

Vazquez, Samantha

From: Knapp, Don
Sent: Monday, July 20, 2020 7:52 AM
To: Vazquez, Samantha
Subject: FW: Open Meetings Act

From: Knapp, Don
Sent: Sunday, July 19, 2020 4:14 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Open Meetings Act

Dr. [REDACTED],

By way of introduction, my name is Don Knapp. I work for McLean County in the State's Attorney's Office. Recently, our office has received a complaint suggesting the Academic Senate has engaged in a meeting or meetings in violation of the Open Meetings Act. To my knowledge, no investigation into such complaints has been conducted by a law enforcement agency or, maybe more accurately, no reports from any such law enforcement agency have been forwarded to my office for review.

As we do from time to time when we receive such complaints, I thought it prudent to advise you of my interpretation of the Open Meetings Act and how it applies to the Academic Senate at Illinois State University.

The Open Meetings Act (the Act) defines a public body as "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, except the General Assembly and committees or commissions thereof." 5 ILCS 120/1.02. If an entity qualifies as a "public body", then "All meetings of [the] public bod[y] shall be open to the public unless" an exception allows for the meeting to be closed. 5 ILCS 120/2.

The Act defines a meeting as "any gathering, whether in person or by video or audio conference, telephone call, electronic means (such as without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a

public body held for the purpose of discussing public business.” 5 ILCS 120/1.02. The Act does not just apply to the full membership of a public body but also “any subsidiary bodies of any [public body] but not limited to committees and subcommittees which are supported in whole or in part by tax revenue.” 5 ILCS 120/1.02.

As “the primary governing body at Illinois State University” (Bylaws of the Academic Senate, Section 1), the Academic Senate is an “advisory body of the State” for purposes of the Open Meetings Act. Therefore, anytime “a majority of a quorum of the members” of the Academic Senate gather, “whether in person or by video or audio conference” in a method that allows for “contemporaneous interactive communication”, they have convened a meeting subject to the strictures of the Open Meetings Act.

Those strictures are well defined in Section 2.02 *et seq.* of the Act and include, but are not limited to, public posting of an agenda and permitting any person “an opportunity to address public officials under the rules established and recorded by the public body.” 5 ILCS 120/2.06

While I have not had time to review the entirety of the Academic Senate's by-laws, it appears that the Academic Senate is composed of 54 individuals making a quorum of the Academic Senate 28 members. Therefore, a majority of a quorum of the Academic Senate equates to any 15 individuals that comprise the Academic Senate's membership.

Turning to the specific complaint sent to my office, it appears you initiated an email to all ISU faculty for an “all-faculty meeting” and identified a public body which is the Academic Senate in the email.



From: fac-l Faculty list <[REDACTED]> on behalf of Academic Senate
University [REDACTED]
Sent: Monday, July 13, 2020 1:55 PM
To: fac-l <[REDACTED]>
Subject: [FAC-L] Reminder: All-faculty meeting announcement

Reminder:



Dear Faculty,

I wish to convey to all of you a set of ground rules for our upcoming all-faculty meet

Was there a majority of a quorum of the Academic Senate at this meeting, was business of the public body discussed, or did a majority of a quorum of any public body have the ability to engage in contemporaneous interactive communications in violation of the Open Meetings Act? Honestly, I do not know as, again, I do not have police reports or an investigation conducted by a law enforcement entity to review at this time.

While our General Assembly has chosen to exempt themselves from the mandates of the Open Meetings Act (5 ILCS 120/1.02) and made violating the Act the lowest possible misdemeanor (Class C, 5 ILCS 120/4), ensuring that our public bodies within McLean County comply with the Act is something our office takes seriously. One needs no more evidence of how seriously our office takes these matters than the fact that I am emailing you on a Sunday in the middle of our office's fourth murder trial since June 8th. Our initial step when we receive complaints such as these is to educate and inform as I have found almost universally the members of our public bodies truly do not wish to run afoul of the Act. That is the purpose of this email to you, to simply educate and inform.

Another reason we take this step, however, is the debate in the legal community as to whether the penalty provision within the Act necessitates a *mens rea* element. That is, would we have to prove that someone 'knowingly' violated the Act before we could ever secure a conviction for the Class C misdemeanor under Section 4 of the Act. While lawyers will debate that issue until a court of record ultimately decides it, what is not debatable is that our efforts to educate and inform members of our public body in communications such as these provide notice of our interpretation of the Act which can leave little doubt as to whether future violations were done 'knowingly.'

So that they are aware of this communication, I have carbon copied the University Counsel and Chief of Police on this email. Please know that is purely for purposes of transparency so that they are aware of exactly what I have communicated to you. While I am happy to discuss this or any other matter with you if you so choose, I would advise that you discuss the matter with Ms. Huson before contacting me if you are so inclined to do so.

Be well,

Don