



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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I -00-037

MEETINGS:

Local Professional Development
Committees and Regional Professional
Development Review Committees

Mr. Respicio F. Vazquez
General Counsel
Illinois State Board of Education
100 North First Street
Springfield, Illinois 62777-0001

Dear Mr. Vazquez:

I have your predecessor's letter wherein he posed the following questions:

1. Are local professional development committees (hereinafter referred to as "LPDCs") and regional professional development review committees ("RPDRCs") established pursuant to section 21-14 of the School Code (105 ILCS 5/21-14 (West 1999 Supp.)) subject to the Open Meetings Act (5 ILCS 120/1 et seq. (West 1998))?
2. Can a member of a school board serve simultaneously on either of the two committees? and
3. Is either the State Employees Indemnification Act (5 ILCS 350/0.01 et seq. (West 1998)) or the Local Governmental and Governmental Employees Tort Immunity

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Act (745 ILCS 10/1-101 et seq. (West 1998)) applicable to such committees?

Because of the nature of this inquiry, I do not believe that the issuance of an official opinion is necessary. I will, however, comment informally upon the questions which have been raised.

LPDCs are established pursuant to the provisions of subsection 21-14(f) of the School Code (105 ILCS 5/21-14(f) (West 1999 Supp.)), which provides, in part:

" * * *

(f) Notwithstanding any other provisions of this Code, each school district, charter school, and cooperative or joint agreement with a governing body or board of control that employs certificated staff, shall establish and implement, in conjunction with its exclusive representative, if any, one or more local professional development committees, as set forth in this subsection (f), which shall perform the following functions:

(1) review and approve certificate renewal plans and any modifications made to these plans, including transferred plans;

(2) maintain a file of approved certificate renewal plans;

(3) monitor certificate holders' progress in completing approved certificate renewal plans;

(4) assist in the development of professional development plans based upon needs identified in certificate renewal plans;

(5) determine whether certificate holders have met the requirements of their certificate renewal plans and notify certificate holders of its determination;

(6) provide a certificate holder with the opportunity to address the committee when it has determined that the certificate holder has not met the requirements of his or her certificate renewal plan;

(7) issue and forward recommendations for renewal or nonrenewal of certificate holders' Standard Teaching Certificates to the appropriate regional superintendent of schools, based upon whether certificate holders have met the requirements of their approved certificate renewal plans, with 30-day written notice of its recommendation provided to the certificate holder prior to forwarding the recommendation to the regional superintendent of schools, provided that if the local professional development committee's recommendation is for certificate nonrenewal, the written notice provided to the certificate holder shall include a return receipt; and

(8) reconsider its recommendation of certificate nonrenewal, upon request of the certificate holder within 30 days of receipt of written notification that the local professional development committee will make such a recommendation, and forward to the regional superintendent of schools its recommendation within 30 days of receipt of the certificate holder's request.

Each local professional development committee shall consist of at least 3 classroom teachers; one superintendent or chief administrator of the school district,

charter school, or cooperative or joint agreement or his or her designee; and one at-large member who shall be either (i) a parent, (ii) a member of the business community, (iii) a community member, or (iv) an administrator, with preference given to an individual chosen from among those persons listed in items (i), (ii), and (iii) in order to secure representation of an interest not already represented on the committee. If mutually agreed upon by the school district, charter school, or governing body or board of control of a cooperative or joint agreement and its exclusive representative, if any, additional members may be added to a local professional development committee, provided that a majority of members are classroom teachers. The school district, charter school, or governing body or board of control of a cooperative or joint agreement and its exclusive representative, if any, shall determine the term of service of the members of a local professional development committee. All individuals selected to serve on local professional development committees must be known to demonstrate the best practices in teaching or their respective field of practice.

The exclusive representative, if any, shall select the classroom teacher members of the local professional development committee. If no exclusive representative exists, then the classroom teacher members of a local professional development committee shall be selected by the classroom teachers that come within the local professional development committee's authority. The school district, charter school, or governing body or board of control of a cooperative or joint agreement shall select the 2 non-classroom teacher members (the superintendent or chief

administrator of the school district, charter school, or cooperative or joint agreement or his or her designee and the at-large member) of a local professional development committee. Vacancies in positions on a local professional development committee shall be filled in the same manner as the original selections. The members of a local professional development committee shall select a chairperson. Local professional development committee meetings shall be scheduled so as not to interfere with committee members' regularly scheduled teaching duties, except when otherwise permitted by the policies of or agreed to or approved by the school district, charter school, or governing body or board of control of a cooperative or joint agreement, or its designee.

* * *

"

RPDRCs are created pursuant to the provisions of subsection 21-14(g) of the School Code (105 ILCS 5/21-14(g) (West 1999 Supp.)), which provides, in pertinent part:

"

* * *

(g) (1) Each regional superintendent of schools shall review and concur or nonconcur with each recommendation for renewal or nonrenewal of a Standard Teaching Certificate he or she receives from a local professional development committee or, if a certificate holder appeals the recommendation to the regional professional development review committee, the recommendation for renewal or nonrenewal he or she receives from a regional professional development review committee and, within 14 days of receipt of the recommendation, shall provide the State

Teacher Certification Board with verification of the following, if applicable:

* * *

(2) Each certificate holder shall have the right to appeal his or her local professional development committee's recommendation of nonrenewal to the regional professional development review committee, within 14 days of receipt of notice that the recommendation has been sent to the regional superintendent of schools. Each regional superintendent of schools shall establish a regional professional development review committee or committees for the purpose of advising the regional superintendent of schools, upon request, and handling certificate holder appeals. This committee shall consist of at least [4] classroom teachers, one non-administrative certificated educational employee, 2 administrators, and one at-large member who shall be either (i) a parent, (ii) a member of the business community, (iii) a community member, or (iv) an administrator, with preference given to an individual chosen from among those persons listed in items (i), (ii), and (iii) in order to secure representation of an interest not already represented on the committee. The teacher and non-administrative certificated educational employee members of the review committee shall be selected by their exclusive representative, if any, and the administrators and at-large member shall be selected by the regional superintendent of schools. A regional superintendent of schools may add additional members to the committee, provided that the same proportion of teachers to administrators and at-large members on the committee is maintained. Any additional teacher and non-administrative

certificated educational employee members shall be selected by their exclusive representative, if any. * * *

* * *

The "exclusive representative" responsible for appointing the teacher members of each committee is the labor organization which represents the majority of the educational employees in a unit. (See 115 ILCS 5/2 (West 1998).)

Each of these committees is created pursuant to statute, and is organizationally related to, although operating independently of, the local school district or the regional superintendent of schools, respectively. LPDCs perform administrative functions with respect to the development, review, approval and monitoring of certificate renewal plans and maintenance of records of such plans; quasi-adjudicative functions with respect to whether the requirements of such plans have been met; and advisory functions with respect to recommendations for renewal or nonrenewal of teaching certificates. RPDCs perform quasi-adjudicative functions, with respect to appeals of decisions and recommendations of LPDCs, and advisory functions, with respect to recommendations requested by the regional superintendent.

Section 1.02 of the Open Meetings Act defines "public body" as follows:

" * * *

'Public body' includes 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,

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except the General Assembly and committees or commissions thereof.

* * *

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It appears that LPDCs are administrative or subsidiary bodies of school districts, for purposes of the Open Meetings Act. They are created in each school district pursuant to statute. Their duties relate to the State's teacher certificate renewal system, which is clearly a public activity. They are supported in whole or in part by tax revenue. (See 105 ILCS 5/21-14(k) (West 1999 Supp.)) Although LPDCs do not report to the school boards which create them, they perform functions which the General Assembly has mandated to be performed at the school district level. Indeed, the General Assembly could have required that school boards carry out these duties directly, but elected instead to delegate them to a body containing representatives of both the school districts and their employees or employee representatives.

It has been suggested that LPDCs are analogous to the University of Illinois Assembly Hall Advisory Committee, which was held not to be subject to the Act in Pope v. Parkinson (1977), 48 Ill. App. 3d 797. The Advisory Committee was an ad hoc committee appointed by the university chancellor to advise the Assembly Hall director on policy matters. It occasionally reported directly to the chancellor, but not to the Board of Trustees. The creation of such a committee was not mandated by statute, and it had no statutory duties. The membership of the committee was not specified by any statute, and members could be dismissed at any time. Clearly, LPDCs are distinguishable from the committee at issue in Pope v. Parkinson, because they are created by statute, have specifically mandated membership and perform public duties prescribed by statute.

It appears, therefore, that LPDCs are public bodies which are subject to the provisions of the Open Meetings Act. In accordance with the Act, meetings of these committees are required to be open to the public, except to the extent that one of the exceptions provided for in subsection 2(c) of the Act (5 ILCS 120/2(c) (West 1998)) authorizes the closure of a specific meeting or part of a meeting. In this regard, your predecessor

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asked whether the exceptions set out in subsections 2(c)(4) and (15) of the Act would be applicable to LPDCs:

" * * *

(c) Exceptions. A public body may hold closed meetings to consider the following subjects:

* * *

(4) Evidence or testimony presented in open hearing, or in closed hearing where specifically authorized by law, to a quasi-adjudicative body, as defined in this Act, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning.

* * *

(15) Professional ethics or performance when considered by an advisory body appointed to advise a licensing or regulatory agency on matters germane to the advisory body's field of competence.

* * *

"

A quasi-adjudicative body is one charged by law with the responsibility of conducting hearings, receiving evidence or testimony and making determinations based thereon. (5 ILCS 120/2(d) (West 1998)). An LPDC which receives evidence regarding whether a certificate holder has met the requirements for certificate renewal, and determines whether to recommend certificate renewal based upon that evidence, will be acting in a quasi-adjudicative manner, for purposes of the Open Meetings Act. Further, LPDCs are authorized to advise the regional superintendent, and in turn the State Teacher Certification Board, on matters germane to the "licensing" of teachers, a matter which is within the competence of those qualified for

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appointment to such committees. It appears, therefore, that in appropriate circumstances, an LPDC may hold closed meetings under subsections 2(c)(4) or (15) of the Act.

RPDRCs are established by the several regional superintendents for the purpose of reviewing the decisions of LPDCs and advising the regional superintendent on various matters. It appears, therefore, that RPDRCs would be considered quasi-adjudicative administrative and advisory bodies, for purposes of the Act. Like LPDCs, RPDRCs are statutorily created, publicly funded entities. Consequently, RPDRCs appear to be "public bodies" which are subject to the provisions of the Open Meetings Act, and may likewise avail themselves of the exceptions to the requirement of holding open meetings, where appropriate.

Your predecessor also inquired whether it was permissible for a member of the board of education of a local school district to be appointed as the at-large member of either a LPDC or RPDC. With respect to LPDCs, it is generally held that, as a matter of common law, offices are incompatible where the incumbent of one has the power of appointment to the other office. (Hetrich v. County Commissioners of Anne Arundel County (1960), 222 Md. 304, 159 A.2d 642, 644-45; Knuckles v. Board of Education of Bell County (1938), 272 Ky. 431, 114 S.W.2d 511, 514.) This principle has been enacted into law in Illinois with respect to county boards, township boards and municipal councils. (50 ILCS 105/1, 2, 2a (West 1998).) Although the principle has not been codified with respect to school boards, the common law rule, not having been altered by statute with respect to school districts, remains the rule of decision in Illinois. (5 ILCS 50/1 (West 1998).) Therefore, because the school board has been granted the power to appoint the at-large member of an LPDC, it appears that a member of the school board may not properly be appointed to serve in that office.

With respect to RPDRCs, I note that in the city of Chicago, at-large members of RPDRCs, like those of LPDCs, are appointed by the school board. This factor necessarily precludes the appointment of a school board member to a RPDC in Chicago. With respect to RPDRCs outside the city of Chicago, however, the administrator and at-large members of which are appointed by

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regional superintendents of schools, further analysis is necessary.

Public offices are deemed to be incompatible where the constitution or a statute specifically prohibits the occupant of either one of the offices from holding the other, or where, because of the duties of either office, a conflict of interest may arise, or the duties of either office are such that the holder of one cannot, in every instance, properly and faithfully perform all the duties of the other. (People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286; People ex rel. Fitzsimmons v. Swailes (1984), 101 Ill. 2d 458, 465.) No constitutional or statutory provision appears to prohibit a school board member from being appointed to or serving as the at-large member of a RPDC. Therefore, it must be considered whether the duties of the positions may conflict.

Your predecessor had suggested that because RPDCs review and make recommendations concerning teacher certification, and school boards make employment decisions, a conflict may exist if a RPDC is required to review a plan or make a recommendation concerning a teacher employed by the district when an RPDC member also serves on the school board. An employing school board is entitled to know the certificate status of a teacher whom it hires, however. The mere fact that a particular member of a school board has access to information relevant to hiring decisions does not create conflicting interests. Incompatibility of offices does not arise because information learned in one position may be of use with regard to duties in another. Rather, incompatibility of offices arises when the fiduciary duty owed to one body may conflict with the fiduciary duty owed to another. In this regard, it appears that the offices of RPDC member and school board member are not incompatible.

Lastly, your predecessor inquired whether either the Local Governmental and Governmental Employees Tort Immunity Act or the State Employees Indemnification Act will be applicable to LPDCs or RPDCs. As discussed above, LPDCs are legislatively created bodies which are essentially outgrowths of school districts, while RPDCs are administrative and advisory bodies associated with the regional superintendents of education. Both school districts and educational service regions, of which

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regional superintendents are the administrative officers, are "local public entities" to which the provisions of the Local Governmental and Governmental Employees Tort Immunity Act are applicable. (745 ILCS 10/1-206 (West 1998).) It appears, therefore, that both LPDCs and RPDCs will likewise be encompassed by the provisions of that Act.

This is not an official opinion of the Attorney General. If we may be of further assistance, please advise.

Sincerely,

A solid black rectangular redaction box covering the signature of Michael J. Luke.

MICHAEL J. LUKE
Senior Assistant Attorney General
Chief, Opinions Bureau

MJL:KJS:ab