mr. Komada:

This responds to your request for an opinion concerning the amenability of the Eastern Illinois University Intercollegiate Athletic Board to "AN ACT in relation to meetings". (Ill. Rev. Stat. 1973, ch. 102, pars. 41 et seq.) I understand that the Intercollegiate Athletic Board is an advisory board whose members are appointed by the faculty and student senates. It advises the president of the University, who may accept or reject its recommendations, on matters of policy and budget in areas relating to intercollegiate athletics. I further under-

stand that at a recent meeting the Intercollegiate Athletic Board voted by secret ballot to recommend the dropping of three intercollegiate sports. Based on this set of facts, you have asked the following three questions:

> (1) Is the Intercollegiate Board one of the advisory bodies or committees subject to "AN ACT in relation to meetings", supra?
>
> (2) Was the particular action taken by the Board as set forth above within any of the exceptions contained in the Act?
>
> (3) If the Board is subject to the Act and the action is not within one of the exceptions, are secret ballots prohibited by the Act?

Sections 1 and 2 of "AN ACT in relation to meetings" (Ill. Rev. Stat. 1973, ch. 102, pars. 41 and 42) provide as follows:

> "§ 1. It is the public policy of this State that 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."
>
> "§ 2. All meetings of any 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, shall be public meetings except for (a) collective negotiating matters between public employers and their employees or representatives, (b) deliberations for decisions of the Illinois Commerce Commission and the Illinois Parole and Pardon Board, (c) meetings where the acquisition of real property is being considered, or where a pending court proceeding against or on behalf of the particular governmental unit is being considered, but no other portion of such meetings may be closed to the public, (d) grand and petit jury sessions, (e) where the constitution provides that a governmental unit can hold secret meetings, and (f) meetings at public institutions of higher education relating to campus security or to the safety of staff and students. This Act does not apply to the General Assembly or to committees or commissions thereof.

This Section does not prevent any body covered by this Act from holding closed sessions to consider information regarding appointment, employment or dismissal of an employee or officer or to hear testimony on a complaint lodged against an employee or officer to determine its validity, but no final action may be taken at a closed session. This Section does not prevent an agency of government from holding a closed session when Federal regulation requires it. This Section does not prevent a school board or any committee thereof from hearing student disciplinary cases or from discussing matters relating to individual students in special education programs as defined by Article 14 of The School Code at a closed session. This Section does not prevent an advisory committee appointed to provide a public body with professional consultation on matters germane to its field of competence from holding a closed session to consider matters of professional ethics or performance. This Section does not prevent the corporate authorities of a municipality from enacting ordinances which provide for closed meetings for conciliating complaints of discrimination under Section 11-11.1-1 of the 'Illinois Municipal Code', approved May 29, 1961, as amended. This Section

> does not prohibit any body covered by this Act from holding closed sessions to consider the appointment of a member to fill a vacancy on that body, but no final action may be taken at a closed session."

In opinion No. S-87, issued November 14, 1969, (1969 Ill. Att'y. Gen. Op. 131), I advised that the Board of Trustees of Southern Illinois University is an executive or administrative body of the State of Illinois within the meaning of "AN ACT in relation to meetings", supra. In opinion No. NP-585, issued May 22, 1973, I advised that all advisory committees and subcommittees of the listed governmental entities, whether or not they were supported in whole or in part by tax revenue or expended tax revenue, are subject to "AN ACT in relation to meetings". It is quite clear from these opinions that Eastern Illinois University is a public corporation which is subject to "AN ACT in relation to meetings", and that the Intercollegiate Athletic Board as an advisory body to its president is also subject to that Act.

The exceptions to the Act are set forth above and I think it is clear without discussing each one individually that neither the Board nor the action taken by the Board in recommending the dropping of three intercollegiate sports comes within any of the listed exceptions. I, therefore, am of the

opinion that the action taken by the Board is subject to the provisions of the Act.

Finally, I am of the opinion that "AN ACT in relation to meetings", supra, and the public policy of this State both prohibit the taking of secret ballots at meetings of boards when such meetings are open to the public. It is the declared public policy of this State in section 1 of "AN ACT in relation to meetings" that the actions of public agencies should be taken openly and that their deliberations be conducted openly. In opinion No. 246, issued May 4, 1933 (1933 Ill. Att'y. Gen. Op. 334), my predecessor was asked to advise whether the chairman and other officials of the county board of supervisors could be elected by secret ballot. The statute there in question provided that the board of supervisors should sit with open doors. In advising that the vote to elect the chairman could not be taken secretly, it was stated at page 335:

> "Of what avail is an open door to the public if the proceedings are secret. The eye can see, the ear can hear, but secrecy conceals all. It is no advantage to the citizen to see a member write a name secretly on the ballot unless he is privileged to read what is thereon written. * * * If no record is made of how the individual member votes, of what avail is the statute providing for a meeting with open doors."

Similarly, "AN ACT in relation to meetings", supra, requires that actions be taken openly and deliberations be conducted openly. Actions taken by secret ballot are not open and clearly violate the Act.

In that same opinion, my predecessor was also of the opinion that secret balloting was against public policy. With this, I am in full agreement. He stated at page 336 as follows:

> "* * * On what possible ground can it be said that the public good can be helped, bettered, or aided by a secret ballot. On the other hand, think of the public injury it might and could do. Instead of confidence in public officers and public affairs, the secret ballot would create distrust and suspicion. The citizen would wonder, and rightfully, what is the reason that the chairman cannot be openly chosen. What deals have been made, what covenants arrived at, what payment exacted would be the questions asked by the citizen, and he would be absolutely within his rights. The secret ballot would make possible the distribution of patronage and favors that would not withstand the light of day, and permit secret deals and agreements to be entered into that would not be conducive to good government and the ideals of upright citizenship. In other words, the secret ballot is a weapon of thedark, not of the light, and its use should not be permitted under any law in the organization of county boards."

I understand that secret balloting serves to protect public officials from criticism and that this may have been the reason for the secret ballot in this case. However, public officials are subject to criticism for action they take in fulfilling their duties as public officials and anyone

who undertakes a public office or membership on a public body should be aware that his actions will be subject to criticism. Anyone who is unwilling to subject himself to such criticism by the public should not accept public office or membership of a public board. The public has a right to know how their public officials and representatives vote on issues, not only so they may try to persuade them to change their position or congratulate them on actions they have taken, but also that they may have the necessary information to decide whether they want to retain that person in public office. Secret voting by members of public bodies, can only contribute to further deterioration of public confidence in government and undermine the very bases of representative democracy.

Very truly yours,

ATTORNEY GENERAL