

July 20, 2015

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Via Facsimile No. 229-244-9788

Gary Lewis Moser, Esquire
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RE: Open Meetings Act Complaint regarding the Valdosta City Schools Board of Education

Dear Mr. Moser:

I have received your response to my letter to you about the allegations that the Valdosta City Schools Board of Education has violated the Open Meetings Act. As you know, the complaint concerned the Board's practice of taking public votes on personnel decisions by voting to "approve the recommendations of the superintendent," after the Board had discussed those recommendations in executive session. I appreciate you taking the time to respond in such detail. It is my view that the School Board's use of executive sessions complies with the Open Meetings Act, but the way in which the public votes are taken does not.

Having the Superintendent make personnel recommendations to the Board and present those recommendations during an executive session is certainly allowable under the Act. As you note, the Board members may then discuss and consider those recommendations, as long as they do not hear arguments or receive evidence. The Act does not require the Board to discuss the recommendations during the public part of the meeting.

I understand from your description of the process that Board members are always aware of the individual recommendations that are being discussed and voted on after they leave executive session and take a vote on the recommendations. However, the issue here is whether the public is properly informed of the matters that are being voted on during the meeting. I do not agree that voting to "accept the Superintendent's recommendations" complies with the Act.

If notifying the public of the particular decisions made during a meeting soon after the meeting occurred were sufficient under the Act, such an interpretation would contradict the whole purpose of the Act. For example, in *Jersawitz v. Fortson*, 213 Ga. App. 796, 799 (1994), the Court of Appeals held that "viewing an edited videotape of the meeting after the fact is not the

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equivalent of being present.” If closing a meeting and later providing the public with a videotape is not acceptable, then neither is voting to “accept recommendations” and only later disclosing what recommendations were being voted on.

I agree that it can be awkward for employees or job applicants to learn important details about their employment through an announcement at a public meeting or from a “local newspaper or the employee/applicant’s neighbor,” as you note. Notifying them privately before making a public announcement is considered the best practice for a private employer. However, this is just one of many ways in which public employment differs from private employment. Public employees’ personnel files are available to the public under the Open Records Act, as are the emails that they send on their work accounts, unless one of a limited number of exceptions apply.

Our office represents many state agencies that make hiring and personnel decisions by public vote, and I know that many state employees have had the experience of learning the details of changes in their employment while sitting in the crowd at a public meeting. I would be happy to talk with you about the various ways that state agencies make this a less awkward process. Among the possible alternatives would be including in the meeting agenda a list of the particular personnel positions that will be voted on, allowing employees to be prepared for the decisions to be announced. The Open Meetings Act requires that level of detail in the agenda in any case to inform the public at large what actions will be considered, and may be acted upon, by the Board.

I am requesting that the Valdosta Board of Education change its practices to comply with the Act by including in its meeting agendas a list of the particular personnel decisions that will be voted on at each meeting. Additionally, to comply with the requirements of the Open Meetings Act and appellate direction, the Board should make clear to the public during public votes exactly which decision, including personnel, is being voted on.

Finally, I would like to note that under Georgia law the Attorney General, as an independent constitutional officer, has the discretionary authority to enforce the Open Meetings Act. O.C.G.A. § 50-14-5(a). Although we attempt to resolve disputes through mediation, if possible, our office reserves the right to civilly and criminally prosecute such matters where it deems doing so is appropriate.

Sincerely,

JENNIFER COLANGELO
Assistant Attorney General

cc: Jim Zachary, Editor, Valdosta Daily Times