

IN THE CIRCUIT COURT FOR THE FIFTH JUDICIAL CIRCUIT  
COUNTY OF CLARK, MARSHALL, ILLINOIS

KIRK ALLEN and JOHN KRAFT )  
 )  
 Plaintiffs )  
 v. )  
 )  
 CLARK COUNTY PARK DISTRICT ) 2015-MR-4  
 BOARD OF COMMISSIONERS )  
 )  
 Defendant )

**PLAINTIFF RESPONSE TO DEFENDANT MOTION TO DISMISS**

Plaintiffs, Kirk Allen and John Kraft, *pro se*, state as follows for their Response to Defendant Motion to Dismiss:

**INTRODUCTION**

Defendant seeks a Motion to Dismiss pursuant to 735 ILCS 5/2-615. Defendant wrongfully alleges in their Motion that Plaintiffs have failed to allege any violation of the Open Meetings Act.

Plaintiffs have sufficiently alleged violations of the Open Meetings Act in their Complaint, and specifically in paragraph 26 (a) and (b) of the Complaint. Plaintiffs even gave the specific paragraphs from the Act of the alleged Open Meetings Act violation, which were 5 ILCS 20/2.02(c), 2(e), and 2.06(g).

This Complaint provides enough information to reasonably inform the Defendant of the nature of the claim or defense that he is called upon to meet. 735 ILCS 5/2-612(b); *Forest Preserve*

*District of DuPage County v. Miller*, 339 Ill.App.3d 244, 252, 739 N.E.2d 916, 923 (2d Dist. 2003); *People of the State of Illinois ex rel. Hartigan v. Candy Club*, 149 Ill.App.3d 498, 500, 501 N.E.2d 188, 190 1st Dist. 1986); *Kita v. Young Men's Christian Association of Metropolitan Chicago*, 47 Ill.App.2d 409, 425, 190 N.E.2d 174, 182 (1st Dist. 1964).

In this Complaint, Plaintiffs alleged an actual violation of the Act in that Defendant did not provide proper notice on the posted Agenda that would adequately identify, or provide the "general subject matter", of the subject matter to be voted on (Compl ¶ 13, 14, and 25(a)) (Compl Ex. A). Plaintiffs also alleged additional actual violations of the Act in that Defendant did not precede the votes with a public recital of the "substance" of what was being considered (Compl ¶ 17, 18, 19, 21, 22, and 26(b)).

## Argument

### Legal Standard

Plaintiffs have alleged actual violations of the Open Meetings Act that contain sufficient facts for this cause of action and Plaintiffs are entitled to relief. Under a section 2-615 motion, a cause of action should not be dismissed unless it is clearly apparent that no set of facts can be proved that would entitle Plaintiff to relief *Food-Best Enterprises, Inc. v.*

County of Cook, 232 Ill. 2d 463, 473, 905 N.E.2d 781, 789 [2009]; *Mapleton v. Village of Hinsdale*, 229 Ill.2d 296, 305, 891 N.E.2d 839, 845 (2008). *Kindel v. Tennis*, 409 Ill. App. 3d 1138, 949 N.E.2d 1119 (5th Dist. 2011).

### **The Board's Meeting Agenda Violated the Open Meetings Act**

Plaintiffs alleged in their Complaint that the posted Agenda did not provide sufficient information to the general public of the general subject matter to be considered (voted on) during the meeting. Items for approval such as "Board Approval of Lease Rates" do not provide the "general subject matter" as required in the Act. Was the Board establishing lease rates for the lease of paddle boats, pontoon boats, cabins, the soccer field? Additionally, the item entitled "Board Approval of Revised Covenants" did not provide the "general subject matter" as required in the Act. What covenants? Which agreements did the covenants apply to? The posted Agenda did not "set forth the general subject matter" of items to be subject to final action. 5 ILCS 120/2.02(c). This requirement is separate and distinct from the requirement found in paragraph 2.02(a), which allows "consideration", meaning discussion but not final action, of items not on the Agenda.

Posting the agenda along with copies of the proposed final actions would have brought the Agenda within the requirements of

section 2.02 of the Open Meetings Act [IL ATTY GEN OP 14-001, Apr 10, 2014, at bottom of Pg 5]. See Exhibit A.

The facts supporting these alleged violations are provided in Compl ¶ 1, 13, 14, 15, and 26(a).

Defendant relies on *Foxfield v. Subdivision v. Village of Campton Hills*, 920 NE 2d 1102, ILL. App. 2<sup>nd</sup> Dist. 2009. The Court in *Foxfield* relied on agenda requirements enacted prior to Public Act 097-0827, which became effective 1-1-2013 and added section 2.02(c), which includes, among others, the requirement of including the "general subject matter" on items considered for final action. Therefore, *Foxfield* does not apply in this cause since it relied on the statutory language prior to the amendment of the Act.

**Defendant Violated the Open Meetings Act During the Meeting, Denying the Public, Including Plaintiffs, of their Rights Under the Open Meetings Act**

As Plaintiffs alleged in their Compliant, Defendant violated Section 2(e) during its meeting by failing to precede any final action with a public recital of the "substance", or nature of the matter being considered, and other information that will inform the public of the business being conducted. 5 ILCS 120/2(e). This is a requirement of the Open Meetings Act.

Defendant's citing of a U.S. District Court Case *Roller v. Bd of Educ. Of Glen Ellyn Sch. Dist. No. 31*, which does not have precedential authority in Illinois state courts [*Kaufman v. Barbiero*, 2013 IL App (1<sup>st</sup>) 132068 ¶19, 999 N.E.2d 764, 768 (2013)], failed to distinguish between the requirement found in 2(e) for taking final action, and the requirements found in section 2.02 for posting of notices and agendas.

Posting an agenda cannot be considered as fulfilling the requirement of section 2(e) of "public recital", because the recital must be verbal and must take place during an open meeting. There are actually two requirements in section 2(e) that must occur prior to any final action: 1) publicly recite the nature of the action, and, 2) provide such other information as to inform the public of the business being conducted. Defendant did not comply with these requirements.

The facts supporting these alleged violations are provided in Compl ¶ 2, 17 thru 22, and 26(b).

Defendant "seems to claim" they do not understand the word "substance" as used in the Complaint, and it can be defined as the "key provisions" of the final action, or the "nature of the action and other information" as to inform the public of the business being conducted.

Defendant also claims Plaintiff repeatedly stated that there was discussion of the Disputed Actions, but fails to

qualify their statement with what is actually written in the Complaint: that there was "brief" discussion and that at no time did Defendants discuss the substance of, or advise the public of, what they were actually considering for final action (Compl ¶ 18, 19, and 21).

### Conclusion

Plaintiffs sufficiently and factually alleged actual violations of the Open Meetings Act. Defendant failed to post an agenda that complied with the Open Meetings Act and Defendant failed to precede any final actions with a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted.

This Complaint is brought under section 3(a) of the Open Meetings Act which states that *"Where the provisions of this Act are not complied with...any person, including the State's Attorney...may bring civil action in the circuit court for the judicial circuit in which the alleged noncompliance has occurred..."*

**For the forgoing reasons,** Plaintiffs respectfully request that this Court deny Defendant's Motion to Dismiss in its entirety.

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KIRK ALLEN and JOHN KRAFT	)	
	)	
Plaintiffs	)	
v.	)	
CLARK COUNTY PARK DISTRICT		2015-MR-4
BOARD OF COMMISSIONERS		
Defendant	)	

**PLAINTIFF RESPONSE TO DEFENDANT**  
**MOTION FOR RULE 137 SANCTIONS**

Plaintiffs, Kirk Allen and John Kraft, *pro se*, state as follows for their Response to Defendant Motion for Rule 137 Sanctions:

1. Agree.
2. Deny. Plaintiffs did state a cause of action under the clear and unambiguous language of the Open Meetings Act.
3. Deny. Plaintiffs are pursuing this litigation under the provisions of the Open Meetings Act consistent with the principles of open government and transparency that are embodied within the Act.
4. DENY. Plaintiffs are not well-versed in Rule 137, however, Plaintiffs do restate that this Complaint is well-grounded in fact, is warranted by existing law, and is not interposed for improper purpose(s).

5. DENY. Plaintiffs complaint is well-grounded in fact, is warranted under the Open Meetings Act, and was not filed for improper purposes.

**For the foregoing reasons,** Plaintiffs respectfully request that this Court DENY Defendant's Motion For Rule 137 Sanctions in its entirety and award Plaintiff any relief that this Court deems fair.

Dated: April 10, 2015

Respectfully submitted,



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BOARD OF COMMISSIONERS		
Defendant		

**PLAINTIFF MEMORANDUM IN SUPPORT OF PLAINTIFF  
RESPONSE TO DEFENDANT MOTION FOR RULE 137 SANCTIONS**

Plaintiffs, Kirk Allen and John Kraft, *pro se*, state as follows for their Response to Defendant Motion for Rule 137 Sanctions:

**INTRODUCTION**

The Clark County Park District Board of Commissioners ("Board") is no stranger to the Open Meetings Act ("Act") and its members have taken the required training. Despite that, they routinely violate the Act in ways that decrease or eliminate the public's right to know of the actions of their elected officials.

**ARGUMENT**

**Factual Background - Defendant**

Defendants have routinely disregarded provisions of the Act during their open meetings.

As recent as May 12, 2014, the Board violated the Act by refusing to allow public comment at its meeting and the Board subjected itself to a citizen's arrest by Mr. Kraft under the Illinois Code of Criminal Procedure [725 ILS 5/], Sections 107-3 and 107-5, pursuant to Section 4 of the Act for violation of Section 2.06(g) of the Act, *Right to Speak*.

Mr. Allen subsequently filed a *pro se* lawsuit which reached a settlement on June 26, 2014 with the assurance that the Board has enacted a set of rules and regulations confirming the need to allow public participation and providing rules and regulations to guide the Board in such matters. See settlement agreement attached hereto as Exhibit A.

Again, on July 17, 2014, the Board took final action in the form of voting to hire an attorney when the published agenda had no such agenda item listed. Prior to the vote Mr. Kraft asked the Board President, Commissioner Stepp, if the agenda item listed as "Pursuit of Attorney" was meant to hire an attorney and Stepp replied that they were only going to talk about it. The Board then motioned and voted to hire an attorney. Kraft later sent a letter to Stepp asking that the item be reconsidered at the next Board meeting. See emailed letter attached hereto as Exhibit B.

During the next Board meeting, August 21, 2014, the agenda item "Reaffirmation of Hiring an Attorney" was properly placed

on the agenda and voted on. See Agenda attached hereto as Exhibit C.

On November 7, 2014 the Board opened a meeting (retreat) without posting the agenda at the location of the meeting as required in the Act, and was also holding the meeting at a place not convenient to the public. Mr. Kraft appeared, voiced his objections to the board citing the Act, talked with the Board's attorney over the phone, and the Board terminated the meeting. See Page 3 of Director's Report attached hereto as Exhibit D.

Even after this Cause was filed, the Board has continued to disregard the Act and attempted to use an agenda during its March 19, 2015 Regular Meeting that had not been posted at least 48 hours prior to the meeting. The agenda that was posted on their website did not have an agenda item VII(b) "Lease Lot Covenants - Approval of Revision". See agenda posted on district web page attached hereto as Exhibit E.

The agenda Commissioner Stone was using, and that was distributed to the public in attendance at the meeting, listed item VII(b) "Lease Lot Covenants - Approval of Revision", which was not posted 48 hours in advance of the meeting as required in Section 2.02(a) of the Act, and a citizen who attended the meeting informed Janet Morecraft, a District employee, of that fact and Commissioner Stone in turn decided to table the item during the meeting as can be seen at approximately the 1:38 mark

in the video located at this url:

"<https://www.youtube.com/watch?v=-CRtUHNLDaD&feature=youtu.be>"

See agenda and sworn affidavit of Mrs. Dee Reel attached hereto as Exhibit F.

This litigation arises out of the Board's February 17, 2015 regular meeting.

### Legal Standard

Pursuant to Illinois Supreme Court Rule 137, Plaintiff's Verified Complaint, was to the best of their knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law, and that it was not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Under the Illinois Civil Practice Code, "no pleading is bad in substance which contains such information as reasonably informs the opposite party of the nature of the claim or defense which he or she is called upon to meet." 735 ILCS 5/2-612(b); *Forest Preserve District of DuPage County v. Miller*, 339 Ill.App.3d 244, 252, 789 N.E.2d 916, 923 (2d Dist. 2003); *People of the State of Illinois ex rel. Hartigan v. Candy Club*, 149 Ill.App.3d 498, 500, 501 N.E.2d 188, 190 1st Dist. 1986); *Kita v. Young Men's Christian Association of Metropolitan Chicago*, 47 Ill.App.2d 409, 425, 198 N.E.2d 174, 182 (1st Dist. 1964).

In the United States Supreme Court, *Haines v. Kerner*, 404 U.S. 519 (1972), the Court

**Plaintiff's Complaint is Well-Founded in Fact and Law**

The facts alleged in Plaintiff's Complaint are allegations that the Board violated the Open Meetings Act, Sections 2.02(c), 2(e), and 2.06(g) which 1) included posting items on the agenda that did not set forth the "general subject matter" of items considered for final action (2.02(c)), and, 2) failing to publicly recite the nature of the matter being considered and other information that would inform the public of the business being conducted (2(e)), and that thru these, 3) prevented the public from meaningful participation.

The Agenda items "Board Approval of Lease Rates" and "Board Approval of Revised Covenants" (Compl. Ex. A) did not adequately describe, or set forth the "general subject matter", of the item to be considered (2.02(c)).

Legislative intent is best evidenced by the language used in a statute, and if the language is clear and unambiguous, it must be given the effect as written. *Blum v. Koster*, 235 Ill. 2d. 21, 29 (2009). We may not read into the unambiguous language of a statute exceptions, limitations or conditions that the General Assembly did not express. *Kraft, Inc. v. Edgar*, 138 Ill. 2d. 178, 189 (1990).

Section 2.02 is clearly intended to require that a public body give the public advance notice of its meeting agenda and include "general subject matter" of any agenda item on which the public body may take final action. In Illinois Attorney General Binding Opinion 14-001, there was considerable discussion of *Board of Education of Springfield School District No. 186 v. Attorney General of Illinois and Molly Beck*, No. 31 MR 524 (Circuit Court, Sangamon County), where the Attorney General determined that Section 2.02 was satisfied by the posting of the agenda along with the separation agreement at least 48 hours in advance of the meeting.

Additionally, during the Senate Debate on House Bill No. 4687, at 47, Sen. Dillard remarked that "[T]here was no real requirement as to how specific they needed to be to the public of what they are going to discuss that would be final action. And this just says that you have to have a \*\*\*general notice if you're going to have and take final action, as to generally what's going to be discussed so that - that people who follow their units of local government know what they're going to be acting upon."

Defendant cites *Foxfield v. Subdivision v. Village of Campton Hills*, 920 NE 2d 1102, ILL. App. 2<sup>nd</sup> Dist. 2009. The Court in *Foxfield* relied on agenda requirements enacted prior to Public Act 097-0827, which became effective 1-1-2013, and added

section 2.02(c), which includes, among others, the requirement of including the "general subject matter" on items considered for final action. Therefore, *Foxfield* does not apply in this cause since it relied on the statutory language prior to the amendment of the Act.

The text of the contested agenda items does not inform the public generally of what will be the subject of final action. What lease rates were they talking about? Was the District leasing things from someone, or were they leasing to someone? Were they revising the agreement (Covenant) between God and his people? What agreement were they using the covenant for? It cannot be determined with reading the posted agenda, and especially without also posting the documents subject to final action, what the Board was acting on.

The Board did not precede the final action on "Board Approval of Lease Rates" and "Board Approval of Revised Covenants" with a public recital of the nature of the matter being considered and other information (the substance of the matter) that will inform the public of the business being conducted (Section 2(e)). Any discussion the Board held was merely a restatement of the text of the agenda item, which is not sufficient to comply with Section 2(e). This is a requirement of the law. See the video of the February 17, 2015 meeting at this url: <https://www.youtube.com/watch?v=00dhW3JQrR4>

which shows the meeting after return from Executive (Closed) Session where the Board took final action.

Through the Board's actions of the above, it reduced or eliminated the public's opportunity to speak (participate), since the public was not made aware of the general subject matter being considered for final action.

**Defendant's Claim that Plaintiff's Complaint was Filed for the Purpose of Harassing the Board and Delaying its Lawful Activities**

Defendant's absurd claim that Plaintiff's motive is for harassment purposes and is not a product of Plaintiff's professed interest in "accountability, truth, and transparency" is simply an attempt to significantly chill and diminish public participation in government and the exercise of these important constitutional rights. This threat of Sanctions, and of imposing costs to that participation is an abuse of the Judicial process and is being used as a means of intimidating, harassing, and punishing Plaintiffs for involving themselves in public affairs.

What can be more in keeping with Plaintiff's professed interest than accountability to the Open Meetings Act, and truth and transparency in the actions of the Defendant public body? The law is clear that proper advanced notice must be on the



agenda (accountability), and that a public recital must precede any final action (truth and transparency).

Defendant's attempt at a bad faith argument cites different articles Plaintiffs have written and published in an attempt to somehow say that the Board should be immune to violations of law simply because of negative press coverage or the fact that Plaintiffs have chosen in the past to voice their opinions and they are within their constitutional rights to do so and cannot be penalized for doing so. Defendant also points to the filing of this litigation the day after the meeting as some type of evidence in bad faith, but they failed to point out that Plaintiffs had recently filed a similar suit in DuPage County against the College of DuPage, Case No, 2015-CW-154, for their failure to precede final action on a \$760,000+ severance package with a public recital of the nature of the final action and of the key provisions contained in the agreement ("other information") among others and secured a Temporary Restraining Order against the College. Reasonable inquiry was conducted as to being well-grounded in fact and warranted by existing law.

Finally, Defendants try to place the burden on Plaintiff to obtain the information under the Freedom of Information Act, or by attending the meeting and raising objection. Nothing in the Open Meetings Act requires that or even remotely insinuates that as a remedy for violations of the Act. In short, Plaintiffs did

not twist the arms of the Board and make them violate the law, they did it all on their own and have a recent, recurring history of it. Contrary to Defendant's assertion, Plaintiff's goal is not the harassment of the Board, but rather for the Board to adhere to the law. Additionally, a member of the public was in attendance at this meeting and did raise objection by asking the Board if they would tell her what they just passed. Commissioner Stone responded to her by stating she could get a copy of it after it was filed at the courthouse. See video of this portion of the meeting at this url:

<https://www.youtube.com/watch?v=COdhW3JQrRM>

Defendants claim Plaintiffs have a "longstanding dislike of the current members of the Board" but cannot provide evidence of that statement other than claiming published statements that inform the public of the activities of their elected officials somehow translates to dislike of the actual board members. The bottom line is, and always has been, that this Board, or any other public body, must comply with established laws. Defendants next claim Plaintiffs are attempting to prevent the reelection of the Board's members, when they are actually providing valuable facts and opinions so the voting public can make up their own minds on whom to vote for.

Defendant even goes to the extreme of saying the even though Plaintiffs have the right to publish their opinions, "the

timing of this litigation" shows their "bad faith" as if this Board has the authority to determine when articles are published that are critical of their violations of law, because that is what Defendants are essentially trying to say - that even though they violated the Open Meetings Act, the public should not have been made aware of it until after the election otherwise it would be bad faith litigation. The only "timing" mentioned in the Act is that any civil suits must be filed within 60 days of the meeting where violations occurred; this Complaint was filed within the required 60 days.

For the foregoing reasons, Plaintiffs respectfully request that this Court DENY Defendant's Motion for Sanctions and declare Defendant's Motion for Sanctions as frivolous, harassing, and an abuse of the judicial process.

Dated: April 10, 2015

Respectfully submitted,