

EVERYDAY DEMOCRACY

CITIZEN ADVOCACY CENTER'S SEASONAL NEWSLETTER, SPRING, 2004

Electronic Access and Illinois Freedom of Information Act

The Federal and Illinois Freedom of Information Act (FOIA) are statutes which ensure the public's right to inspect and/or copy public documents for any private or public purpose. Pursuant to federal and state law, government agencies are mandated to respond to public requests for information in a timely manner by either producing the document requested, denying the requested document with instructions as to how to appeal, or requesting more time to produce the documents.

Traditionally, FOIA requests were required to be made in person or in writing via postal service or messenger. However, in 1996, the Federal Government amended the Federal FOIA pursuant to the "Electronic Freedom of Information Act of 1996." These amendments require federal agencies to increase accessibility to public records through electronic means of communication. As a result of the 1996 amendments, each federal agency has dedicated a page on its website to explain FOIA, its relevance with respect to that agency, and how to make a FOIA request to that agency. Although not mandated by federal law, many federal agencies now accept FOIA requests via the fax or via e-mail, and some agencies have online request forms available for use on their websites.

The Illinois legislature has yet to amend Illinois FOIA to accommodate the increased access to and reliance on electronic means of communication. Furthermore, despite the widespread use of electronic technology and websites by many public bodies at all levels of government, information about and access to public records via electronic means is limited.

This summer, the Citizen Advocacy Center is conducting a study to learn how municipalities and county government in DuPage and Cook Counties use websites to inform the public about their right to obtain public documents, how to use the FOIA, and whether or not public bodies accept FOIA requests via the web. Additionally, the Center is evaluating what simple amendments can be made to the Illinois FOIA. Simple reforms that would bring access to public records in Illinois into the 20th Century are: requiring state entities to maintain a web site, requiring all public bodies that have a website to dedicate one page to detailing the purpose of FOIA, its relevance to that entity, and how to make a request for public records, requiring public bodies that have websites to maintain an electronic reading room that allows people to inspect and/or download documents that are frequently requested from the public body without submitting a formal FOIA request and finally, and requiring public bodies that have websites to establish an online FOIA request form.

Not only would the reforms described above increase reliance on and access to electronic means of communication but, over time, it would also decrease the amount of manpower needed to address FOIA requests and ultimately lead to a better informed citizenry.

Bryna Williams, Summer Legal Intern

Open Meeting Act and the Right of Citizens to Attend Public Meetings

The purpose of the Illinois Open Meetings Act is to prevent public bodies from secretly discussing or acting on matters which would impact the public. The Act requires that public notice be given in advance of regular meetings, and that public bodies keep minutes for both open and closed meetings.

Additionally, all meetings are required to be public and must be held at specified times and places which are convenient and open to the public. This aspect of the Illinois Open Meetings Act, that meetings must be open to the public and held in a convenient location for the public, was an issue recently addressed in the Illinois case of *Gerwin v. Livingston County Board*. (Fourth Dist. 2003)

In May and June of 2002, the Livingston County Board considered amending the county's solid-waste disposal plan, a topic of wide concern among the community. The County Board knew that a public hearing on this issue would draw a large gathering from the public, which was set for June 13, 2002. Despite requests to change the meeting location to a larger room to ensure space, the meeting location was not changed. As expected, approximately 150 members of the public attempted to attend the meeting.

Because of the small board room capacity, only a few members of the public could enter the room. Other members of the public were forced to stand in the hallway and stairwells, unable to see or hear the board meeting. In addition, agents of the waste disposal company who supported the amendment to the solid-waste disposal plan were permitted to enter the meeting room

despite arriving after the citizens who were made to stand in the hallway or stairwell. Residents filed a pro se suit against the County Board because they tried to attend the meeting, but because of the lack of adequate space and the refusal of the County Board to move the meeting to a larger room, civic shut out resulted.

The Illinois Appellate Court agreed with the citizens that the meeting violated the Open Meetings Act because the County Board had knowledge that the room would be too small to accommodate the anticipated number of citizens who wished to attend, an alternative venue was available, and the County Board refused to change the meeting place. The Appellate Court determined that it was not enough that the County Board meetings were typically held in a certain location; custom cannot trump public convenience.

Despite this decision, public bodies are not required to hold public meetings in locations to accommodate *all* interested members of the public. The court said that convenience is a rule of reasonable accessibility, not absolute accessibility.

This is an important case for citizens in Illinois because public bodies can no longer use the excuse that a meeting was technically open, even though members of the public tried to attend, but due to the small size of the meeting location, could not hear or see the public hearing. This case dictates that public bodies must hold meetings that are BOTH open and convenient and cannot hold open meetings in locations that are unreasonably small.

Susan Stone, Summer Legal Intern

Democracy Watch

Can the DuPage County Board call for a repeat bidding process if a long time vendor used by the County does not submit the lowest qualified bid?

No. This is an obvious case of "steering the contract," which is prohibited by DuPage County's Procurement Code. Regardless of how long a particular contractor has been a County vendor, if that vendor was not the lowest qualified bidder that responded to the County's request for proposals, it is against the DuPage County Procurement Code to rebid the contract.

Can a School Board hold a meeting to discuss the closure of a school behind closed doors?

No. The discussion about whether or not to close a school is clearly public business and, therefore, must be openly discussed.

Can a police station that allows community groups to meet at the station refuse to allow one community group to meet because they are too "political"?

No. Once the police station permits any community group to meet at the station, the station has become an "open and public forum" under the First Amendment. This prohibits the police station from restricting who can meet there because of the type of group or the content of the group's discussion.

How can state statutes that permit back door referendums be amended to ensure that citizens who want to utilize these statutes do not receive legally insufficient petitions to circulate from municipalities?

The statute should be amended to include a sample petition for municipalities. Furthermore, if the petition circulated from the municipality is challenged and found to be legally insufficient, the court should impose a mandatory penalty to the municipality as well as grant attorney fees.

Calendar of Events

Friday, June 25, Brown Bag Lunch 12:30 PM War Profiteering and the Privatization of Services.

Who is cashing in on the War on Terrorism?
Visit CAC for a discussion about war
profiteering, and how during a time of war, not
everyone is making sacrifices.

Tuesday, June 29, 7 PM—Home Rule & You
Home Rule gives municipalities increased power
to generate tax revenue beyond what is permitted
by state statute with decreased accountability.
What are the pros and cons of Home Rule and
how can citizens hold their public officials
accountable?

Friday, July 9, 12:30 PM— The Presidential Campaign and Public Financing

Visit CAC for a discussion about the role of
money in the Presidential campaign.

Tuesday, July 13, 7 PM—The DuPage County Election Commission and Electronic Voting: Will Every Vote Count?

How has electronic voting been implemented in
DuPage County and what safeguards are in place
to ensure that every vote in fact counts?

Thursday, July 22, 7 PM—Democracy Day
Every summer, college and law student interns
work diligently with community lawyers to build
democracy. Visit the Center to learn about
Home Rule, the Freedom of Information Act
project, Elmhurst TIFs, the USA PATRIOT Act
and more.

Petitions for nomination of a candidate for public office or referenda must comply with Illinois law. The State Board of Elections provides a suggested petition form for candidates, however, the Board strongly advises those using the petition to obtain competent legal advice on the candidate's qualifications for office; proper method for completing the form; qualification of circulators; and qualification of signatures and minimum number required. The State Board does not provide suggested petition forms for citizen initiative referenda. Circulators of petitions must be residents and 18 years or older, but they are not required to be registered voters in the district. After the petition has been filed, opponents can view or copy the petition and submit an objection petition. The Board has discretion to impose a penalty for filing a false objection.

Additional information is available on the State Board of Elections website (www.elections.state.il.us) or you can contact the Citizen Advocacy Center.

Election Commission

Representatives from the Center recently attended the DuPage County Bar Association Local Government Committee meeting with guest speaker Colleen Burke, General Counsel, Illinois State Board of Elections, to discuss recent changes in disclosure rules and candidate nomination petitions. The Illinois State Board of Elections supervises the 110 election authorities throughout the state charged with administering local elections, supervises the administration of the Illinois Campaign Financing Act, and closely monitors campaign expenditures appearing on reports submitted by candidates and committees as required by law.

Illinois has been referred to as the "wild west of campaign financing," because of the absence of laws restricting campaign contribution limits. Instead, Illinois relies on a disclosure of campaign contribution system to ensure accountability. State and local political committees that accept contributions or make expenditures in excess of \$3,000 within a 12-month period are required to file semi-annual campaign disclosure forms. Local and State political committees must file financial reports with the county clerk, and State committees must also file with the State Board of Elections. State and local political committees can download the disclosure form filing software free of charge from the State Board of Elections website.

Failure to report a contribution can result in a fine, however, recent changes to the Election Code altered how fines are distributed. Previously, the State Board of Elections *was required* to assess a fine equal to 100% of the contribution that was failed to be disclosed. Now, the State Board has the discretion to assess fines ranging anywhere from 10% to 100% of the total contribution not declared. The State Board when assessing a fine is supposed to consider factors such as past violations, the number of days reported late, and whether the violation was committed inadvertently, negligently, knowingly or intentionally.

Everyday Democracy is a publication of the *Citizen Advocacy Center*, a non-profit, nonpartisan, 501(c)(3) corporation. Submissions from citizen advocates in the western suburbs of Chicago are encouraged. The *Center* is an educational and charitable organization dedicated to building democracy for the 21st century by strengthening the public's capacities, resources, and institutions for self-governance.

If you are interested in more information, becoming a volunteer, or making a tax-deductible contribution, please feel free to contact or visit us.

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Citizen Advocacy Center Celebrates 10th Anniversary & Honors Lt. Governor Pat Quinn with Building Democracy Award

The 10th Anniversary of the Citizen Advocacy Center marks an important milestone. For ten years the Center has been dedicated to building democracy for the 21st Century and has worked tirelessly to increase the citizenry's capacity and desire to participate in their communities and public affairs. We have held true to our mission by educating the public in how to use essential civic tools, by stimulating citizen involvement on key community issues, by providing vast resources to increase the capacity of citizens to participate in public affairs, and by our advocacy and litigation to holding public officials accountable. The Center has taught hundreds of citizens how to advocate for a cause and how to create positive community change through informed and sustained participation. The ability of citizens to perform these tasks is essential to a healthy democracy.

In celebration of our 10th Anniversary, the Center is presenting Lt. Governor Pat Quinn with our Building Democracy Award. This award recognizes Lt. Governor Pat Quinn for his ongoing commitment to making government more accountable to the people, promoting individual and community efforts to resolve societal problems, furthering the public's understanding of democratic protocols, stimulating citizen awareness and involvement on community issues, helping citizens act on issues of public significance and sustaining access to justice.