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MEMO

Open Meetings Act

In 2002, the fourth district court of appeals in Illinois heard an issue of first impression and narrowed the scope of local government law.ⁱ The court considered 5 ILCS 120/2.02(a), the section of the Open Meetings Act dealing with public notice of meetings and agendas. In their decision, the court held that the section of the act stating, “the requirement of a regular meeting agenda shall not preclude the consideration of items not specifically set forth in the agenda,” meant that the local government board could discuss items not specifically included in the agenda, but that no action (i.e. voting) could be taken.ⁱⁱ

After the decision was published, both practitioners and local government entities were surprised. According to Helen Gunnarsson, attorney with the Lake County State’s Attorney’s Office and author for the Illinois Bar Journal, §2.02(a) of the Open Meetings Act had been interpreted broadly by local government entities and the agenda requirement was seen as a “mere formality.”ⁱⁱⁱ In her article, Ms. Gunnarsson hypothesizes that the *Rice* case would force local government entities to take the agenda requirement more “seriously.”^{iv} Moreover, the article discussed the *Rice* interpretation as a problem when local government entities must decide whether they are able to take action in an emergency situation when that action was not included in the agenda.^v

Since the decision in *Rice*, despite the surprise to local governments and practitioners, the *Rice* case has not been overturned and Illinois legislature has initiated action to amend §2.02 of the Open Meetings Act. From 2002 until today, *Rice* has only been cited in two decisions published by West, *Laukhuf v. Board of Education*, 2003 WL 23936148 (11th Cir. 2003), and *Board of Education v. Village of Burr Ridge*, 341 Ill.App.3d 1004, 1013 (1st Dist. 2003). In *Village of Burr Ridge*, the first district court of appeals only cited *Rice* for the standard of review of an order granting summary judgment, *Village of Burr Ridge*, Ill.App.3d at 1013. In *Laukhuf*, the eleventh judicial circuit court addressed the sufficiency of local government’s notice of an emergency meeting, convenience of meeting times, and items listed on an agenda, *Laukhuf*, at 2.

The court addresses both *Rice* and §2.02 of the Open Meetings Act in *Laukhuf*, yet this order neither expands nor narrows the *Rice* decision. The eleventh judicial circuit discussed §2.02 of the Open Meetings Act, which addresses the sufficiency of notice of an emergency local government board meeting, but they cite to *Rice* only for ways courts are able interpret statutory language, *Laukhuf*, at 2. This order, granting the plaintiff's motion for summary judgment and finding that the defendant school board violated the Open Meetings Act with regard to sufficiency of notice, expounds the definition of a "bona fide" emergency and states that there is no emergency where the board creates the situation they wish to address at the "emergency" meeting, *Id* at 4. Notice of emergency meetings is discussed in Ms. Gunnarsson's article and emergency meetings are more precisely defined in *Laukhuf*, yet the order does not define agendas in relation to the *Rice* or *Laukhuf* decisions.

Interestingly, the *Laukhuf* court does address specificity of agendas. The court found that the board did not violate the Open Meetings Act with regard to agendas, *Id.* at 5. In *Laukhuf*, the agenda stated, "Discuss Status of Strike by the Educational Support Personnel and review decision to continue to keep school closed," and the board voted to open the school despite the strike, *Id.* The court found that "the Act does not require an agenda to state every minute detail of an issue," *Id.* In contrast, the board in *Rice* had an agenda that stated, "New Business," and they introduced and voted on a benefit program resolution that had never been previously mentioned, *Rice*, 326 Ill.App.3d at 1207. Oddly, the *Laukhuf* court did not address *Rice* in the "Agenda Issue" section of their order, *Laukhuf*, at 5. The agendas in these cases appear to be extreme opposites; the *Laukhuf* agenda is very specific but fails to mention voting, while the *Rice* agenda is not specific and fails to even mention which issues will be addressed as "New Business."

In 2007, Illinois State Representative Jim Sacia introduced amendments in the State House of Representatives to §2.02 that would codify *Rice*. In the proposed amendment, the Representative suggests adding the language, "but an item that was not specifically set forth in the agenda may not be voted upon," directly after the language at controversy in *Rice*, "the requirement of a regular meeting agenda shall not preclude the consideration of items not specifically set forth in the agenda," H.B. 0210, 95th General Assembly (Il. 2007) and 5 ILCS 120/2.02 (effective January 1, 2006).¹ Thus, the state legislature is considering adopting the rule in *Rice* allowing local government boards to discuss items not included in the agenda, but the board will not be able to vote on the item until proper notice of a meeting, including a specific agenda, is given. If the amendment is adopted, the legislature will be making clear their intent to hold local government boards responsible for specifically notifying the public of any measure they intend to vote upon unless the meeting is "bona fide emergency."

If HB 0210 is enacted, the requirements in *Rice* will become more than common law from the fourth district; instead of overturning a decision, the courts would have to find the new legislation unconstitutional. It remains to be seen what Illinois courts will do

¹ The version of the statute cited in *Rice* became effective in 1995, but the changes that became effective January 1, 2006 related specifically to websites and do not affect the *Rice* case, P.A. 89-86, 5 ILCS 120/2.02 (effective June 30, 1995), and P.A. 94-28, 5 ILCS 120/2.02 (effective January 1, 2006).

when an agenda contains information that is specific but fails to address the ultimate issue voted upon at the meeting. Will boards hold more emergency meetings? Will the agenda specificity requirements force boards to hold more special meetings to address issues that could have been easily addressed at regular meetings? These new requirements force boards to pre-plan their meetings very specifically, which may take extra time and use resources that may be better utilized implementing measures rather than planning the meetings.

ⁱ In *Rice v. Board of Trustees*, 762 N.E.2d 1205 (4th Dist. 2002).

ⁱⁱ *Rice*, 762 N.E.2d at 1207.

ⁱⁱⁱ Helen Gunnarsson, *A Sizzling Rice Soup For Public Officials?*, IBJ (May 2002), *see also* <http://www.isba.org/IBJ/may02lj/p226.htm>.

^{iv} *Id.*

^v *Id.*