Are Your Executive Sessions Lawful?

By Dr. Michael T. Adamson, ISBA Director of Board Services
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Executive sessions are normal occurrences for all Indiana School Boards and the ability to meet in private without an audience is a statutory privilege. However, executive sessions are only lawful for a limited number of reasons and Boards who meet in private for other than the specific statutory reasons can face reprimands, be assessed fines, or have former decisions rescinded until they are properly decided in a public meeting. That is pretty bad, but worse than the legal consequence is the damage to a Board's integrity in the eyes of their constituents.

Keep in mind . . . the reasons for meeting in an executive session are specific, not general. There is little latitude for interpretation. The most often abused executive session criterion is meeting to discuss personnel when, in fact, not all discussions about personnel meet the criteria for an executive session. The discussions that are permissible are those about employee performance evaluations or those to receive information concerning alleged misconduct and to discuss, before determining, employee status. The second most often abused reason is meeting with an outside consultant. Meeting with an outside consultant, like an ISBA staff member, private consultant, and so on, in an executive session is permissible; however, it is only permissible when that person is training the Board on its roles as public officials.

Executive sessions must be advertised 48 hours before meeting, excluding weekends and holidays. Plus, the specific statutory reason must be stated in the advertisement. Consequently, the question arises, "Can the Board entertain a discussion about another item that legitimately meets the executive session criteria if it is meeting on another executive session topic?" So, essentially, the Board has advertised and is meeting on a specific executive session topic, but another topic arises that qualifies for executive session privilege, but it has not been advertised. In short, the answer is "NO!" The Board should not entertain the receipt of any information or engage in any discussion for reasons other than those that have been properly advertised. Some Boards have attempted to "beat" the system by advertising every reason that the Board could meet, just in case something comes up! Needless to say, that approach is not only dishonest; it is an invitation for someone look into your business.

You must also take minutes of your executive session, but those minutes only reflect the time the meeting was convened, for what purpose, who was in attendance, and when it was adjourned. No action can be taken and no decisions rendered or rehearsed. (The only exception to this is when the Board is meeting as a result of a vacancy on the Board. In this case, the Board may develop a list of prospective appointees, consider applications, and make an initial exclusion of prospective appointees.)

More questions? Give us a call! We are always here to assist you with information that will enable you to make the best decisions that ensure your compliance under the Open Door Law.

It's Time to Bargain!

By Lisa F. Tanselle, ISBA General Counsel (ltanselle@isba-ind.org)

September 15 marked the beginning of the formal bargaining window. For those school boards with collective bargaining agreements that have expired or will expire this year, it is time to bargain a new master contract with the teachers association. The bargained contract can only include provisions related to salary, wages, and salary and wage related fringe benefits, such as insurance benefits and paid time off. It may also include a grievance procedure. Lastly, the collective bargaining agreement cannot put the employer in a position of deficit financing.

Indiana law limits the bargaining period to 60 days. Thus, all bargaining must be completed by November 15. The school board's role in the bargaining process varies among our school corporations. Some boards include a member or two on the bargaining team. Other boards allow administration and/or a professional negotiator to represent them at the bargaining table. Indiana law also permits a school board to meet in an executive session with the superintendent, administrators, or the bargaining agent to discuss "strategy with respect to collective bargaining." This gives the school board the opportunity to converse with its bargaining team about proposals that have been submitted and steps that can be taken in order to reach agreement with the teachers association. But, whatever the level of involvement of the board during the bargaining process, any agreement negotiated by the teams must be approved, or ratified, by the governing body. The teachers association must also ratify the agreement in order for it to be a binding contract.

If a ratified contract is not submitted to the Indiana Education Employment Relations Board (IEERB) by November 15, IEERB will declare the parties to be at impasse. Impasse means that IEERB will appoint a mediator who will attempt to help the parties reach agreement on the terms of the collective bargaining agreement.

The mediation process can last up to 30 days and allows for the mediator to meet with the parties for as many as three sessions.

If mediation is successful, the parties will submit a ratified contract to IEERB. If mediation is not successful, then the parties will exchange Last Best Offers (LBOs). The LBO is a critical document as it identifies the terms each party wants in the collective bargaining agreement and requires each party to prove that the proposed agreement will not cause deficit financing. LBOs submitted by the school employer and the teachers association will be presented to a factfinder appointed by IEERB. The factfinder will conduct an investigation, which may include a public hearing, and review the LBOs. The factfinder must select one of the party's LBO, considering four criteria: the financial impact of the LBO and whether it will cause the school employer to engage in deficit financing; the public interest; past agreements and contracts between the parties; and comparisons of wages and hours of employees of other public agencies. The LBO selected by the factfinder becomes the final and binding collective bargaining agreement for the parties.