

**STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
CARROLL COUNTY**

JONATHAN K. WHITNEY and)	
THE CARROLL COUNTY REVIEW,)	
Plaintiff,)	
vs.)	02 MR 1
BOARD OF EDUCATION OF THOMSON)	
COMMUNITY UNIT SCHOOL)	
DISTRICT NO. 301,)	
Defendant.)	
)	

MEMORANDUM OPINION AND ORDER

This cause came before the Court on May 19, 2004 for hearing on cross motions for summary judgment. The plaintiff Mr. Whitney was present and represented by Attorney Scott B. Sievers. The defendant School District was represented by Attorney Karl R. Ottosen. The court heard the arguments of counsel and took the matter under advisement in order to more fully review the pleadings and arguments of counsel. This court has reviewed the arguments, the briefs, the depositions, the case law presented and the applicable statute. The court finds as follows.

Plaintiff alleges that defendant violated the Open Meeting Act 5 ILCS 120/1 et seq. (hereafter referred to as "the Act") during its November 6, 2001 school board meeting by:

1. Holding a closed meeting to consider subjects not withing any exception in Section 2(c) of the Act.
2. Failing to provide the actual agenda for the Board's special meeting at least 48 hours before the meeting in violation of Section 2.02 of the Act.
3. Failing to cite a specific exception contained in the Act which authorizes the closing of the meeting to the public in violation of Section 2a of the Act.

The defendant responds that the school board meeting was closed to the public as a result of the exceptions allowed under (3) and (11) of the Act and that it did not violate the posting or citation requirements of the Act.

The facts are set forth in the parties' motions for summary judgment and need not be reiterated herein.

A motion for summary judgment shall be granted if the pleadings, depositions and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law 735 ILCS 5/2-1005.

Section 120/1 of the Act sets forth the policy of the Open Meetings Act as follows in part: "Exceptions to the public's right to attend all exist only in those limited circumstances where the General Assembly has specifically determined that the public interest would be clearly endangered or the personal privacy or guaranteed rights of individuals would be clearly in danger of unwarranted invasion . . . The provisions for exceptions to the open meeting requirements *shall be strictly construed against closed meetings.*" (emphasis added).

Further, section 120/2 (b) states that "the exceptions are to be strictly construed, extending only to subjects clearly within their scope."

Defendant claims that the meeting in question was closed pursuant to exception (11) due to "litigation, when an action has been filed and is pending before a court or administrative tribunal, or when the public body finds that an action is probable or imminent, in which case the basis for the finding shall be recorded and entered into the minutes of the closed meeting." (emphasis added).

This court does not believe in this that there was any basis to find that any legal action was probable or imminent. Even though "Purple advised the Board's attorney that he believed there was a definite possibility of litigation over the Atherton conflict situation," there was not sufficient reason to believe that there was probable or imminent legal action. For the Board to assert that the issue of Atherton's conflict of interest was "a major concern in the community" and that "it was very conceivable that any number of persons could have contacted the State's Attorney's office for an investigation and probable [felony] charges, does not rise to the level under the statute of "probable or imminent action."

The court notes the defendants use of words such as "definite possibility" and "very conceivable" to support the speculative nature of the Board's opinion that litigation was probable or imminent. There is no evidence of any specific person or persons having threatened litigation or discussed the filing of a suit over these matters.

The court disagrees that plaintiff's threat to sue over the possible closing of the meeting justifies the closing. To bootstrap the weak argument for closing with plaintiff's assertion that he would sue over the improper closing does not make the original reason for closure valid.

While the Atherton's conflict of interest on the school board was clearly sensitive and controversial in the community, that reason does not equate with the exception under the Act. Thus the court finds that summary judgment shall be granted to the plaintiff on the issue of the defendant closing the meeting citing the litigation exception under 120/2(c)(11) of the Act.

The court does not believe that defendant violated the Act under Section 2.02, in that the defendant did post an agenda within 48 hours of the special meeting, and thereafter did amend the agenda at the time of the meeting as required by Section 2.02.

Finally, having ruled in favor of the plaintiff's motion for summary judgment as to the pending litigation issue, the third issue, failing to cite a specific exception, becomes moot and the court need not address that issue.

It is therefore the order of the court that summary judgment is hereby granted in favor of the plaintiff and against the defendant on the issue of defendant's holding a closed meeting not within any exception allowed under the Freedom of Information Act, 5 ILCS 120/2 (c). This matter is set for further proceedings and telephone conference call to Tuesday, September 28, 2004.

Entered this 21st day of September, 2004



Theresa L. Ursin
Associate Circuit Judge