ROLAND W. BURRIS
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

January 31, 1991

COPY

FILE NO. 91-001

MEETINGS:
Authority of Public Body to
Sanction Its Members for Disclosing
Substance of Deliberations at
Closed Meeting

Honorable Dallas C. Ingemunson
State's Attorney, Kendall County
109 West Ridge Street
Yorkville, Illinois 60560

Dear Mr. Ingemunson:

I have your letter wherein you inquire whether a public body has the authority to sanction one of its members for disclosing information or issues discussed by the public body in a closed meeting held pursuant to sections 2 and 2a of the Open Meetings Act (Ill. Rev. Stat. 1989, ch. 102, par. 42, as amended by Public Act 86-1389, effective September 10, 1990; par. 42a). For the reasons hereinafter stated, it is my opinion that public bodies do not have such authority.

The purpose of the Open Meetings Act is to ensure that the actions of public commissions, committees, boards, councils and other public agencies in the State are taken openly and that their deliberations are conducted openly. (Ill. Rev. Stat. 1989, ch. 102, par. 41; People ex rel. Difanis v. Barr (1980), 83 Ill. 2d 191, 199; 1983 Ill. Att'y Gen. Op. 82, 84.) To this end, the Act requires that, with certain limited exceptions, all meetings of public bodies be open to the public. (Ill. Rev. Stat. 1989, ch. 102, par. 42, as amended.) The exceptions allowing the holding of closed meetings are set forth in section 2 of the Act. A public body may hold a closed meeting only upon a majority vote of a quorum present at an open meeting. (Ill. Rev. Stat. 1989, ch. 102, par. 42a.) Only topics specified in the vote to close may be discussed in the closed meeting, and no final action may be taken at a closed meeting. (Ill. Rev. Stat. 1989, ch. 102, par. 42, as amended; par. 42a.) Violation of the Act is a Class C misdemeanor (Ill. Rev. Stat. 1989, ch. 102, par. 44).

Section 1.02 of the Act (Ill. Rev. Stat. 1989, ch. 102, par. 41.02) defines the term "public body", for purposes of the Act, as:

> " * * *
>
> * * * 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, or which expend tax revenue, except the General Assembly and committees or commissions thereof."

With the exception of home rule units, the public bodies which are subject to the Act have no inherent powers -- their powers are ordinarily limited to those which are expressly granted by the constitution or law, those which are incident to the powers expressly granted, and those which are indispensable to the accomplishment of the stated objective of the statute or, in the case of municipal corporations, the object and purposes of the corporation. (Ill. Const. 1970, art. VII, § 7, 8; Pesticide Public Policy Foundation v. Village of Wauconda (1987), 117 Ill. 2d 107; Homefinders, Inc. v. City of Evanston (1976), 65 Ill. 2d 115; Matter of Hoheiser's Estate (1981), 97 Ill. App. 3d 1077.) There is no provision in the constitution or the Open Meetings Act which expressly authorizes public bodies to sanction their members for revealing what went on during a closed meeting, and there is clearly no constitutional provision from which one may imply such powers. In the absence of a specific statute authorizing a public body to impose such sanctions, the issue becomes whether that power arises as an incident to the powers expressly conferred by the Open Meetings Act, or because it is indispensable to the accomplishment of the objectives of the Act or the objects and purposes of a municipal corporation.

In general, the Open Meetings Act does not confer power upon public bodies. The Act assumes, of course, that members of public bodies must meet to conduct business and it requires that such meetings be open. The Act authorizes public bodies to hold closed meetings for specified purposes and authorizes a public body to prescribe reasonable rules governing the right guaranteed by the Act of persons to record open meetings. (Ill. Rev. Stat. 1989, ch. 102, par. 42, as amended; par. 42.05.) In large measure, the Act simply imposes notice and procedural requirements on the holding of both open and closed meetings. Nothing in the Act is to be construed to require that any meeting be closed (Ill. Rev. Stat. 1989, ch. 102, par. 42a), and the purpose of the Act is to ensure that the actions and deliberations of public bodies are open to public scrutiny. (People ex rel. Difanis v. Barr (1980), 83 Ill. 2d 191; People ex rel. Hartigan v. Illinois Commerce Commission (1985), 131 Ill. App. 3d 376, appeal denied.) Thus, there is no power conferred by the Act to which the power to sanction members is a necessary incident; moreover, there appears to be no objective from which the existence of such a power could be necessarily implied.

Indeed, the implication of such a power would clearly work to subvert the purpose of the Act. As noted previously, closed meetings may be held only in strictly limited circumstances to discuss a limited range of topics that must be

identified when the vote to close a meeting is taken, and violation of the Act is a criminal offense. In some circumstances, it would be difficult to enforce these provisions of the Act without the disclosure of violations by a member of the public body; the possibility of imposing sanctions against a member of a public body for disclosing what has occurred at a closed meeting would only serve as an obstacle to the effective enforcement of the Act, and a shield behind which opponents of open government could hide. Such an absurd construction of the law, which would render ineffective the public policy of this State favoring openness in government, must be avoided. _See_, _Ambassador East, Inc. v. City of Chicago_ (1948), 399 Ill. 359, 365.

It is my opinion, therefore, that absent an express statutory provision so providing, public bodies do not have the power to sanction their members for disclosing the substance of deliberations conducted or actions taken at a closed meeting. This conclusion is applicable even to those public bodies which possess home rule powers, since the provisions of the Open Meetings Act constitute minimum requirements for home rule units, and home rule units are granted authority only to prescribe "more stringent requirements" than those of the Act. (Ill. Rev. Stat. 1989, ch. 102, par. 46.) In this context, "more stringent requirements" connotes requirements that "serve to give further notice to the public and facilitate public

access to meetings". Clearly, an ordinance authorizing the imposition of sanctions for revealing matters discussed or action taken in a closed meeting would not serve either objective, but would, instead, have an adverse impact upon open access to government. Consequently, such an ordinance would not constitute "more stringent requirements" than those of the Act.

Very truly yours,

ATTORNEY GENERAL