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FEB 20 2001

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NOTICE

NO. 5-02-0727

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

THE BREEZE-COURIER,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Christian County.
)	
v.)	No. 01-CH-75
)	
THE CITY OF TAYLORVILLE,)	Honorable
)	James J. Eder,
Defendant-Appellee.)	Judge, presiding.

RULE 23 ORDER

The plaintiff, The Breeze-Courier, a daily newspaper (Newspaper), filed a complaint against the defendant, the City of Taylorville (City), alleging that the Taylorville City Council (Council) had violated the Open Meetings Act (Act) (5 ILCS 120/1 *et seq.* (West 2000)) when Council members gathered at a City police department meeting that was closed to the public. The Newspaper sought a temporary restraining order and injunctive relief against future Act violations, a public disclosure of any minutes taken during the closed meeting, the nullification and voiding of any final actions taken at the closed meeting, and reasonable attorney fees and litigation costs. The Newspaper did not seek damages. Subsequent to a bench trial, the circuit court entered a judgment in favor of the City and against the Newspaper. The Newspaper filed a timely notice of appeal.

The relevant facts are as follows. The City has apparently had an ongoing problem on the City's downtown square with teenagers loitering and being too noisy, underage drinking of alcoholic beverages, underage smoking, littering, and teenagers breaking their curfew.

Gregory Brotherton, the City's police chief, testified that he has 21 police officers under his command. Brotherton stated that he sets policies, reviews police officer performance, sets the police officers' schedules, buys equipment and clothing for the officers, and conducts meetings for the members of his staff. Brotherton routinely conducts interdepartmental meetings with the police officers on a quarterly basis. Brotherton claimed that the interdepartmental meetings are mandatory for all police officers unless they are on vacation. He also stated that he has, in the past, asked the City's attorney and the State's Attorney to attend the interdepartmental meetings so the officers can understand how to use their services and vice versa.

On September 25, 2001, Brotherton attended the City's ordinance committee meeting. It was open to the public, and members of the public were present. At that meeting, Brotherton announced that he was having a police interdepartmental meeting on October 2, 2001. He invited the mayor and the aldermen to attend the October 2, 2001, meeting. On October 1, 2001, during the City's regular open and public meeting, Brotherton again invited the aldermen to attend the police interdepartmental meeting. Members of the public were present at the October 1, 2001, City Council meeting.

Frank Mathon, an alderman on the Council, Mathon's constituents, the Newspaper, and others in the community were questioning the performance of the police officers in the execution of their duties in the City's downtown square area. In September 2001, Brotherton circulated a questionnaire to downtown merchants in an effort to elicit their perceptions of the police officers' performance and to solicit potential solutions to the problems that the City was encountering. Based upon the replies received from the downtown merchants, it became clear that the police officers' performance was being seriously questioned. The police officers were frustrated with the downtown merchants' perceptions. The officers were confused about whether certain ordinances and laws could be effectively enforced and

prosecuted. For these reasons, Brotherton held a police interdepartmental meeting on October 2, 2001.

Prior to the meeting, Brotherton requested that the City's attorney research the constitutionality of the City's existing loitering and curfew ordinances and the State's curfew laws. All the police officers attended this meeting. At Brotherton's invitation, the City's attorney, his assistant, and the State's Attorney attended the meeting. He also invited someone from the probation department, but they were unable to attend. It is undisputed that a majority of a quorum of the Council attended also. Brotherton stated that he had to politely ask a few merchants from the downtown square to leave the meeting because it was not open to the public. Brotherton testified that the primary function of the interdepartmental meeting was to discuss police performance and police enforcement issues. Another purpose of the meeting was to have the City's attorney and the State's Attorney advise the officers concerning what they could and could not do and to respond to the officers' questions about ordinance enforcement. Brotherton stated that these discussions are held during interdepartmental meetings to avoid the ineffective enforcement of the law when dealing with potential crime perpetrators. Brotherton opined that these discussions were sensitive matters and were not a proper subject for discussion in an open forum. The various topics that were discussed at the meeting included the following: (1) the lack of cooperation by downtown merchants when the police officers attempted to enforce existing laws and ordinances, (2) what the police officer must observe prior to issuing a citation, (3) alcohol and methamphetamine problems, (4) alcohol and public intoxication ordinances, (5) the locations of methamphetamine labs that the officers had under surveillance, (6) the legality of the use of surveillance cameras and closed-circuit television on private and public property, (7) trespassing and loitering ordinances and their constitutionality and enforcement, (8) whether the officers could give citations for public urination and defecation, (9) how the

police officers should handle public ridicule by kids, (10) the elements of disorderly conduct, (11) whether the sheriff's reserve or auxiliary police would have the authority to enforce City ordinances, (12) whether the police officers should be writing citations under state laws or City ordinances, (13) the formulation of a City uniform citation form, (14) the legality of performing roadside safety checks in and around the downtown square, and (15) the legality of writing tickets on private property. Brotherton also stated that during this meeting, the officers criticized his performance as the police chief. All the topics were discussed among Brotherton, the police officers, and the attorneys. The aldermen and the mayor did not participate in any of the discussions. Brotherton stated that at the end of the meeting, one alderman stated that he would take what he had learned at the interdepartmental meeting and take action at the next ordinance committee meeting. Other aldermen's comments were similar.

David Martin, the State's Attorney, testified that he did not remember any specific discussions at the meeting. He remembered that he had a discussion with the police officers wherein they discussed the problems on the downtown square. Martin understood that he was there to address these concerns and to make recommendations for the proper enforcement of the ordinances.

Jim Montgomery, the City's mayor, stated that the October 2, 2001, meeting was a police interdepartmental meeting called by Brotherton for the purpose of giving his officers an opportunity to discuss issues with the City's attorney and the State's Attorney. He recalled that six aldermen attended the meeting. He could not remember any specific comments that were made by any of the aldermen. Montgomery stated that there was no prior agenda sent out by the City since it was not a Council meeting. Montgomery remembered that the meeting was about the problems around the downtown square. He remembered an officer asking a question about the use of cameras. Montgomery testified that there was a discussion

about bringing in undercover State police or plain-clothed officers from outside Taylorville to address the problems on the downtown square. He stated that he did not participate in the discussion.

According to Mathon, on September 25, 2001, the Council's ordinance committee met to discuss the issues regarding the problems on the downtown square. The meeting was open to the public. When the ordinance committee reached the downtown square item on the agenda, it was "very briefly" discussed. Mathon stated that at that meeting, Brotherton stated that a meeting would be held on October 2, 2001, to discuss the downtown square problems. According to Mathon, Brotherton also said, "You are all invited to come and attend." Mathon testified that no motions were made at the police interdepartmental meeting. He also stated that there were no decisions made at the meeting and that there was no sense of accord among the Council members regarding what they should or should not do. Mathon agreed that he had not personally discussed anything at the meeting, but he had commented, as the chairman of the ordinance committee, that he would take the issues to the next ordinance committee meeting, where they would be deliberated upon and discussed.

Subsequent to the October 2, 2001, meeting, a downtown Taylorville *ad hoc* committee was created and approved in an open meeting. Over the course of at least 23 open and public meetings, the downtown square problems were discussed and debated. Pursuant to these meetings, the Council adopted new city ordinances that added new crimes. Ordinance number 3078 prohibits littering, obstructing a public way, public urination or defecation, or exposing a person's private body parts in public. City of Taylorville Ordinance No. 3078 (eff. June 18, 2002). Ordinance number 3077 prohibits the driver of a motor vehicle from playing or operating a stereo or other sound amplification system that can be heard outside the motor vehicle from 75 feet or more when it is being operated on the City's public way. City of Taylorville Ordinance No. 3077 (eff. June 18, 2002). Ordinance

number 3040 prohibits the consumption, purchase, delivery, or possession of alcohol. City of Taylorville Ordinance No. 3040 (eff. June 21, 2002). That ordinance also prohibits the transportation of alcohol within the passenger area of a motor vehicle unless it is in the original container with the seal unbroken, with certain exceptions for limousines and chartered buses. Ordinance 3040 also prohibits public intoxication. The new ordinances also increased fines and penalties. As a result of the actions taken after numerous meetings, the number of citations written for ordinance violations drastically increased, and the police officers' performance improved.

After hearing all the evidence, the circuit court determined that the gathering of the Council members at the police interdepartmental meeting was not a "meeting" within the definition of the Act because it was not held for the purpose of discussing *public* business. The October 2, 2001, meeting was a City police department meeting that was conducted by the City's police chief, police department members, and legal counsel. The Council did not conduct the meeting, and the aldermen that were present did not run the meeting. No actions were taken by the aldermen at this meeting. The Council members did not discuss *public* business. The court found that the Council was not likely to violate the Act in the future and that it did not violate or "skirt" the purposes of the Act. The court noted that the numerous open and public meetings that were held subsequent to the October 2, 2001, meeting, combined with the exhibits and the testimony, showed that the City went to great lengths to involve and discuss the issues before the public. After taking all the aforementioned information into consideration, the circuit court determined that the Council did not violate the Act when a majority of a quorum of the Council attended a police interdepartmental meeting. The court then entered a judgment in favor of the City. The Newspaper filed a timely notice of appeal.

The Newspaper claims that the circuit court erred in determining that the October 2,

2001, gathering of the Council at the police interdepartmental meeting was not a "meeting" as defined by the Act. We agree.

The construction of a statute is an issue of law that we review *de novo*. *Nelson v. Old Line Life Insurance Co.*, 341 Ill. App. 3d 144, 147, 792 N.E.2d 796, 798 (2003). Pursuant to section 2(a) of the Act (5 ILCS 120/2(a) (West 2000)), "All meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." Section 1.02 of the Act (5 ILCS 120/1.02 (West 2000)) defines a "meeting" as a gathering of a majority of a quorum of the members of a public body held for the purpose of discussing public business. The fundamental objective in construing the Act is to ascertain and give effect to the intent of the legislature. *Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189, 561 N.E.2d 656, 661 (1990). Ordinarily, the language used in the statute is the primary source for determining this intent. *People v. Markovich*, 195 Ill. App. 3d 999, 1004, 552 N.E.2d 1232, 1235 (1990).

As we previously stated, the circuit court in the instant case determined that the police interdepartmental meeting was not a "meeting" within the definition of the Act because it was not held for the purpose of discussing *public* business. Although the Act does not define "public business" and there are no cases that interpret that section pursuant to the Act, the terms have been defined by the Illinois Supreme Court interpreting section 1-206 the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1-206 (West 2000)) (*Carroll v. Paddock*, 199 Ill. 2d 16, 764 N.E.2d 1118 (2002)). In *Carroll*, 199 Ill. 2d at 18, 764 N.E.2d at 1120, the issue was whether a not-for-profit charitable hospital and a not-for-profit mental-health-care organization were "local public entities" within the meaning of section 1-206 of the Local Governmental and Governmental Employees Tort Immunity Act. In order to make this determination, the court had to determine whether the not-for-profit corporation was "organized for the purpose of conducting *public business*" (emphasis

added) in order to satisfy the definition of a local public entity. 745 ILCS 10/1-206 (West 2000). The *Carroll* court then adopted the following definition for "public business":

" ' "Public" is defined as "[p]ertaining to a state, nation, or whole community; proceeding from, relating to, or affecting the whole body of people or an entire community. Open to all ***. Belonging to the people at large; *** not limited or restricted to any particular class of the community." Black's Law Dictionary 1227 (6th ed. 1990). *** Thus, to conduct "public business" under the Act, a corporation must pursue an activity that benefits the entire community without limitation. In addition, the phrase "public business" is also today commonly understood to mean the business of the government.' " *Carroll*, 199 Ill. 2d at 25-26, 764 N.E.2d at 1124 (quoting *O'Melia v. Lake Forest Symphony Ass'n*, 303 Ill. App. 3d 825, 828, 708 N.E.2d 1263, 1265 (1999)).

Absent statutory definitions indicating a contrary intent, words in a statute are to be given their ordinary and popularly understood meaning. *Paxson v. Board of Education of School District No. 87*, 276 Ill. App. 3d 912, 917, 658 N.E.2d 1309, 1312 (1995).

There is no doubt that, according to the Illinois Supreme Court's definition of "public business," a "meeting" was held in the instant case for the purpose of discussing "public business." The specific purpose of the meeting was to discuss criminal problems on and around the downtown square. The record is undisputed that a majority of a quorum of the Council was present at the meeting. Pursuant to the Act, it makes no difference who held the meeting or that the Council members did not participate or participated very little in the discussion. The fact of the matter is that too many Council members gathered at the police interdepartmental meeting that was held for the purpose of discussing public business for it to not be considered a "meeting" pursuant to the Act. If we construed the statute in such a manner to allow a majority of a quorum of Council members to attend such meetings and we

find that they are not meetings within the definition of the Act, it would render the Act meaningless and circumvent the primary purpose of the Act. The situation in the case at bar could have been avoided by the Council having less than a majority of a quorum of its members attend the police interdepartmental meeting. For these reasons, a "meeting" occurred pursuant to the Act. 5 ILCS 120/1.02 (West 2000).

The City claims that if this court determines that a "meeting" occurred, it falls under the exception listed in section 2(c)(1) of the Act (5 ILCS 120/2(c)(1) (West 2000)), which allows closed meetings to consider certain subjects. We disagree.

As we previously stated, all meetings of public bodies shall be open to the public unless excepted by section 2(c) of the Act (5 ILCS 120/2(c) (West 2000)). Section 2(c)(1) of the Act (5 ILCS 120/2(c)(1) (West 2000)) states as follows:

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

(1) The appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body, including hearing testimony on a complaint lodged against an employee to determine its validity."

We find that this exception does not apply to the facts of the instant case because a specific employee's performance was not discussed.

Although neither party makes this claim, we find that the exception listed in section 2(c)(14) (5 ILCS 120/2(c)(14) (West 2000)) applies to the instant case. Section 2(c)(14) states that a public body may hold a closed meeting to consider the following:

"(14) Informant sources, the hiring or assignment of undercover personnel or equipment, or ongoing, prior[,] or future criminal investigations, when discussed by a public body with criminal investigatory responsibilities."

This is precisely what occurred in the instant case.

A "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, *** except the General Assembly." 5 ILCS 120/1.02 (West 2000).

The police department is an executive body of the City charged with executing and enforcing compliance with the law. In the case at bar, at the meeting in question, the members of the police department, the City's attorney, and the State's Attorney discussed numerous confidential matters that related to the ongoing criminal investigation of the City's downtown square. Although the meeting was held by the police chief for the purpose of discussing public business, it was *confidential* public business that the public had no right to know. The only reason that it was a meeting within the definition of the Act was because too many Council members attended. The record shows that confidential issues were discussed at the meeting, such as the use of surveillance cameras, the location of methamphetamine labs, the hiring of undercover police officers, the police officers' performance regarding ongoing, prior, and future criminal problems around the City's downtown square, and how the police officers were supposed to handle various situations.

Hence, even though a "meeting" occurred, the exception in section 2(c)(14) of the Act (5 ILCS 120/2(c)(14) (West 2000)) allowed the meeting to be closed due to the confidential nature of the information that was being discussed by the police department.

The only remaining issue is that notice of the meeting was not given pursuant to the Act (5 ILCS 120/2.02, 2a (West 2000)). According to section 3(c) of the Act (5 ILCS 120/3(c) (West 2000)), if the provisions of the Act are not complied with, the court "may

grant such relief as it deems appropriate."

A review of the record shows that the Council did not meet privately to decide what to do about the City's downtown square problems. In fact, the record shows quite the contrary. The police chief held a police interdepartmental meeting that too many Council members attended, which turned it into a "meeting" within the definition of the Act. The Council did not participate in the meeting, and no decisions were made by the Council at the meeting. Since the Act states that the court must have due regard for orderly administration and the public interest, as well as the interests of the parties, we find no need to publicly disclose any of the minutes that may have been taken during the meeting that contained any of the confidential information that falls under the exception listed in section 2(c)(14) of the Act. If minutes exist that contain any information that did not fall within the exception listed in section 2(c)(14) of the Act, it must be publicly disclosed. The record shows that no final actions were taken at the meeting; hence, we find no need to void any action as the Newspaper demands. Finally, since the record demonstrates that the City did not intentionally violate the Act, each party must pay its own attorney fees.

The intention of the Act is to protect the citizens' right to know. 5 ILCS 120/1(1) (West 2002). Because the City violated the Act, the obligations of a "public body" (5 ILCS 120/1.02 (West 2002)) are set forth hereafter. Pursuant to the Act, every "public body" must give public notice of the schedule of regular meetings at the beginning of each calendar or fiscal year, stating the regular dates, times, and places of the meetings. The Act requires an agenda for each regular meeting of a public body, and it requires the agenda to be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting. 5 ILCS 120/2.02(a) (West 2002); *Rice v. Board of Trustees of Adams County*, 326 Ill. App. 3d 1120, 1122, 762 N.E.2d 1205, 1206 (2002). The requirement of a regular meeting agenda does not preclude the

consideration of items not specifically set forth in the agenda. 5 ILCS 120/2.02(a) (West 2002). If a change is made in regular meeting dates, at least 10 days' notice of the change must be given by publication in a newspaper of general circulation in the area in which such public body functions. Notice of the change must also be posted at the principal office of the public body or, if no such office exists, at the building in which the meeting is to be held. Notice of such change must also be given to news media that have filed an annual request for notice. 5 ILCS 120/2.03 (West 2002). A public notice of the meeting shall be posted at the principal office of the body holding the meeting or, if no such office exists, at the building where the meeting is to be held. If a news medium has filed an annual request for notice of the public body's regular, special, emergency, rescheduled, or reconvened meetings, the public body shall supply copies of the notices to it. The news medium must be given the same notice as is given to members of the public body, provided that the news medium has provided an address or telephone number within the jurisdiction of the public body. 5 ILCS 120/2.02(b) (West 2002). The public body is required to keep minutes of meetings, whether open or closed. 5 ILCS 120/2.06(a)(1), (a)(2), (a)(3) (West 2002). The minutes of open meetings shall be available for public inspection within seven days of the approval of those minutes. Minutes of closed meetings are available only after the public body determines that it is no longer necessary to protect the public interest or the privacy of an individual. 5 ILCS 120/2.06(b) (West 2002). Each public body shall, no less than semiannually, meet to review the minutes of all closed meetings. A determination must be made and reported in open session that the need for confidentiality still exists regarding all or a part of those minutes or that the minutes or portions thereof no longer require confidential treatment and are available for public inspection. 5 ILCS 120/2.06(c) (West 2002). A public body may hold a closed meeting, or close a portion of the meeting to the public, upon a majority vote of a quorum present, taken at a meeting that is open to the public for which notice has been given

as required by the Act. Only topics specified in the vote to close the meeting may be considered during the closed portion of the meeting. 5 ILCS 120/2a (West 2002).

Based on the foregoing considerations, we reverse the circuit court's judgment in favor of the City and against the Newspaper, and we enjoin the City from future Act violations. Only those minutes, if any, that did not fall under the exception listed in section 2(c)(14) of the Act (5 ILCS 120/2(c)(14) (West 2000)) should be disclosed to the public. Any minutes that contain any confidential police business shall not be publicly disclosed. Each party will bear its own attorney fees and costs of this suit.

Reversed; judgment entered.

MAAG, J., with HOPKINS and WELCH, JJ., concurring.