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FILE NO. 82-043

MEETINGS:
Prisoner Review Board
"Deliberations for Decisions"

Honorable James R. Thompson
Governor
State of Illinois
Room 207 State House
Springfield, Illinois 62706

Dear Governor Thompson:

I have your letter in which you inquire whether the Prisoner Review Board may lawfully close its hearings to the public when taking testimony from an inmate applying for executive clemency. For the reasons stated below, it is my opinion that the Open Meetings Act (Ill. Rev. Stat. 1981, ch. 102, par. 41 et seq.), and the Board's governing regulations require such hearings to be conducted publicly.

As you know, section 12 of article V of the Illinois Constitution of 1970 empowers the Governor to grant reprieves,

commutations and pardons, after conviction, for all offenses on such terms as he thinks proper. The section further provides that:

> "* * * The manner of applying therefore may be regulated by law."

The General Assembly has outlined the procedure governing applications for executive clemency. Section 3-3-2(a)(6) of the Unified Code of Corrections (Ill. Rev. Stat. 1981, ch. 38, par. 1003-3-2(a)(6)) authorizes the Prisoner Review Board, through a panel of at least three members, to hear all requests for pardon, reprieve or commutation, and to make recommendations without publicity to the Governor. The Code further provides:

> "(a) Petitions seeking pardon, commutation or reprieve shall be addressed to the Governor and filed with the Prisoner Review Board. The petition shall be in writing and signed by the person under conviction or by a person on his behalf. It shall contain a brief history of the case and the reasons for executive clemency.
>
> (b) Notice of the proposed application shall be given by the Board to the committing court and the state's attorney of the county where the conviction was had.
>
> (c) The Board shall, if requested and upon due notice, give a hearing to each application, allowing representation by counsel, if desired, after which it shall, without publicity advise the Governor by a written report of its recommendations which shall be determined by majority vote. The Board shall meet to consider such petitions no less than 4 times each year.
>
> (d) The Governor shall decide each application

and communicate his decision to the Board which shall notify the petitioner.

* * * "

(Emphasis added.) (Ill. Rev. Stat. 1981, ch. 38, par. 1003-3-13.)

Pursuant to its statutory power to adopt rules for the conduct of its work (see, Ill. Rev. Stat. 1981, ch. 38, par. 1003-3-2(d)), the Board has promulgated regulations governing its procedure for considering executive clemency petitions. (See, 1981 Illinois Register 167-169.) These regulations provide in pertinent part as follows:

" * * *

5. For each meeting of the Board, a docket shall be prepared listing all petitions filed thirty (30) days or more before the date of the meeting which have not been previously considered and which petitions comply with the applicable statutes of Illinois and these rules. Counsel and those who wish to be heard in favor of or in opposition to the respective petitions on the call of the docket, must register in person at the meeting of the Board.

6. The Board or a designated panel thereof will hear counsel or any other persons who appear in support of or in opposition to the petition at the scheduled public hearing. The Board will also consider petitions on the docket on which there are no appearances and may elect to hear petitioners who are in confinement.

7. No requirement herein shall preclude the Chairman or the Governor from calling a special session of the Board for the purpose of giving a hearing and consideration to any petition deemed to be of an emergency nature. All usual requirements shall be met insofar as is practical.

8. The Board will determine by majority vote in

> conference what its recommendation is on each petition and shall advise the Governor by a written report without publicity."
> (Rule XVIII, (5)-(8).)
> (Emphasis added.)

Section 2 of the Open Meetings Act (Ill. Rev. Stat. 1981, ch. 102, par. 42) mandates, with certain exceptions, that "[a]ll meetings of public bodies shall be public meetings". There is no question that the Prisoner Review Board and its committees or subsidiary bodies are "public bodies" subject to the Act. (Ill. Rev. Stat. 1981, ch. 102, par. 41.02.) Further, there is no question that a board or panel hearing on an application for executive clemency falls within the definition of "meeting" under the Act. (Ill. Rev. Stat. 1981, ch. 102, par. 41.02.) Therefore, unless one of the Act's exceptions is applicable, hearings of the Prisoner Review Board must be open to the public.

Section 2 of the Open Meetings Act (Ill. Rev. Stat. 1981, ch. 102, par. 42) exempts from the Act's public meetings mandate:

> " * * * (b) deliberations for decisions of * * * the Prisoner Review Board, * * * ."

None of the Act's other exceptions appears applicable in the instant situation. The question which thus arises is whether the Prisoner Review Board's hearings on applications for executive clemency are "deliberations for decisions" within the

meaning of section 2 of the Act.

The phrase "deliberations for decisions" is not defined in the Act. In the absence of a statutory definition indicating a contrary legislative intent, words in a statute are to be given their plain and commonly understood meaning. (Illinois Power Co. v. Mahin (1978), 72 Ill. 2d 189, 194.) Further, "[i]t is a rule of general acceptance as to the construction of statutes, that exceptions or provisos found in a statute are to be strictly construed." (People v. Lofton (1977), 69 Ill. 2d 67, 71.) This rule of construction has been applied to the Open Meetings Act. See, Illinois News Broadcasters Association v. City of Springfield (1974), 22 Ill. App. 3d 226, 228.

Webster's Third New International Dictionary (1981 ed.) provides the following pertinent definitions of "deliberation":

> "1 : the act of weighing and examining the reasons for and against a choice or measure : careful consideration : mature reflection * * * 2 : a discussion and consideration by a number of persons of the reasons for and against a measure * * * "

Under this definition, it is clear that the hearings about which you inquire cannot be considered "deliberations for decisions" within the meaning of exception (b) contained in section 2 of the Act. You state in your letter:

> " * * * There have been certain circumstances where residents incarcerated in correctional facili-

> ties who seek various forms of clemency before the Prisoner [Review] Board have requested that the conduct of their testimony be in private and not accessible to the public.
>
> * * * "
>
> (Emphasis added.)

Thus, you ask whether the Board has "the right to hear such testimony in private". (Emphasis added.) Plainly, the taking of testimony is not equivalent to either (1) the act of weighing and examining or (2) the discussion and consideration of the reasons for and against a choice or measure. The hearing process, i.e., the gathering of evidence and the taking of testimony, is a stage distinct and separate from the Board's own deliberations on the evidence. It is only after the Board has received all the evidence that it "deliberates for decision" within the meaning of exception (b).

In this sense, the Board is acting in a quasi-judicial capacity when it hears testimony on a petition for executive clemency and makes its recommendation thereon. This description of the process is reflected in the response of the sponsor of the most recent amendments to the Act to a question on the purpose behind exception (b):

> "Reilly: * * * [i]t is thought that what they are deciding is not in the ordinary legislative nature but rather is more in the nature of deciding a case. The jury doesn't meet in public, the jury meets in private and the general feeling over not just in this but over many generations has been that the values of having them conduct their delib-

> erations in private outweigh any advantage of having them in public."
> (Remarks of Representative Reilly, May 20, 1981, House Debate on House Bill No. 411, at 24.)

Thus, applying to situations which have been likened to the closed deliberations of a jury held after public testimony, the "deliberations for decisions" exception of the Open Meetings Act must be restricted to the Prisoner Review Board's deliberations held after the conduct of public testimony.

The meaning attached to a statutory provison is arrived at from an evaluation of the statute as a whole; each provision should be construed in connection with every other provision and in light of the statute's general purposes. (Miller v. Department of Registration and Education (1979), 75 Ill. 2d 76, 81.) Nearly all of the other exceptions enumerated in section 2 of the Open Meetings Act exempt certain types of meetings from the Act's public meetings requirement by reference to specific subjects. In contrast, exception (b) is phrased in terms of a certain phase of the administrative process - namely, "deliberations for decisions". Thus, the language of section 2 evidences a legislative intent to restrict the scope of exception (b) to those meetings of the Prisoner Review Board which involve the specified stage of the Board's adjudicative process.

It should be noted that, when the General Assembly

intended to allow the taking of testimony out of the public view, it plainly stated its intent. For example, section 2 of the Act (Ill. Rev. Stat. 1981, ch. 102, par. 42) permits public bodies to meet in closed session in order " * * * to hear testimony on a complaint lodged against an employee or officer to determine its validity. * * * " (Emphasis added.) (See, also, Ill. Rev. Stat. 1981, ch. 46, par. 9-21) which requires the State Board of Elections to hold closed preliminary hearings, and opinion No. 82-041, issued November 10, 1982.)

Rule XVIII(6) of the Board's regulations provides in pertinent part that:

> "The Board or a designated panel thereof will hear counsel or any other persons who appear in support of or in opposition to the petition at the scheduled public hearing. * * * " (Emphasis added.)

Thus, the Board's own regulations require it to conduct its hearings publicly.

The conclusion that the phrase "deliberations for decisions" does not include the taking of testimony by administrative bodies is in accordance with the weight of authority on this issue. One study summarized its findings thusly:

> " * * * Most open meeting laws require that any evidentiary phase of the hearing be open, but allow the deliberative phase to be closed to the public. * * * " (The National Association of Attorneys General, Open Meetings: Actions and Meetings Covered (1981) at 22.)

In construing an exception to the Arkansas Open Meetings Law

that permitted closed "executive sessions" held for the purpose of discussing or considering employment related matters of public officers or employees, one court stated as follows:

" * * *

> * * * we cannot construe [the exception] broad[ly] enough to permit an executive session for the purpose of hearing testimony. Like the trial court, we read the provision permitting an executive session, when applied to a statutory evidentiary hearing such as this, as giving to the Commissioners, after the hearing of testimony (and arguments, if any), the limited right of retiring into executive session ' . . . only for the purpose of discussing or considering . . . ' among themselves the decision they should reach. * * * " (Arkansas State Police Commission v. Davidson (Ark. 1973), 490 S.W.2d 788, 790.)

See, also, Baxter County Newspapers, Inc. v. Medical Staff of Baxter General Hospital, (Ark. 1981), 622 S.W.2d 495; Bell v. Board of Education of Harlan (Ky. 1977), 557 S.W.2d 433; State ex rel. Cities Service Oil Co. v. Board of Appeals (Wis. 1963), 124 N.W.2d 809; Conn. Att'y Gen. Op. Sept. 29, 1975 (37 Conn.L.J., No. 17, p. 7.)

For purposes of effectuating the stated public policy of the Open Meetings Act that "deliberations [of public bodies] be conducted openly" (Ill. Rev. Stat. 1981, ch. 102, par. 41), the word "deliberations" has been construed broadly. (See, 1976 Ill. Att'y Gen. Op. 224.) Yet to apply this construction to exception (b) of the Act would be neither appropriate in the present factual context nor in accordance with the language of

the Act itself. Firstly, the operative language in this case is "deliberations for decisions", a phrase plainly more narrow than the blanket term "deliberations". Secondly, the former phrase is part of an exceptions clause to the principal mandate of section 2 of the Act; the latter term is included in the Act's general statement of public policy. In keeping with well-established rules of statutory construction, the language of the exceptions clause must be construed narrowly while the language of the Act's statement of public policy must be construed broadly. (Illinois News Broadcasters Association v. City of Springfield (1974), 22 Ill. App. 3d 226, 228; Graham v. Board of Education of Community High School District No. 77 of St. Clair County (1973), 15 Ill. App. 3d 1092, 1097, 1098.) For these additional reasons, it is appropriate to exclude the conduct of hearings from the "deliberations for decisions" exception to the Act.

In summary, it is my opinion that the Open Meetings Act and the Board's own regulations require the Prisoner Review Board to conduct its hearings on applications for executive clemency publicly. Under section 2 of the Act, the Board may deliberate in closed session only for the purpose of arriving at its decision in each case.

Very truly yours,

ATTORNEY GENERAL