



**OFFICE OF THE ATTORNEY GENERAL**  
STATE OF ILLINOIS

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FILE NO. 00-004

COUNTIES:

Duty of County Clerk to Take  
Minutes of County Board Meetings

The Honorable John Knight  
State's Attorney, Bond County  
Bond County Courthouse  
Greenville, Illinois 62246

Dear Mr. Knight:

I have your letter wherein you inquire whether it is the duty of the county clerk to make a record of the proceedings and to prepare the minutes of closed meetings of the county board, and, if so, whether the clerk may properly be excluded from attendance at a closed meeting. For the reasons hereinafter stated, it is my opinion that the statutory duty of the county clerk to keep an accurate record of the proceedings of the county board requires that the clerk take the minutes of all board meetings, including closed meetings, either in person or by deputy. Therefore, the clerk or his or her deputy may not ordinarily be excluded from a county board meeting which is closed to the public.

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Section 3-2013 of the Counties Code (55 ILCS 5/3-2013  
(West 1998)) provides, in part:

"General duties of clerk. Subject to the provisions of 'The Local Records Act', the duties of the county clerk shall be--

1st. To act as clerk of the county board of his county and to keep an accurate record of the proceedings of said board  
\* \* \*

\* \* \*

"

Further, section 5-1087 of the Counties Code (55 ILCS 5/5-1087  
(West 1998)) provides:

"Alteration of duties, powers and functions of county officers. No county board may alter the duties, powers and functions of county officers that are specifically imposed by law. A county board may alter any other duties, powers or functions or impose additional duties, powers and functions upon county officers. In the event of a conflict State law prevails over county ordinance."  
(Emphasis added.)

The county clerk is charged by statute with the duty to keep the record of the proceedings of the county board, and, because that duty is one imposed by statute, the county board cannot alter it. The record kept by the clerk is the only competent proof of the official acts of the board. People v. Cleveland, Cincinnati, Chicago & St. Louis Ry. Co. (1915), 271 Ill. 226, 228-29.

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The proceedings of the county board include those which are conducted in meetings which are properly closed to the public. The Open Meetings Act specifically requires that minutes be kept of all meetings, whether open or closed. (5 ILCS 120/2.06 (West 1998).) Because minutes of closed meetings must be kept, and it is the statutory duty of the clerk to keep those minutes, it is my opinion that the clerk must be permitted to be present at closed as well as open meetings of the board for the purpose of taking minutes. The county board cannot, consistently with the provisions of section 5-1087 of the Counties Code, prohibit the clerk from attending meetings for the purpose of carrying out this duty.

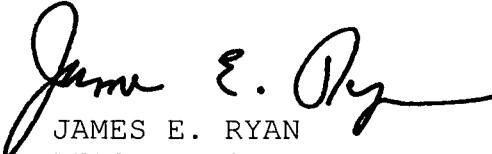
Although it might be suggested that the duty to "keep an accurate record of the proceedings" of the board could be satisfied by the preservation of records created by others, a mere custodian generally cannot assure the accuracy of such records. Section 3-2013 of the Counties Code clearly contemplates that the clerk is not charged merely with the preservation of the records of proceedings, but is responsible for creating them. The duty to keep an accurate record of proceedings requires the clerk's presence at the meetings of the board.

It is conceivable that circumstances might arise in which the clerk's presence at a closed meeting of the county

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board would be inappropriate due to a personal interest of the clerk in the subject of the proceedings. For example, if the clerk was involved adversarially in litigation affecting the county, the clerk's presence at a closed meeting at which the county's litigation strategy is being discussed would defeat the purpose of the exception permitting such a meeting. (See 5 ILCS 120/2(c)(11) (West 1998).) Like any public officer who possesses a personal interest in the acts of the body which he serves, the clerk must necessarily withdraw from involvement in such matters. Only in extraordinary circumstances such as these, however, may the clerk properly be excluded from attendance at a closed meeting of the board, and a person other than the clerk or a deputy clerk be charged with keeping the records of the proceedings of the board and preparing the minutes thereof.

Sincerely,

  
JAMES E. RYAN  
ATTORNEY GENERAL