HALLMAN LAW OFFICE, P.C.

ATTORNEY AT LAW
802 WEST MAIN STREET
POST OFFICE BOX 980
CLAXTON, GEORGIA 30417

Ronald W. Hallman
hallman9@bellsouth.net

TELEPHONE 912-739-4825
TELEFAX 912-739-3082

October 3, 2018

Ms. Jennifer Colangelo
Assistant Attorney General
Georgia Department of Law
40 Capitol Square SW
Atlanta, Georgia 30334-1300

U S MAIL and EMAIL jcolangelo@law.ga.gov

RE: Evans County Board of Education-Open Meetings Act complaint

Dear Ms. Colangelo:

I am writing this letter in my capacity as attorney for the Evans County Board of Education and Evans County School District. Please accept this as our response to your letter of September 26, 2018 addressing the complaint made by Jessica Szilagyi and her employer AllOnGeorgia, LLC, regarding the manner in which the Evans County Board of Education votes on personnel recommendations.

The procedure used by our District is identical to that used by the vast majority of school districts we have surveyed in this area, and is in full compliance with the Open Meetings Act. All personnel discussions are held by the Board in closed executive session. This is done after the Board votes, in open session, to enter executive session for that purpose. The Board completes its discussion on personnel matters (and any other matters properly handled in executive session) and then by majority vote comes out of executive session. The Board then votes, in public, to resume open session. At that time, a motion is made and seconded to accept the "personnel recommendations as made" and a vote is taken on this motion, in full public view in open session. A personnel list reflecting the decisions made is made available to the public within 48 hours of such meeting, allowing administrative personnel to contact the affected persons of the decisions made if needed prior to public disclosure. This keeps the affected employees or potential employees from first receiving the news of their hiring, firing or discipline by social media or news media.

AllOnGeorgia, LLC, is apparently taking the position that the applicable statute, O.C.G.A. § 50-14-3(b)(2), has some sort of implied, but not stated, requirement that the personnel recommendations be listed specifically by name on the meeting agenda. We respectfully

submit to your office that this is not the law, and the procedure that is used by this District as well as numerous other districts and approved by me and numerous other school attorneys is in full compliance with the Open Meetings Act. Any other conclusion would amount to reading into the statute a non-existent requirement which the Legislature chose not to impose.

O.C.G.A. § 50-14-3(b)(2) is direct and unambiguous: "The vote on any matter covered by this paragraph shall be taken in public and minutes of the meeting as provided by this chapter shall be made available." There is no legislative requirement that the names of the affected personnel be listed on the agenda but instead only that the vote be made in public and that the minutes be prepared "as provided in this chapter". The minutes requirement is found in O.C.G.A. § 50-14-1(e)(2)(A) which states that "a summary of the subjects acted on and those members present at a meeting of any agency shall be written and be made available to the public for inspection within 2 business days of the adjournment of a meeting." Subsection (B) then provides that the complete minutes shall be approved at the next regular meeting and shall show the names of the persons voting for each proposal and a description of each motion made, including the identity of the persons making and seconding the motion. The Evans County School District fully and literally complies with all requirements regarding minutes.

Had the Legislature intended to require that the names of each person being voted upon be listed on the agenda it certainly would have done so. Further, no appellate court has ever read into the statute such a requirement. Instead, the Legislature opted to make a plain, simple and unambiguous statement that the vote must be made in public and recorded in the minutes. No more is required, and no further requirement can be added to the statute absent legislative action.

As you aware, statutes are to be construed as set forth in O.C.G.A. § 1-3-1. Among other things, this statute provides that "ordinary signification shall be applied to all words" and that "a substantial compliance within any statutory requirement, ***especially on the part of public officers***, shall be deemed and held sufficient." (emphasis added).

Georgia courts have long followed the principle of *expressio unius est exclusio alterius* (expression of one thing excludes another). See the early case of Bailey v. Lumpkin. 1 Ga. 392 (1846) which is the first reported application of this principle to statutory construction. Since the Legislature expressed great detail on many matters in the Open Records Acts, including the minutes requirements, its failure to require that personnel matters discussed in executive session be set forth in detail on the agenda shows intent of the Legislature to impose no such requirement. Creating such a rule would further defeat the purpose of having a personnel exception to the Open Records Act. Allowing personnel decisions to be discussed in closed session shows the Legislature's recognition of the importance of the privacy and delicacy of such matters.

Another long held principle recognized in Georgia is that the law never requires a useless act. Nothing would be added to the decision making process by revealing the name of every person being considered because the public, listening in the open meeting, would have no input to the vote conducted by the Board. While our school district allows public input at regular board meetings under certain guidelines (such as signing in ahead of the meeting), personnel matters are specifically excluded from such public participation. To do otherwise would circumvent the policy of holding all personnel discussions in closed session for protection of the privacy rights of the persons being considered and promoting candor on the part of supervisors.

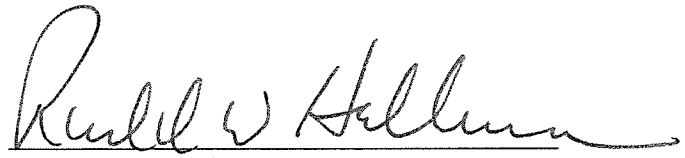
Construction of any statute must square with common sense and sound reasoning as has been repeatedly held by our appellate courts. See Blalock v. State, 166 Ga. 465 (1928), and similar cases. Further, "where the language in the statute is plain and unequivocal, judicial construction is not only unnecessary but is forbidden." City of Jesup v. Bennett, 226 Ga. 606 (1970).

Georgia's Open Meetings Act, or Sunshine Law, has now been around for several decades. It has served a useful purpose and has allowed the public access to decision-making, thus contributing to our democratic process. However, the Legislature recognized from the very beginning that there are certain matters that are best handled in private, with later disclosure in the public minutes. Personnel is one of these. The Legislature balanced the rights of the public with the rights of employee privacy and allowed such matters to be handled in closed session. The Legislature could have easily required that the names of potential employees, or persons subject to disciplinary action, be specifically made public prior to the vote, but they did not do so. If someone feels that this was an unwise decision, then it is a matter to be addressed by the Legislature, which is the only body authorized to make such a change.

If you or your office needs any additional information about our procedures, or additional argument or positions on any point, please let me know. We can discuss by telephone if you wish.

Thank you, and with personal regards, I am

Sincerely,



Ronald W. Hallman
RWH/crm
cc/ Jessica Szilagyi
Dr. Martin Waters