

Public bodies are not required to place closed session on agenda: Court clarifies the prerequisites for closing public meetings

by Timothy Hoppa

The appellate court recently expanded the authority of public bodies to hold closed session meetings. In *Wyman v. City of Champaign*, ___ Ill.App.3d ___ (4th Dist. 2008), the court held that closed session need not be included on the open meeting agenda. Additionally, the *Wyman* court also relaxed its previously articulated formalities required to enter closed session.

In *Wyman*, the City of Champaign ("City") conducted a regularly scheduled meeting of the city council. Although the agenda posted for the meeting did not include a closed session, the city council voted to close the meeting for the purpose of discussing "litigation" and "property acquisition." The city council and several staff members attended the closed session meeting.

The plaintiff maintained that the closed session meeting violated numerous requirements of the Open Meetings Act (the "OMA"). First, the plaintiff argued that the City was required to list its intention to hold a closed session meeting on the open meeting agenda. Second, plaintiff asserted that the appellate court's decision in *Henry v. Anderson*, 356 Ill.App.3d 952 (2005) required the City to list the specific sections of the OMA under which the meeting was closed. Third, the plaintiff interpreted the OMA to require a separate, roll call vote on *each* exception asserted for closing the meeting. Finally, the plaintiff argued that the inclusion of persons other than the city council was inappropriate and contrary to the OMA.

In a decision that clarifies its prior decision in *Henry*, the court ruled that the City had not violated the OMA. In *Henry*, the court found an OMA violation where a public body held a closed session meeting for the purpose of "litigation" without further explanation. There, no litigation was pending but was only probable. The *Wyman* court clarified that, where the litigation matter to be discussed in closed session is not yet pending, the public body is required to articulate why the litigation is imminent and record the basis for that decision in the minutes of the meeting. Where the litigation matter is already pending, however, the public body may close the meeting for the purpose of "litigation" without further clarification and without recording the basis for the decision in the meeting minutes. ★

While Section 2a of the OMA requires that "each member" vote to authorize the closing of a meeting, the Act does not specify if a roll call vote is required. The *Wyman* court found that when the City conducted a voice vote and recorded the vote in the meeting minutes, it complied with the requirements of the OMA. The court specifically rejected reading into the OMA a requirement that a roll call vote of each member be taken. Further, the court held that individual votes on each basis for closing the meeting was not required; a single, voice vote on whether to close the meeting for the reasons articulated in the motion complies with the OMA.

The court rejected the plaintiff's argument that only members of the city council could properly attend its closed session meetings. In so doing, the court accepted the City's argument that the City

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attorney needed to attend the closed session to discuss the pending litigation. Similarly, the purchase of property could not be discussed by the city council in closed session without the input of the staff member responsible for negotiating the real estate purchase contract. The court confirmed that the OMA does not delineate who is allowed to attend closed session meetings or prohibit a public body from inviting nonmembers into the closed session.

Although most public bodies include a closed session on their open meeting agenda, the *Wyman* court held that the plain language of the OMA does not require advanced notice of the intent to convene a closed session meeting. The *Wyman* decision provides Illinois school boards increased freedom when deciding whether to conduct closed session. It is clear that, as long as the statutory provision under which the meeting is closed is identified, the school board need not identify by number the provision used to close the meeting. If something comes up after the agenda has been published, the *Wyman* case establishes the ability of a school board to convene a closed session meeting without publishing a new agenda or foregoing the closed session meeting entirely.

Keeping in mind that school boards cannot act on a matter that is not on the agenda before the meeting began, we recommend that school boards list closed sessions on their open meeting agendas as well as a subsequent agenda item indicating "Action on Items Arising Out of Closed Session." If you have any questions regarding the OMA, please contact Tim Hoppa at (630) 682-0085. ■

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SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION

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December 29, 2008

Mr. Scott Kuffel, Superintendent
Geneseo Community School District #228
209 S College Ave.
Geneseo, IL 61254

Re: Illinois Freedom of Information Act

Dear Mr. Kuffel,

As permitted by the Illinois Freedom of Information Act, 5 ILCS 140, I request a copy of the following documents pertaining to any and all renovation, maintenance, or new construction involving heating, ventilating and air conditioning systems of Geneseo Community School District #228.

1. Public bid notices involving HVAC service maintenance contracts for the 2008-2009 school year.
2. Copies of award notice, and notice to proceed.
3. Copy of signed contract documents, including copies of contractors' performance bond and certificates of insurance.
4. Copies of certified weekly payroll for such work performed.

I would like to obtain copies of these records. I understand that the Act permits a public body to charge a reasonable fee not to exceed the actual cost of reproduction and not to include costs of any search or review of the records. 5 ILCS 140/6. If any part of this request is denied, please state exact reason for denial and to whom I may appeal.


I look forward to hearing from you in writing within seven (7) working days as required by the Act. 5 ILCS 140(3).

Sincerely,

Scott Barber
Business Representative/ Recording Secretary
Sheet Metal Workers Local #91
8124.42nd Street West
Rock Island, IL 61210
309-787-0695 ext-13

Certified Mail #7004 0750 003 1638 6693

ILLINOIS — Adams, Calhoun, Carroll (Western Part), Hancock, Henry, Henderson, Jo-Daviess (Western Part), Knox, McDonough, Mercer, Pike
Rock Island, Warren and Whiteside (Western Part) Counties.

IOWA — Allamakee, Cedar, Clayton, Clinton, Davis, Des Moines, Dubuque, Henry, Jackson, Jefferson, Keokuk, Lee, Louisa, Muscatine, Scott, Van
Buren, Wapello and Washington Counties. 

From: "Bryan Pullen" <bpullen@ppsm.net>
Subject: **CMS and HFS Update December 30, 2008**
Date: December 30, 2008 10:15:55 AM CST
To: <skuffel@dist228.org>

Well, it has been 6 months since I sent out a "CMS update" e-mail to everyone. So I thought I would give you an update on what is going on in the world of school-based Medicaid.

The last e-mail I sent out announced the "saving" of Administrative Claim and Fee-for-Service Transportation until April 1, 2009. As of right now, Administrative Claim and Fee-for-Service Transportation are still set to expire effective April 1, 2009. Organizations like AASA, CASE, LEAnet, and NAME are still attempting to either postpone the moratoria further into the future, or save them permanently. As you can probably guess, the timing at this moment is not right for any sort of assault. As the current administration and some legislative members are set to take their leave, a new administration with new legislative members are chomping at the bit to take over. So at this time we are just waiting until after January 20th ...

Right now there is a LEAnet webinar (a conference held over the internet) scheduled at the end of February to discuss the issue and to help formulate a game plan. I am also planning a trip to Washington DC in the next couple of months to meet with the Illinois delegation to help them understand the importance of this crucial revenue stream. As I learn more details about the webinar or what you can do to help this cause, I will let you know.

Even though we are looking to April 1 for possible eliminations at the federal level, the Illinois Department of Healthcare and Family Services (HFS) is looking ahead to some changes of their own. Starting with the quarters beginning April 1, 2009, all Administrative Claims must be filed using the "official" state-wide vendor. What does this mean? That means that Peoria School District 150 will not be able to file Administrative Claims anymore beginning with the April-June 2009 quarter. I can not say who the state-wide vendor will be (because I don't know), but I can tell you it is not Peoria. One of the stipulations of the state-wide vendor is that they can NOT file Fee-for-Service claims for any LEA. With Peoria being the largest Fee-for-Service vendor in Illinois, I felt that would be a dis-service to all our Fee-for-Service clients to leave them "high and dry" with no vendor on April 1. Therefore, I did not submit a bid to HFS on the Request for Proposal to be the state-wide vendor.

Probably about now you are asking yourself... Why is HFS going to a state-wide vendor April 1, 2009 when CMS is under moratoria to eliminate Administrative Claim April 1, 2009? Well, the state-wide vendor will be doing more than just filing Administrative Claims. Here is a laundry list of duties the state-wide vendor will be required to do ...

1. Implement and administer a new time study methodology called Random Moment Time Study (RMTS)
2. Use RMTS results to calculate state-wide statistics for use in Fee-for-Service cost calculations
3. Use RMTS results to file Administrative Claims (to the extent it is federally allowed) for LEAs
4. Facilitate the execution of necessary Interagency Agreements between HFS and LEAs
5. Provide support for the completion and submission of the web-based Fee-for-Service cost calculation forms via the MEDI system
6. Provide training and technical assistance to support the Fee-for-Service claims filed using the MEDI system
7. Provide training and technical assistance to support the Administrative Claiming process (to the extent it is federally allowed)
8. Perform other administrative functions related to the HFS school-based program as directed by HFS

As I stated earlier, one stipulation of the state-wide vendor is that they CAN NOT file Fee-for-Service claims on behalf of any LEAs. HFS is leaving that responsibility up to you. ★

HFS issued a memo dated October 30 announcing the Request for Proposal for this state-wide vendor. The bids were due to HFS on December 12, 2008 and HFS is planning on having the state-wide vendor selected sometime in January to begin performing duties on February 1, 2009. I don't know what will be asked of you (like signing new HFS agreements, updating HFS provider information sheets, providing names of time study participants to the new vendor, etc), but Peoria will assist you however much we can in this transition period. Peoria will still file all outstanding Administrative claims (October-December 2008 and January-March 2009) after April 1, 2009; we will just not be able to file future Administrative Claim quarters beginning with the April-June 2009 quarter. And we will still be a Fee-for-Service vendor after April 1, 2009!!!

A second HFS memo was issued on December 24 regarding the changes effective April 1, 2009. If you did not receive either memo, or would like to review them again, you can view them on our website by selecting the "HFS Updates" link from our

homepage, www.ppsm.net.

If you have any questions, feel free to contact me. As I know more information, I will pass it along to you.

Bryan