

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF DUPAGE )

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
DUPAGE COUNTY, ILLINOIS

ROBERT B. BERLIN, )  
State's Attorney of DuPage County, )  
Plaintiff. )  
v. )  
BOARD OF TRUSTEES OF )  
COMMUNITY COLLEGE DISTRICT )  
NO. 502, Counties of Cook, DuPage and )  
Will and State of Illinois, )  
Defendant. )

No.  
**2016CH000428**



**COMPLAINT FOR A VIOLATION OF  
THE OPEN MEETINGS ACT**

NOW COMES ROBERT B. BERLIN, State's Attorney in and for the County of DuPage, by and through his Assistant, Gregory E. Vaci, and pursuant to Section 3 of the Open Meetings Act ("the Act"), 5 ILCS 120/1 *et. seq.*, alleges that the BOARD OF TRUSTEES OF COMMUNITY COLLEGE DISTRICT NO. 502 ("BOARD OF TRUSTEES") violated Section 2(e) of the Act by taking final action during a closed meeting on March 6, 2014. In support of said allegation, the State's Attorney states as follows:

**APPLICABLE LAW**

1. The Illinois Open Meetings Act provides that:

It is the public policy of this State that public bodies exist to aid in the conduct of the people's business and that the people have a right to be informed as to the conduct of their business. In order that the people shall be informed, the General Assembly finds and declares that it is the intent of this Act to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly.  
5 ILCS 120/1

2. Though the Act permits a public body to close portions of its meetings in limited

circumstances, its “provisions for exceptions to the open meeting requirements shall be strictly construed against closed meetings.” *Id.* The Act further provides that “no final action may be taken at a closed meeting.” 5 ILCS 120/2(e).

3. Plaintiff, ROBERT B. BERLIN, is the duly elected and serving State’s Attorney in and for the County of DuPage, Illinois.

4. Defendant, BOARD OF TRUSTEES, is a body corporate and politic, existing and organized pursuant to the Public Community College Act, 110 ILCS 805/1 *et. seq.*, with its principal place of business located in the Village of Glen Ellyn, in the County of DuPage, Illinois. The BOARD OF TRUSTEES is also a public body as defined by Section 1.02 of the Open Meetings Act.

5. Section 3(a) of the Open Meetings Act provides:

Where the provisions of this Act are not complied with, or where there is probable cause to believe that the provisions of this Act will not be complied with, any person, including the State's Attorney of the county in which such noncompliance may occur, may bring a civil action in the circuit court for the judicial circuit in which the alleged noncompliance has occurred or is about to occur, or in which the affected public body has its principal office, prior to or within 60 days of the meeting alleged to be in violation of this Act or, if facts concerning the meeting are not discovered within the 60-day period, within 60 days of the discovery of a violation by the State's Attorney. 5 ILCS 120/3(a).

### **STATEMENT OF FACTS**

6. On or about January 11, 2016, the State’s Attorney became aware of a statement contained in a pleading filed in a matter pending before the United States District Court for the Northern District of Illinois, which if true, suggested that the BOARD OF TRUSTEES committed a violation of the Open Meetings Act in February or March 2014.

7. On or about January 11, 2016, the State’s Attorney through his assistant, made a written request to the BOARD OF TRUSTEES requesting a copy of the minutes and verbatim

record of any and all closed meetings of the BOARD OF TRUSTEES during the months of February and March 2014 for the purpose of reviewing whether a violation of the Act occurred.

8. On February 17, 2016, the BOARD OF TRUSTEES voted to provide the State's Attorney with the records he requested.

9. On February 23, 2016, the BOARD OF TRUSTEES, through an agent, provided the State's Attorney with the minutes and verbatim record of four (4) closed meetings conducted by the BOARD OF TRUSTEES during the relevant time frame, to wit: two meetings on February 20, 2014, and one meeting on March 6, 2014, and March 20, 2014, respectively.

10. The State's Attorney completed his review of the records tendered by the BOARD OF TRUSTEES on March 16, 2016.

11. The BOARD OF TRUSTEES had properly closed portions of its meetings as authorized by the Open Meetings Act and appropriately confined its discussions to matters generally within the scope of the purposes for which it had closed its meetings.

12. The BOARD OF TRUSTEES met in closed session on March 6, 2014, with assistance of counsel, as authorized by Section 2(c)(1) of the Open Meetings Act. During that meeting the BOARD OF TRUSTEES properly deliberated on whether to give notice to a college administrator that it did not wish to extend the administrator's employment contract for another year beyond its already existing term.

13. On information and belief, the administrator's contract contained a clause which provided that the contract term would extend by an additional year unless the BOARD OF TRUSTEES provided the administrator with notice that it desired otherwise. The relevant contractual provision provided as follows:

"On or before April 1, 2010, and April 1 of each year thereafter, the term of this Agreement will be automatically extended for an additional one (1) year period

unless either party provides to the other, prior to the 15<sup>th</sup> day of March of such Agreement year, written notice of his or its intention to terminate this Agreement at the end of the then-current Agreement term which expires no earlier than June 30, 2012, but may be extended as provided in this Agreement. The President will notify in writing the Chairperson of the Board by February 1 of each such year that failure of the Board to give the President notice of intent to not extend the Agreement will extend this Agreement one (1) additional year. The failure of the President to give written reminder notice to the Chairperson of the Board waives the obligation of the Board hereunder to give its written notice of intent by March 15. The Board's notice need not be acted upon publicly, but authorization to give such notice will be recorded in the closed session minutes of the Board.”

14. On information and belief, on March 6, 2014, the “then-current Agreement term” of the administrator’s contract concluded in 2018. During its March 6, 2014 closed session meeting, the BOARD OF TRUSTEES considered whether to permit the contract’s term to extend by an additional year, until 2019, or to provide the administrator with notice of its intention to terminate the contract at the conclusion of its then-current term.

15. Although the administrator’s contract purported to authorize the BOARD OF TRUSTEES to reach a decision to provide notice of its intention to terminate the contract in closed session, the BOARD OF TRUSTEES recognized that taking final action to authorize such notice in closed session would be contrary to the Open Meetings Act.

16. After the BOARD OF TRUSTEES met in closed session for one and one half hours (following its regularly scheduled meeting), the recording reflects that **counsel for the BOARD**

**OF TRUSTEES stated:**

“The contract calls for authorizing the Chair to extend. So, **why don’t we keep it that way** because otherwise we’re not going to vote. I don’t want a voting in a closed, so **why don’t we just raise hands as to who would be willing to authorize the Chair to extend the contract**...So with that, four, a majority, and let’s... just so we have clarity for the record, **since we have raised hands, the record reflects we had a majority of four that would authorize the Chair to extend the contract**. And ‘K. So if that’s the case, then we don’t need the board meeting on March the 13. The Chair can then go ahead and obviously relay that the extension was...authorized...”

17. The contract did not appear to require nor contemplate a delegation of authority by the BOARD OF TRUSTEES to its Chairman to extend the contract's term. Nor did the contract require the Chairman or the BOARD OF TRUSTEES to notify the administrator that the BOARD OF TRUSTEES intended to permit the contract's extension. By its own terms, the administrator's contract extended unless the BOARD OF TRUSTEES intervened.

18. Nevertheless, the BOARD OF TRUSTEES participated in a vote which contemplated the affirmative action of extending the administrator's contract – even though the only real effect of that affirmative action was for the Board to do nothing prior to the April 1 notice deadline. By virtue of its vote to authorize its Chairman to extend the contract, the BOARD OF TRUSTEES agreed that it would not have to hold a special meeting prior to April 1 to authorize notice of its intention to terminate the contract at the conclusion of its then-current term.

19. Despite the apparent lack of necessity of the BOARD OF TRUSTEES' action, the showing of hands was nevertheless a vote resulting in a "final action" within the meaning of the Open Meetings Act since the BOARD OF TRUSTEES did not subsequently repeat the vote in an open session. Because the BOARD OF TRUSTEES took final action in closed session, it violated Section 2(e) of the Act.

WHEREFORE, the State's Attorney prays this Honorable Court enter an ORDER:

1. Declaring that the BOARD OF TRUSTEES violated the Open Meetings Act by taking final action in closed session on March 6, 2014; to wit authorizing the Chairman of the BOARD OF TRUSTEES to extend the administrator's contract;
2. Declaring the aforementioned final action taken by the BOARD OF TRUSTEES during its closed session null and void;
3. Enjoining the BOARD OF TRUSTEES and its successors against future violations of

the Open Meetings Act; and

4. Granting whatever relief it deems just and equitable.

Respectfully Submitted,  
ROBERT B. BERLIN  
State's Attorney

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