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OFFICERS:
Definition of Public Meetings

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Dear Mr. Ellison:

This responds to your request for an opinion concerning "AN ACT in relation to meetings" (Ill. Rev. Stat. 1973, ch. 102, pars. 41 to 46.) This Act reads in pertinent part (Ill. Rev. Stat. 1973, ch. 102, pars. 41 and 42), as follows:

"§1. It is the public policy of this State that the public commissions, committees, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of this Act that their actions be taken openly and that their deliberations be conducted openly.

§2. All meetings of any 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, shall be public meetings * * *

First you ask, what is a "meeting" within the context of the Act. Specifically you state:

"* * * Obviously, a gathering of all members of a board or council at the regular meeting place, pursuant to a notice and at a prearranged time, would be a meeting. However, at the other end of the scale, would a casual, non-prearranged conversation between less than all of the members of a particular body in a coffee shop during which the business of the body was discussed constitute a 'meeting'? If not, then what specific elements are necessary to constitute a 'meeting'?

1. Must a quorum of the body be present?
2. Must the gathering be at the official meeting place?
3. Must it be prearranged and set as to time?
4. Must all three of these factors be present or would any lesser combination make the gathering a meeting?"

It is not my usual policy to issue an opinion without a specific set of facts to which to apply the law. However, because of repeated concern over the impact of the Act in question,

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I will set forth some of the considerations necessary to answer questions arising under this Act.

As originally passed in 1957, "AN ACT in relation to meetings" (Laws 1957, p. 2892), provided in part as follows:

"§1. It is the public policy of this State that the public commission, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of this Act that their actions be taken openly and that their official deliberations be conducted openly.

§2. All official meetings at which any legal action is taken by the governing bodies * * * " (emphasis added.)

As is apparent from the changes in the Act by which the word "official" was deleted, "meeting" is not now limited to a gathering which is an official meeting or where there are only official deliberations.

However, the Illinois statute does not define meeting and there have been no Illinois cases which directly concern the definition of a meeting. The State of California has a public meeting law, which is known as the Brown Act (Cal. Gov. Code, sec. 54950 - 54960.) The language in section 54950 is almost exactly the same as section 1 of our present "ACT in relation to meetings", supra. In a case entitled Sacramento

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Newspaper Guild v. Sacramento Co. Bd. of Super., 69 Cal. Rptr.

480, the court held that a luncheon gathering at the Elk's Club in Sacramento attended by the five county supervisors, the county counsel, the county executive, county director of welfare and several members of the Central Labor Council, AFL-CIO, to discuss a strike of the Social Workers Union against the county and the county's effort to enforce an injunction secured in connection with the strike was a "meeting" within the public meeting law.

In coming to this conclusion, the court stressed the purpose of the Act and noted that the provision applies equally to actions taken and to deliberations, as does the Illinois law. It stated at page 485 as follows:

"* * * Section 54950 is a deliberate and palpable expression of the act's intended impact. It declares the law's intent that deliberation as well as action occur openly and publicly. Recognition of deliberation and action as dual components of the collective decision making process brings awareness that the meeting concept cannot be split off and confined to one component only, but rather comprehends both and either. To 'deliberate' is to examine, weigh and reflect upon the reasons for or against the choice. (See Webster's New International Dictionary, 3d ed.) Public choices are shaped by reasons of fact, reasons of policy or both. Any of the agency's functions may include or depend upon the ascertainment of facts. (Walker

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v. County of Los Angeles (1961) 55 Cal. 2d 626, 635, 12 Cal. Rptr. 671, 361 P. 2d 247.) Deliberation thus connotes not only collective discussion, but the collective acquisition and exchange of facts preliminary to the ultimate decision." (emphasis added.)

It also stated at page 487:

"* * * An informal conference or caucus permits crystallization of secret decisions to a point just short of ceremonial acceptance. There is rarely any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors. Only by embracing the collective inquiry and discussion stages, as well as the ultimate step of official action, can an open meeting regulation frustrate these evasive devices. As operative criteria, formality and informality are alien to the law's design, exposing it to the very evasions it was designed to prevent. Construed in the light of the Brown Act's objectives, the term 'meeting' extends to informal sessions or conferences of the board members designed for the discussion of public business. * * * " (emphasis added.)

While this case does not give a comprehensive definition of meeting, it is clear that it does extend to informal sessions or conferences designed for the discussion of public business. Thus, in response to your specific questions, a gathering need not be prearranged and set as to time, nor need it be at an official meeting place to come within the purview of the Act. By sections 2.01 and 2.02 (Ill. Rev. Stat. 1973, ch. 102, pars. 42.01

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and 42.02) all meetings required to be public meetings must be held at specified times at places which are convenient to the public and in accordance with specified requirements of public notice. Simply because a meeting is held without these statutory prerequisites does not take it out of the purview of the Act.

Neither need a quorum be present. Often members constituting fewer than a quorum can effectively control a group decision. However, I do not believe the Act is designed to include every gathering of two or more members of a public body. As pointed out later, some private gatherings among a limited number of members may be necessary. Furthermore, an interpretation of "meeting" to include any gathering of two members of the same body, would be nearly impossible to enforce.

I realize that this does not provide specific guide lines in determining which gatherings are meetings subject to the Act. It is impossible to give a comprehensive definition of meeting. As stated by the writer of a law review comment, "Access to Governmental Information in California" (54 Cal. L. Rev. 1650), at page 1651:

"* * * There is a spectrum of gatherings of agency members that can be called a meeting, ranging from formal convocations to transact business to chance encounters where business is discussed.

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However, neither of these two extremes is an acceptable definition of the statutory word 'meeting.' Requiring all discussion between members to be open and public would preclude normal living and working by officials. On the other hand, permitting secrecy unless there is formal convocation of a body invites evasion. In formulating a definition of 'meeting' the public's need for access to information must be balanced against the official's need to act in an administratively feasible manner. Public officials must be able to become acquainted with community problems in depth, to test ideas without becoming publicly committed to them, and to feel out opposition and begin compromise. The problem of the courts, legislature and executive department is to find a definition of 'meeting' that can accomodate officials and still protect the public's access to information. * * * "

The Judge in the Sacramento Newspaper Guild case stated in a footnote at page 487:

"* * * Although one might hypothesize quasi-social occasions whose characterization as a meeting would be debatable, the difference between a social occasion and one arranged for pursuit of the public's business will usually be quite apparent. * * * "

I, therefore, am of the opinion that whether a gathering falls within the definition of meeting as used in the Act, would depend upon the peculiar facts in each situation. It is unlikely

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that the casual non-prearranged conversation among less than, or even all, of the members of a particular body in a coffee shop, during which the business of the body was discussed, would constitute a meeting within the terms of the Act. I assume such a gathering is primarily a social gathering and business is discussed only incidentally between certain individuals and not among the group as a whole. Of course, if any decisions or agreements to make decisions are made, such a gathering would be a meeting within the terms of the Act.

You have also requested an opinion as to the meaning of one of the exceptions to the general requirements of the Act. The second paragraph of section 2 (Ill. Rev. Stat. 1973, ch. 102, par. 42), provides in pertinent part as follows:

"* * * This Section does not prevent any body covered by this Act from holding closed sessions to consider information regarding appointment, employment or dismissal of an employee or officer or to hear testimony on a complaint lodged against an employee or officer to determine its validity, but no final action may be taken at a closed session. * * * "

Your question is:

"Does this exception permit a closed meeting to consider matters relating to the general terms (not exempted by the collective bargaining

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exception) of employment of a particular employee or a class of employees, such as wages, hours, vacation, and working conditions, or is the term 'employment' restricted to the narrow meaning of 'hiring or discharging'? Is the term broad enough to include any matters relating to personnel?"

The above quoted provision is restricted to "consider information regarding appointment, employment or dismissal of an employee or officer". The language of the statute, "an employee or officer", limits its operation to an individual and does not include a class of employees or officers.

Furthermore, the significant word is "information" and not "employment". This provision is intended to protect the identity of prospective appointees or employees, and reputation of public employees. As stated in "Open Meeting Legislation" in the Harvard Law Review (75 Harvard L. Rev. 1199 at 1208):

"* * * Privacy in the screening of potential appointees is often necessary if people of high caliber are to apply for governmental positions. In one instance where a board of regents was seeking a new university chancellor, newspaper publicity of the candidates resulted in several of the prospects withdrawing their names. When possible disciplinary action or dismissal is being considered, premature publicity can cause great and often unjustified damage to personal reputations. * * *"

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However, in response to your specific question, I would interpret the word "employment" according to its ordinary usage as defined in a dictionary. Webster's Third New International Dictionary (1961) defines "employment" as:

"[T]he act of employing someone or something or the state of being employed * * *

and "employ" as:

"[T]o use or engage the services of - also: to provide with a job that pays wages or a salary or with a means of earning a living * * *

"Employment" includes only, in your terms, "hiring". It does not include "discharging" for this is covered in the statute by "dismissal". Employment is distinguished from appointment in that employment refers to hiring employees and appointment refers to hiring officers. It does not relate to matters arising between the beginning of a work relationship and the ending of it. The statute specifically provides for closed meetings "to hear testimony on a complaint lodged against an employee or officer to determine its validity". This would seem to be the extent to which matters other than initial hiring or dismissal could be discussed at a closed meeting. The term is not broad enough to include any matter relating to personnel. The word "personnel"

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was specifically deleted from the exception concerning collective negotiating matters in section 2 of the Act by Public Act 76-1914.

If the legislature had intended "employment" to include matters beyond this, such as promotion, demotion and compensation, it would have done so specifically, as other States have done. For example, see the State of Wisconsin statute for providing for open meetings of governmental bodies, (W.S.A. 66.77), which provides in part as follows:

* * * (3) Nothing herein contained shall prevent executive or closed sessions for purposes of:

* * *

(b) Considering employment, dismissal, promotion, demotion, compensation, licensing or discipline of any public employe or person licensed by a state board or commission or the investigation of charges against such person, unless an open meeting is requested by the employe or person charged, investigated or otherwise under discussion;

* * *

Therefore, given that the exception is limited to consider information concerning an individual employee or officer, and that the purpose of the exception is to protect the identity and reputation of a person, I am of the opinion that this

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exception permits closed meetings only to the extent discussed above. As provided in the statute, no final action could be taken at such a closed meeting.

Very truly yours,

A T T O R N E Y G E N E R A L