

# CASTING A SHADOW ON ILLINOIS' SUNSHINE LAWS: *RICE V. BOARD OF TRUSTEES*, 762 N.E.2d 1205 (Ill. App. Ct. 2002)

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## I. INTRODUCTION

The July heat pounds down on the parking lot of the building where the township board is having their monthly meeting. The clock strikes 9 p.m. as the five board members sitting around the table finally work their way down to the bottom of the agenda. The board supervisor, as chairman of trustees, cautiously asks, "Is there any *New Business*?" Knowing the answer, the chairman looks into the audience where about fifty people from the town have gathered. One of the less shy female members of crowd stands up and declares, "We don't want that West Nile Virus that is spreading around. There is too much standing water in our township and that leads to too many of those little mosquitoes that carry that deadly disease. We want you guys to vote that the township should be sprayed for mosquitoes now before we all get sick and die." The chairman reluctantly stands up and explains, "Miss, we can't take any action on anything that wasn't specifically named in the agenda. We would be happy to discuss the matter, but we can't order the spraying of the township until it has been voted on at either our next meeting or until we have a special meeting."

Decided in January 2002, *Rice v. Board of Trustees*<sup>1</sup> provides the reason why the township board could not take action on the mosquito problem that night. In a case of first impression in Illinois, the Fourth District of Illinois ruled that Illinois' Sunshine Laws<sup>2</sup> prohibit public bodies in Illinois from taking action at their meetings on any matter not

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1. 762 N.E.2d 1205 (Ill. App. Ct. 2002).

2. A sunshine law is a statute requiring a governmental department or agency to open its meetings or its records to public access. BLACK'S LAW DICTIONARY 1450 (7th ed. 1999). Illinois' Sunshine Laws are commonly referred to as the Illinois Open Meetings Act. 5 ILL. COMP. STAT. 120/1-6 (2002).

specifically named in the posted agenda for that meeting.<sup>3</sup> Defining section 2.02(a) of the Illinois Open Meetings Act's use of the word "consideration," *Rice* held the Act permitted only discussion of new topics at public meetings, but not action upon those new items.<sup>4</sup> In addition, the court found that the agenda item, *New Business*, did not allow for enough advance notice to the public.<sup>5</sup> Although the result rendered in *Rice* could be achieved by a narrow process of statutory interpretation, if the court had analyzed those same principles of statutory interpretation in a broader sense and applied other factors such as public business efficiency, substantial compliance with the Illinois Open Meetings Act, and future problems, a more reasoned and appropriate outcome could have been achieved by the *Rice* court ruling that "consideration" should include taking action and the agenda item, *New Business*, does provide enough advance notice to the public.

Part II of this note examines a brief history of the development of the law leading up to *Rice*. First, a summary of the major requirements of the current Illinois Open Meetings Act is presented.<sup>6</sup> Second, prior case law illustrating the evolution to *Rice*, is reviewed. Finally, the 1995 amendment to the Illinois Open Meetings Act, which added the language that came to be part of the controversy in *Rice*, is discussed. Part III of this note will outline the underlying facts, decision, and rationale behind *Rice*.

Part IV of this note will provide an analysis of the decision in *Rice*. First, statutory interpretation principles will be applied to the Illinois Open Meetings Act to examine how the court reached its decision in *Rice*. It will demonstrate how the facts in *Rice* could have just as easily favored the defendants by looking to the concepts of (1) statutory interpretation from a different viewpoint, (2) good business, and (3) substantial compliance with the Illinois Open Meetings Act. Finally, potential problems resulting from the ruling in *Rice* will be addressed with attempts to answer these lingering questions.

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3. *Rice*, 762 N.E.2d at 1207.

4. *Id.* (holding "the consideration of" items not specifically set forth in the agenda to be in the nature of deliberations and discussion and not actions taken); 5 ILL. COMP. STAT. 120/2.02(a) (1998).

5. *Rice*, 762 N.E.2d at 1207.

6. This Casenote is current as of 2003.

## II. BACKGROUND

### A. Requirements of the Current Illinois Open Meetings Act

Elected officials across the state of Illinois are probably the most likely people to have a general sense of what the Illinois Open Meetings Act is all about.<sup>7</sup> This is true because elected officials are the people who have to deal with the procedures of meetings governed by the Illinois Open Meetings Act.<sup>8</sup> The Illinois Open Meetings Act regulates how the governing boards of the state's municipalities, counties, public school districts, and townships all make political and legislative decisions.<sup>9</sup>

As of 2003, the Illinois Open Meetings Act is divided into sixteen different sections and subsections.<sup>10</sup> As the crux of the Illinois Open Meetings Act, section 2 outlines the broad requirement that “[a]ll meetings of public bodies shall be open to the public.”<sup>11</sup> Section 2.01 states that all meetings “shall be held at specified times and places which are convenient and open to the public.”<sup>12</sup> Section 2.02 describes the notice requirement which is at issue in *Rice*.<sup>13</sup> Public bodies shall “prepare and make available a schedule of all [their] regular meetings” according to section 2.03.<sup>14</sup> Section 2.05 makes clear that “any person may record the proceedings at meetings required to be open by this Act by tape, film or other means.”<sup>15</sup> Section 2.06 says that “[a]ll public bodies shall keep written minutes of all their meetings, whether open or closed.”<sup>16</sup> Guidelines for a closed meeting are outlined in section 2a.<sup>17</sup> Section 4 describes the possible penalty for violating any provision of the Illinois Open Meetings Act.<sup>18</sup>

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7. Mathias W. Delort, *Let the Sunshine In: The New Illinois Open Meetings Act*, 9 CHI. B. ASS'N. REC., May 1995, at 42.

8. *Id.*

9. *Id.*

10. 5 ILL. COMP. STAT. ANN. 120/1-6 (West 1993 & Supp. 2003).

11. *Id.* § 2.

12. *Id.* § 2.01.

13. *Id.* § 2.02; *Rice v. Board of Trustees*, 762 N.E.2d at 1205 (Ill. App. Ct. 2002).

14. 5 ILL. COMP. STAT. ANN. 120/2.03.

15. *Id.* § 2.05.

16. *Id.* § 2.06.

17. *Id.* § 2a.

18. *Id.* § 4.

### B. The Road to *Rice v. Board of Trustees*

Since the inception of the Illinois Open Meetings Act in 1957, Illinois courts have ruled in a wide variety of directions on the subject of public notice.<sup>19</sup> Three cases, *Allen v. Cook County*,<sup>20</sup> *Argo High School Council v. Argo Community High School Dist. 217*,<sup>21</sup> and *People ex rel. Redell v. Giglio*,<sup>22</sup> point out the confusion attorneys faced even before *Rice*. Each case paints a picture of the transition: from *Allen*, where public notice was not required; to *Argo*, where partial notice was required; to *Redell*, which required a higher level of public notice.<sup>23</sup> This incongruent view of the courts in Illinois is what likely led to the court's attempt to shed some light on the issue in *Rice*.

In *Allen*, a meeting of the Board of Commissioners of Cook County was held on October 20, 1975.<sup>24</sup> The Board adopted Ordinance No. 75-0-33, appropriating \$2 million from the motor fuel tax fund to the Regional Transportation Authority.<sup>25</sup> One member of the Board challenged the announcement and "stated that the appropriation measure required a two-thirds vote of the members elected to the Board."<sup>26</sup> As a result, Ordinance No. 75-0-34, which in pertinent part provided: "[n]o money shall be appropriated or ordered paid by said county commissioners beyond the sum of \$5,000.00, unless such appropriation shall have been authorized by a vote of a majority of the members elected to said county board" was voted on and passed by the Board.<sup>27</sup> Ordinance No. 75-0-33, appropriating money to the Regional Transportation Authority, was then voted on again and passed under the newly amended majority vote standard.<sup>28</sup>

On January 29, 1976, the plaintiff, John T. Allen, Jr., filed a claim against the defendants, the County of Cook, George W. Dunne, president of the Board of Commissioners of Cook County; and the

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19. *Id.* §§ 1-6.

20. 357 N.E.2d 458 (Ill. 1976); *accord* *Menssen v. Eureka Unit Dist. No. 140*, 388 N.E.2d 273, 276 (Ill. App. Ct. 1979) (holding that an agenda was not required for public notice).

21. 516 N.E.2d 834 (Ill. App. Ct. 1987).

22. 606 N.E.2d 128 (Ill. App. Ct. 1992).

23. *Allen*, 357 N.E.2d at 462; *Argo*, 516 N.E.2d at 836; *Redell*, 606 N.E.2d at 131.

24. *Allen*, 357 N.E.2d at 460.

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

other fourteen incumbent members of the Board.<sup>29</sup> The plaintiff sought a declaratory judgment that Cook County Ordinance No. 75-0-34, enacted on October 20, 1975, was invalid.<sup>30</sup> Among other reasons, the plaintiff argued the ordinance did not comply with the notice requirement of the Illinois Open Meetings Act.<sup>31</sup> The Supreme Court of Illinois denied the motion, holding “[n]othing in the Open Meetings Act required that notice be given that the proposed ordinance would be presented for adoption at that meeting. The public and suburban members had knowledge of the time and place of the meeting, and the meeting was ‘open’ within the meaning of the Act.”<sup>32</sup>

The pertinent issue in *Argo* involved an interpretation of the language of section 2.02(a) of the Illinois Open Meetings Act, which read “the validity of any action taken by the public body which is germane to a subject on the agenda shall not be affected by other errors or omissions in the agenda.”<sup>33</sup> On November 7, 1985, the secretary of the Argo Community High School District 217 board posted and published notice of a meeting to be held on November 11, 1985.<sup>34</sup> The agenda stated the meeting would cover “[r]eview and discussion of salaries involving administrators, supervisors and other personnel not covered by agreements.”<sup>35</sup> However, at the meeting, the Argo Community High School board adopted certain motions providing the following: (1) extension of the superintendent's contract for one year through the 1986-1987 school year; (2) a change in the appointment of department chairpersons from a permanent basis to a three-year rotational basis; and (3) the posting and receiving of applications for the position of Athletic Director for the 1986-1987 school year.<sup>36</sup>

On December 26, 1985, Argo High School Council of Local 571 filed a complaint against the high school stating the November meeting violated the notice requirements of the Illinois Open Meetings Act.<sup>37</sup> The union sought a declaratory ruling making the actions of the

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29. *Id.* at 459.

30. *Id.*

31. *Id.* at 462.

32. *Id.*

33. 5 ILL. COMP. STAT. 120/2.02(a) (1985); *Argo High School Council v. Argo Community High School Dist. 217*, 516 N.E.2d 834, 836 (Ill. App. Ct. 1987).

34. *Argo*, 516 N.E.2d at 834.

35. *Id.* at 834-35.

36. *Id.* at 835.

37. *Id.*

November meeting void.<sup>38</sup> The trial court rejected the union's complaint ruling that notice did take place, which led to the appeal in this case.<sup>39</sup>

Referring to the language of the Illinois Open Meetings Act, the Appellate Court for the First District of Illinois affirmed the trial court's decision because the proceedings that took place at the board's November meeting were *germane* enough to the items listed on the agenda.<sup>40</sup> *Germane* is defined as appropriate, relative, or in close relationship.<sup>41</sup> Interpreting the language of section 2.02(a) of the Open Meetings Act rather broadly, the court decided that discussions of who can authorize salary increases, who will receive a salary, and the length of the superintendent's contract are closely related enough, or germane to, "a discussion of salaries of personnel not covered by agreements."<sup>42</sup>

Conversely, in *Redell*, the court applied the wording of section 2.02(a) of the Illinois Open Meetings Act a little more narrowly.<sup>43</sup> On October 22, 1991, Charles Palombo resigned his position as trustee on the Board of Trustees of Thornton Township.<sup>44</sup> On December 17, 1991, the Board held a special board meeting.<sup>45</sup> The agenda for the meeting consisted of five items.<sup>46</sup> Items one, two and four involved financial matters, item five referred to the rescheduling of a regular meeting, and item three stated: "[a]ny other matters or problems related to the Redell/Poindexter abandonment of their responsibilities as supervisor and trustee affecting Thornton Township regarding personnel, finance, programs, general fund, general assistance fund, paratransit, road and bridge fund, and all other matters pertaining to the function of the township."<sup>47</sup> Frederick Redell was the Supervisor of the Board of Trustees of Thornton Township and Catherine Poindexter was a trustee.<sup>48</sup> At the meeting, a motion was made to vote in Tina

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38. *Id.*

39. *Id.*

40. *Id.* at 837.

41. *Id.* at 836 (citing BLACK'S LAW DICTIONARY 618 (5th ed. 1979)).

42. *Id.* at 837; 5 ILL. COMP. STAT. 120/2.02(a) (1985).

43. *People ex rel. Redell v. Giglio*, 606 N.E.2d at 128 (Ill. App. Ct. 1992); 5 ILL. COMP. STAT. 120/2.02(a) (1991).

44. *Redell*, 606 N.E.2d at 129.

45. *Id.*

46. *Id.* at 130.

47. *Id.*

48. *Id.*

Paterek as trustee for the board, which was approved by everyone except Redell and Poindexter.<sup>49</sup>

Subsequently, on December 23, 1991, Paterek filed a claim seeking declaratory judgment that she was a lawfully appointed member of the board.<sup>50</sup> Redell filed his answer and affirmative defenses to Paterek's claim "alleging the action taken at the meeting on December 17, 1991, to elect Paterek to the board, was illegal because it was not within the scope of the agenda" and therefore violated the Open Meetings Act.<sup>51</sup> On March 23, 1992, the trial court sided with Redell.<sup>52</sup>

After referencing the wording on the meeting's agenda, the Appellate Court for the First District of Illinois affirmed the trial court.<sup>53</sup> Finding Paterek's appointment was intended to fill the position vacated by Palombo, the court saw no connection between that position and the positions occupied by Redell and Poindexter, nor did it find any action on their part which had an impact on the township.<sup>54</sup> In addition, the court determined the phrase, "'and all other matters pertaining to the function of the Township,'" to be overly all-inclusive and did not give any notice to the public of Paterek's possible appointment to the vacant board seat.<sup>55</sup>

### C. The 1995 Amendment to the Illinois Open Meetings Act

The Illinois legislature enacted the public notice requirement of the Illinois Open Meetings Act into law in July 1967.<sup>56</sup> The regulations set forth in the Illinois Open Meetings Act are fairly stringent.<sup>57</sup> However, some individuals obviously did not believe they were stringent enough. In the early 90's, a group represented by the Illinois Press Association negotiated with elected local officials, led by the Illinois Municipal League, to provide more openness in the process of the deliberation of public business.<sup>58</sup> The compromise that came about

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49. *Id.* at 129–30.

50. *Id.* at 130.

51. *Id.*

52. *Id.*

53. *Id.* at 131.

54. *Id.*

55. *Id.*

56. *Bigham v. Rock Island*, 256 N.E.2d 897, 898 (Ill. App. Ct. 1970).

57. Delort, *supra* note 7, at 42.

58. *Id.*; James Tidwell, *An Open Meetings Act Primer*, 83 ILL. B.J. 593, 593 (1995).

as a result was House Bill 1332,<sup>59</sup> which was passed by both houses and signed into law as Public Act 88-621 by Governor Jim Edgar in September of 1994.<sup>60</sup>

Public Act 88-621 made three significant changes to the structure of the Illinois Open Meetings Act.<sup>61</sup> First, the legislature amended the Act to require public notice 48 hours prior to a meeting, a change from the previous 24-hour requirement.<sup>62</sup> Second, the Act required public bodies to post an agenda for each regular meeting at least 48 hours in advance.<sup>63</sup> In addition, it provided that the agenda requirement no longer precluded consideration of other items not in the agenda.<sup>64</sup>

This last change was at issue in *Rice*.<sup>65</sup> It seemed like a pretty straightforward addition to the statute. After all, during the third reading of House Bill 1332 on April 20, 1993, Representative Currie did mention one of its purposes was to clarify the previous wording of the Illinois Open Meetings Act.<sup>66</sup> However, from its enactment in 1995, the amendment has caused confusion as to whether “consideration” meant elected officials at a meeting could vote on something not set forth in the posted agenda.

In May 1995, the Chicago Bar Association published an article addressing this controversy.<sup>67</sup> It concluded that items not posted on the agenda could still be acted upon, stating the new agenda requirement for regular meetings led to concerns that elected officials could not bring up new issues during meetings, or that citizens could not raise new matters and request action on them.<sup>68</sup> ““However, the law specifies that failure to include a matter on a regular meeting agenda does not invalidate any action taken on the item.””<sup>69</sup>

The 1996 Summer Survey Edition of the Southern Illinois University Law Journal addressed the requirement that the agenda now

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59. H.R. 1332, 88th Gen. Assem., Reg. Sess. (Ill. 1995).

60. Delort, *supra* note 7, at 42.

61. *Id.*; 5 ILL. COMP. STAT. 120/2.02(a) (2002).

62. 5 ILL. COMP. STAT. 120/2.02(a) (2002).

63. *Id.*; Delort, *supra* note 7, at 42.

64. 5 ILL. COMP. STAT. 120/2.02(a) (2002).

65. *Rice v. Board of Trustees*, 762 N.E.2d at 1205 (Ill. App. Ct. 2002).

66. House of Representatives Transcript of the Debate on H.B. 1332, State of Illinois 88th GENERAL ASSEMBLY 56 (Apr. 20, 1993) (statement of Rep. Currie).

67. Delort, *supra* note 7, at 42.

68. *Id.*

69. *Id.*



must be posted at every regular meeting.<sup>70</sup> The author stated, “[t]his requirement, however, does not prohibit discussion of issues not on the agenda.”<sup>71</sup> Since nothing was said in the article about “acting” on an item not on the agenda, it seems the writer of this article likely believed only “discussion” could occur on items not on the agenda.

In the May 2002 *Law Pulse* edition of the *Illinois Bar Journal* author Helen W. Gunnarsson wrote about the Illinois Open Meetings Act notice requirement.<sup>72</sup> Illinois State Bar Association member, Phillip Lenzini, whose practice involves advising many local government units all over Illinois, was quoted as saying that until recently “many attorneys and local government bodies had taken the agenda requirement fairly casually, believing that the language of section 2.02(a) transformed the statutory requirement of having an agenda into a mere formality.”<sup>73</sup> This was the common belief until January 24, 2002. Then the *Rice* ruling was issued, which attempted to lessen the vagueness of the Illinois Open Meetings Act notice requirement.<sup>74</sup> However, the true result has been more confusion and shock permeating throughout Illinois’ legal community because of the agenda requirement suddenly changing from a helpful tool to an essential necessity.

### III. EXPOSITION OF THE CASE

On January 7, 1999, Bruce A. Rice filed a complaint against the defendants, the Board of Trustees of Adams County, Illinois and the County of Adams, Illinois.<sup>75</sup> The amended complaint of May 18, 1999, alleged a failure by the Board to comply with the Illinois Open Meetings Act.<sup>76</sup> The Board had adopted a resolution providing for an alternative benefit program for elected county officers pursuant to section 7-145.1 of the Illinois Pension Code.<sup>77</sup> Both plaintiff and defendants filed for summary judgment, and on May 10, 2000, the trial

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70. Michael J. Maslanka et al., *Survey of Illinois Law: Administrative Law*, 20 S. ILL. U. L.J. 667, 692 (1996).

71. *Id.*

72. Helen W. Gunnarsson, *A Sizzling Rice Soup for Public Officials?*, 90 ILL. B.J. 226, 230 (2002).

73. *Id.*

74. *Rice v. Board of Trustees*, 762 N.E.2d at 1205 (Ill. App. Ct. 2002).

75. *Id.* at 1206.

76. *Id.*; 5 ILL. COMP. STAT. 120/1-6 (1998).

77. *Rice*, 762 N.E.2d at 1206; *see also* 40 ILL. COMP. STAT. 5/7-145.1 (1998).

court granted summary judgment in favor of the plaintiff, declaring the actions of the Board in adopting the resolution null and void.<sup>78</sup> The defendants moved for reconsideration, and the trial court entered an order denying this motion on March 16, 2001.<sup>79</sup> The defendants then appealed the grant of summary judgment for plaintiff, and the Appellate Court for the Fourth District of Illinois affirmed the trial court's decision.<sup>80</sup>

The agenda of the County Board's November 10, 1998, meeting included thirty-four items, twenty-five of which were reports by various people.<sup>81</sup> Item number 32 was entitled *New Business*.<sup>82</sup> Nearly identical agendas were found for meetings dated September 8, 1998, and October 13, 1998.<sup>83</sup> The minutes of the November 10 meeting reflected that when the meeting got down to *New Business* on the agenda, a Mr. Heidbreder stated, "there is another resolution to present."<sup>84</sup> The resolution dealing with the alternative benefit program for elected county officials pursuant to section 7-145.1 of the Illinois Pension Code was read aloud, and Mr. Heidbreder made a motion to adopt the resolution.<sup>85</sup> The County Board discussed the resolution and the motion passed.<sup>86</sup>

The defendants admitted that the alternative benefit program for elected county officials was not specifically added to the agenda before the meeting.<sup>87</sup> However, the defendants argued that section 2.02(a) of the Illinois Open Meetings Act, which provides that the "requirement of a regular meeting agenda shall not preclude the consideration of items not specifically set forth in the agenda," should sway the court in their favor.<sup>88</sup> The defendants also argued that, because the elected county officers who chose to participate in the alternative benefit program were not made parties to the suit, these officers were not bound by the judgment declaring the actions of the Board, in adopting the resolution, null and void.<sup>89</sup> The Appellate Court for the Fourth

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78. *Rice*, 762 N.E.2d at 1206.

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. 5 ILL. COMP. STAT. 120/2.02(a) (1998); *Rice*, 762 N.E.2d at 1206.

89. *Rice*, 762 N.E.2d at 1207.

District of Illinois disagreed with the defendants' reasoning on both arguments.<sup>90</sup>

The appellate court started its analysis of the issues by first expressing that the entry of summary judgment is appropriate where no questions of fact are present and judgment can be made as a matter of law.<sup>91</sup> The court then reasoned since the case involved statutory interpretation and statutory interpretation is a matter of law, summary judgment was a possible verdict by the trial court.<sup>92</sup> Appellate courts review a summary judgment decision *de novo*.<sup>93</sup>

Referencing *County of Knox ex rel. Masterson v. Highlands*<sup>94</sup> and the language of the Illinois Open Meetings Act, the court concluded that the term "consideration" did not mean action could be taken on an issue at a meeting.<sup>95</sup> The court pronounced the "fundamental rule of statutory interpretation is to give effect to the intention of the legislature. A court first looks to the words of the statute. The language of the statute is the best indication of the legislative intent."<sup>96</sup> Section 1 of the Illinois Open Meetings Act states:

In order that the people shall be informed, the General Assembly finds and declares that it is the intent of this Act to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly. The General Assembly further declares it to be the public policy of this State that its citizens shall be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way.<sup>97</sup>

The court noted the Illinois Open Meetings Act speaks of "actions of public bodies" in a separate way from "their deliberations."<sup>98</sup> Also, the Act speaks of "business of a public body" being "discussed" in addition to "acted upon."<sup>99</sup>

The court found the item, *New Business*, did not provide enough advance notice to the public of a resolution providing for an alternative

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90. *Id.* at 1206.

91. *Id.*

92. *Id.*

93. *Id.*

94. 723 N.E.2d 256 (Ill. 1999).

95. 5 ILL. COMP. STAT. 120/1-6 (1998); *Rice*, 762 N.E.2d at 1207.

96. *Rice*, 762 N.E.2d at 1207 (citing *Highlands*, 723 N.E.2d at 263).

97. *Id.* (citing 5 ILL. COMP. STAT. 120/1 (1998)).

98. 5 ILL. COMP. STAT. 120/1 (1998); *Rice*, 762 N.E.2d at 1207.

99. 5 ILL. COMP. STAT. 120/1 (1998); *Rice*, 762 N.E.2d at 1207.

benefit program for elected county officers.<sup>100</sup> In addition, it noted in the minutes of the November 10, 1998 meeting the item had already been discussed years ago, contrary to the Board's assertion that the resolution was "new" business.<sup>101</sup> Finally, in response to the defendants' argument that the elected county officers were not bound by the judgment of the trial court because they were not made parties to the suit, without providing any justification, the court stated the pension rights of the defendants no longer had any "force, binding power, or validity."<sup>102</sup>

#### IV. ANALYSIS

The result handed down in *Rice* could be achieved by a narrow process of statutory interpretation. However, if the court had analyzed those same principles of statutory interpretation in a broader sense and applied other factors such as public business efficiency, substantial compliance with the Illinois Open Meetings Act, and future problems, a more reasoned and appropriate outcome could have been achieved. A proper ruling by the *Rice* court would have stated that "consideration" should include taking action and the agenda item, *New Business*, does provide enough advance notice to the public.

##### A. Statutory Interpretation of Section 2.02(a) of the Illinois Open Meetings Act

###### 1. *The Definition of "Consideration"*

The *Rice* court ruled on two issues.<sup>103</sup> First, the *Rice* court had to give a meaning to the word "consideration" in the context of section 2.02(a) of the Illinois Open Meetings Act.<sup>104</sup> Section 2.02(a) of the Illinois Open Meetings Act provides that the "requirement of a regular meeting agenda shall not preclude the consideration of items not

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100. *Rice*, 762 N.E.2d at 1207.

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

specifically set forth in the agenda.”<sup>105</sup> The court then had to decide whether the agenda item, *New Business*, was detailed enough in order to give notice to the public.<sup>106</sup> Citing *Highlands*, the court properly stated the “fundamental rule of statutory interpretation is to give effect to the intention of the legislature.”<sup>107</sup> The Open Meetings Act is intended to create a functional means of opening the deliberative processes of government to public view.<sup>108</sup> The *Rice* court noted, “[i]t is the intent of the Act to protect the citizen’s right to know.”<sup>109</sup>

The issue is whether the term “consideration” should mean “taking action” or just “discussion.”<sup>110</sup> The defendants in *Rice* wanted to give “consideration” a definition that would allow for action on an item not mentioned in the agenda.<sup>111</sup> However, the court took the opposite view that “consideration” was limited only to deliberation and discussion.<sup>112</sup> Section 1 of Illinois’ Sunshine Laws states the legislative intent.<sup>113</sup> The court noticed that in this section the legislature spoke of “actions of public bodies” separate from “their deliberations,” and business “discussed” separate from business “acted upon.”<sup>114</sup> Most likely trying to avoid surplusage, the court implied that these groupings of words

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105. 5 ILL. COMP. STAT. 120/2.02(a) (1998). The text of this section provides:

(a) Every public body shall give public notice of the schedule of regular meetings at the beginning of each calendar or fiscal year and shall state the regular dates, times, and places of such meetings. An agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting. The *requirement of a regular meeting agenda shall not preclude the consideration of items not specifically set forth in the agenda.*

*Id.* (emphasis added).

106. *Rice*, 762 N.E.2d at 1207.

107. *Id.* (citing *County of Knox ex rel. Masterson v. Highlands*, 723 N.E.2d 256, 263 (Ill. 1999)); *see also* *People ex rel. Hopf v. Barger*, 332 N.E.2d 649, 658 (Ill. App. Ct. 1975).

108. *People ex rel. Difanis v. Barr*, 414 N.E.2d 731, 738 (Ill. 1980).

109. *Rice*, 762 N.E.2d at 1206.

110. *Id.* at 1207.

111. *Id.* at 1206.

112. *Id.* at 1207.

113. 5 ILL. COMP. STAT. 120/1 (1998). Section 1 states:

In order that the people shall be informed, the General Assembly finds and declares that it is the intent of this Act to ensure that the *actions of public bodies* be taken openly *and* that *their deliberations* be conducted openly. The General Assembly further declares it to be the public policy of this State that its citizens shall be given advance notice of and the right to attend all meetings at which any business of a public body is *discussed or acted upon* in any way.

*Id.* (emphasis added).

114. *Rice*, 762 N.E.2d at 1207; 5 ILL. COMP. STAT. 120/1 (1998).

should be put into two categories.<sup>115</sup> Surplusage is defined as “[r]edundant words in a statute or other drafted document.”<sup>116</sup> The rule against surplusage reasons that the legislature put every word in the statute for a reason.<sup>117</sup> Consequently, no two terms in a statute would mean the same thing at the same time.<sup>118</sup> When the court tries to avoid surplusage by dividing these words in section 1 into two categories of discussion and action, it is in reality giving effect to every word of the statute.<sup>119</sup>

Another device the court in *Rice* might have used to separate the two sets of words is *noscitur a sociis*.<sup>120</sup> *Noscitur a sociis* is a canon of construction meaning “an unclear word or phrase should be determined by the words immediately surrounding it.”<sup>121</sup> Section 1 of the Illinois Open Meetings Act has the word “and” placed between the phrase “actions of public bodies” and “their deliberations,” and the word “or” between the words “discussed” and “acted upon.”<sup>122</sup> Thus, it would be logical to infer that discussion is being talked about in a different sense from action because of the conjunctions which separate these different phrases.

Looking at the placement of words to get the meaning of certain words is a logical procedure, but the court fails to support its final conclusion.<sup>123</sup> After the court divided these sets of words into two separate groups, it found “consideration of” items not specifically set forth in the agenda to be in the nature of deliberations and discussions and not actions taken.<sup>124</sup> The decision to place “consideration” into the category of discussion rather than action would be appropriate if the *Rice* court gave a reason, but it did not do so.<sup>125</sup>

One easy way to find a rationale would have been to look up the word “consideration” in the dictionary and thereby give the term its plain meaning.<sup>126</sup> The American Heritage College Dictionary defines

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115. *Rice*, 762 N.E.2d at 1207.

116. BLACK'S LAW DICTIONARY 1457 (7th ed. 1999).

117. *Id.*

118. *Id.*

119. *See Rice*, 762 N.E.2d at 1207.

120. *Id.*; BLACK'S LAW DICTIONARY 1084 (7th ed. 1999).

121. BLACK'S LAW DICTIONARY 1084 (7th ed. 1999).

122. 5 ILL. COMP. STAT. 120/1 (1998).

123. *Rice*, 762 N.E.2d at 1207.

124. *Id.*

125. *Id.*

126. *Fitzsimmons v. Norgle*, 472 N.E.2d 802, 804 (Ill. 1984); *People v. Brown*, 442 N.E.2d 136, 139 (Ill. 1982) (These cases illustrate Illinois courts' deference toward the plain-meaning rule.).

“consideration” as “[c]areful thought; deliberation.”<sup>127</sup> Therefore, the *Rice* court may have come to the correct conclusion as to the meaning of “consideration,” but it did not defend this decision. It could have included even a simple dictionary definition to support its ultimate conclusion.

However, by applying the rules of statutory interpretation in a broader sense and carefully analyzing the actual purpose of the Illinois Open Meetings Act, rather than determining the way certain words should be categorized, the intent of the legislature would be satisfied whether “consideration” is defined as action or discussion. The purpose of the Illinois Open Meetings Act is to keep the public informed by requiring all discussions and actions of public bodies take place in the open.<sup>128</sup> Thus, since the intent of the Illinois Open Meetings Act will be fulfilled whether “consideration” is defined as action or discussion, the *Rice* court’s argument does not have validity.

## 2. *The Agenda Item, New Business*

Turning to the more important and controversial second issue in *Rice*, the court decided whether the agenda item, *New Business*, was specific enough to give notice to the public.<sup>129</sup> Looking to the words of the Illinois Open Meetings Act once again to determine the legislature’s intent, the court declared that *New Business* did not give enough advance notice to the public.<sup>130</sup> Once again, however, the court did not give any explanation as to why it came to this conclusion.<sup>131</sup> Thus, when the court found that the item, *New Business*, did not provide sufficient advance notice to the public, *Rice* would only be correct if it based its decision on previous cases dealing with this type of catch-all provision, like *Redell*, which held a similar agenda item to be too all-inclusive to give enough notice to the public.<sup>132</sup>

The problem with this argument, however, is that even though precedent exists in Illinois cases to hold the item, *New Business*, does not give enough advance notice to the public, holdings of Illinois earlier cases imply that such an agenda item might be acceptable. The

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127. AMERICAN HERITAGE COLLEGE DICTIONARY 297 (3d ed. 1997).

128. 5 ILL. COMP. STAT. 120/1 (1998).

129. *Rice*, 762 N.E.2d at 1207.

130. *Id.*

131. *Id.*

132. *People ex rel. Redell v. Giglio*, 606 N.E.2d at 128, 131 (Ill. App. Ct. 1992).

*Argo* court required only that action by public bodies be germane to a subject on the agenda.<sup>133</sup> Germane is defined as appropriate, relative, or in close relationship.<sup>134</sup> In *Argo*, the school board's agenda stated the meeting would cover "[r]eview and discussion of salaries involving administrators, supervisors and other personnel not covered by agreements."<sup>135</sup> The *Argo* court decided discussions of who can consent to salary increases, who will secure a salary, and the length of the superintendent's contract were related closely enough, or germane to, a discussion of salaries of personnel not covered by agreements.<sup>136</sup> In *Argo*, the school board listed a broad topic on the agenda and then took action on items that were more specific but not expressly listed on the agenda.<sup>137</sup> The *Argo* court found this action to be appropriate and in accordance with the rules set forth in the Illinois Open Meetings Act.<sup>138</sup>

The facts in *Rice* are very similar to those in *Argo*.<sup>139</sup> The *Rice* defendants also listed a broad term on the agenda in the form of the item, *New Business*.<sup>140</sup> When the board got down to this item on the agenda, Mr. Heidbreder spoke of, and action was taken on, the resolution dealing with the alternative benefit program for elected county officials pursuant to section 7-145.1 of the Illinois Pension Code.<sup>141</sup> Applying the ruling in *Argo* to the facts in *Rice*, the only question that would need to be asked is whether the alternative benefit program for elected county officials is germane enough to the item, *New Business*, listed on the agenda under which action was taken.<sup>142</sup> With such a broad definition of germane to work with, the *Rice* court could have easily decided that the alternative benefit program for elected county officials was germane enough to the item, *New Business*. Therefore, applying rules of statutory interpretation with a slightly broader approach might have led the *Rice* court to rule the opposite way and hold that the defendant's agenda item, *New Business*, did give

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133. *Argo High School Council v. Argo Community High School Dist.* 217, 516 N.E.2d 834, 836 (Ill. App. Ct. 1987).

134. *Id.* (citing BLACK'S LAW DICTIONARY 618 (5th ed. 1979)).

135. *Id.* at 834-35.

136. *Id.* at 837.

137. *Id.* at 834-35.

138. *Id.* at 837; see also 5 ILL. COMP. STAT. 120/2.02(a) (1985).

139. *Argo*, 516 N.E.2d at 834; *Rice v. Board of Trustees*, 762 N.E.2d 1205, 1206 (Ill. App. Ct. 2002).

140. *Rice*, 762 N.E.2d at 1206.

141. *Id.*

142. *Argo*, 516 N.E.2d at 836; *Rice*, 762 N.E.2d at 1206.



enough advance notice to the public under the Illinois Open Meetings Act.

#### B. Open Meetings vs. Good Business

What the *Rice* court undoubtedly forgot was the Illinois Open Meetings Act's second purpose, which is to aid public bodies in carrying out their business in the manner most beneficial to the public.<sup>143</sup> In *Gosnell v. Hogan*,<sup>144</sup> the court decided "whether the Board violated the [Illinois Open Meetings] Act by discussing during executive session matters not excepted in the Act, and whether the Board failed to comply with the formal requisites of the Act."<sup>145</sup> As the *Gosnell* court pointed out, "[w]e recognize the delicate balance between interpreting the Act too broadly, thereby running the risk that the public interest will take second seat to the interest of private individuals, and interpreting the Act too narrowly, thereby overwhelming the public officials with time consuming formalities. . . ."<sup>146</sup> It is not always feasible for both of the above-stated goals of the Illinois Open Meetings Act to be promoted at once.<sup>147</sup> As the court noted, "where the purposes of the Act cannot be promoted in harmony, priority should be given to the more dominant or overriding purpose."<sup>148</sup> Here, the more dominant purpose of the Illinois Open Meetings Act is the promotion of good business.<sup>149</sup>

*People ex rel. Hopf v. Barger*<sup>150</sup> concerned members of a municipal body having a private conversation with their attorney.<sup>151</sup> In considering whether this conversation would be in violation of the Illinois Open Meetings Act, the court reasoned:

The people's access to information is the basis of public understanding of governmental decisions so that their elected representatives will be responsive to them and under their ultimate control. But disclosure of all forms of information preliminary to decision-making may prevent

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143. *Gosnell v. Hogan*, 534 N.E.2d 434, 440 (Ill. App. Ct. 1989).

144. *Id.* at 434.

145. *Id.* at 442.

146. *Id.*

147. *Id.* at 441.

148. *Id.*

149. *Id.* at 440.

150. 332 N.E.2d 649 (Ill. App. Ct. 1975).

151. *Id.* at 653.

the efficient administration of governmental functions and thus adversely affect the public interest.<sup>152</sup>

As Representative Murphy noted in the third reading of House Bill 1332, the Illinois Municipal Clerks, the Illinois Association of School Administrators, the library districts, the City of Chicago, and the Cook County Board of Commissioners were all against the amendment which led to the conflicted issue in *Rice* because it took away freedom to do business.<sup>153</sup> If *Rice* is correct, “[c]ommunity members, employees, and even board members themselves who introduce requests for prompt action during board meetings may be disappointed or frustrated by the delay, if their matter cannot be dealt with because it was not on the official agenda.”<sup>154</sup>

With respect to whether the term “consideration” is defined as “discussion” or “action” in *Rice*, the first purpose of the Illinois Open Meetings Act is fulfilled whether the court decides “consideration” is just discussion or action because either way the “consideration” is open to the public.<sup>155</sup> The Illinois Open Meetings Act requires that both action and discussion at any meetings be open.<sup>156</sup> Since one purpose of the Illinois Open Meetings Act had been fulfilled, the second purpose of the Act should be examined to determine if it has been satisfied.

Regarding the item, *New Business*, the only requirement needing to be met is giving advance notice to the public.<sup>157</sup> Although only persuasive, cases such as the First District of Illinois’ *Argo* possibly could have reversed the thinking of the *Rice* court judges.<sup>158</sup> Since the court could conceivably have held the opposite way from the perspective of the first purpose of the Illinois Open Meetings Act, it seems logical to once again look to the second purpose of the Act to see whether it has been fulfilled.

When applying the business purpose of the Illinois Open Meetings Act to the issues of whether “consideration” should mean “taking

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152. *Id.* at 658.

153. HOUSE OF REPRESENTATIVES TRANSCRIPT OF THE DEBATE ON H.B. 1332, STATE OF ILLINOIS 88TH GENERAL ASSEMBLY 58 (Apr. 20, 1993) (statement of Rep. Murphy).

154. *Alert! Stringent New Open Meetings Act Requirements*, CORE ISSUES, LEGAL UPDATE FOR SCH. ADMIN., Feb. 2002, (newsletter from the Law Firm of Miller, Tracy, Braun, Funk & Paisley, Ltd.) (on file with Southern Illinois University Law Journal).

155. *Rice v. Board of Trustees*, 762 N.E.2d 1205, 1207 (Ill. App. Ct. 2002).

156. 5 ILL. COMP. STAT. 120/1 (1998).

157. *Rice*, 762 N.E.2d at 1207.

158. *Argo High School Council v. Argo Community High School Dist.* 217, 516 N.E.2d at 834 (Ill. App. Ct. 1987).

action,” and whether *New Business* should be an appropriate agenda item, the analysis is the same. All that needs to be asked is whether allowing “consideration” to mean taking action and allowing *New Business* to be an appropriate item on an agenda helps public bodies carry out their business. The answer is undoubtedly yes, for reasons of efficiency. A comparison can be made to the Congress of the United States of America. When one political party has the majority in both the U.S House and Senate, more bills are passed and generally more things are accomplished because the two parts of Congress are working together as a team.<sup>159</sup> However, when one political party rules the U.S. House and another political party rules the U.S. Senate, the Congress as a whole is not as efficient in bill passing because the two parties are usually fighting against each other.<sup>160</sup> The same concept can be applied to a public body in Illinois trying to get something done at some type of board meeting. The more restrictions on how and when action can be taken, the less they will be able to accomplish because those restrictions act as an opponent to business efficiency. On the other hand, if everyone was working on the same team and the *Rice* court had decided that “consideration” can mean taking action, and the item *New Business* on the agenda is appropriate to give enough advance notice to the public, the overriding business purpose of the Illinois Open Meetings Act would be fulfilled much more easily.

### C. Substantial Compliance

The *Rice* court could have also relied on the notion of substantial compliance to side with the defendants. The Illinois Open Meetings Act requires only that a public body substantially comply with its provisions.<sup>161</sup> Thus, if the *Rice* court would have taken the view that the defendants substantially complied with the provisions of the Illinois Open Meetings Act when they used the agenda item, *New Business*, then the judgment might have been different.

In *Williamson v. Doyle*,<sup>162</sup> a special city council meeting was commenced on July 9, 1981.<sup>163</sup> At this meeting, Ordinance No.

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159. Rick Valelly, *Divided They Govern*, 3 THE AMERICAN PROSPECT 11, (Sept. 1, 1992), available at <http://www.prospect.org/print/V3/11/valelly-r.html>.

160. *Id.*

161. *Argo*, 516 N.E.2d at 837; *Williamson v. Doyle*, 445 N.E.2d 385, 388 (Ill. App. Ct. 1983).

162. *Doyle*, 445 N.E.2d at 385.

163. *Id.* at 387.

0-12-81 was recommended and adopted.<sup>164</sup> Ordinance No. 0-12-81 was identical to, and was in effect a re-enactment of, the previous Ordinance No. 0-8-81, adopted at the regular meeting on May 12, 1981.<sup>165</sup> A question arose whether notice was given for the July 9, 1981, special meeting.<sup>166</sup> The plaintiffs introduced affidavits by six persons saying that they attended the meeting of July 9, 1981, and "they did not see notices of the special meeting posted at the city hall. As against this, the city clerk testified that the posting of notices posed a problem since on some occasions notices had been removed without authority."<sup>167</sup> In the court's ruling it stated, "we are impelled to classify this type of violation as inconsequential and strictly technical. In our opinion, the law was substantially complied with."<sup>168</sup>

A court could reasonably conclude the defendants in *Rice* substantially complied with the provisions of the Illinois Open Meetings Act. The board did have an agenda posted for the meeting.<sup>169</sup> The board even had the term, *New Business*, listed on the agenda to show there was a possibility that something new might come up that called for action at that particular meeting.<sup>170</sup> The court found in the record other agendas dated September 8, 1998, and October 13, 1998, which were, in appearance, nearly identical to the agenda in question.<sup>171</sup> Thus, the public had been given notice at least two months prior that *New Business* might be a possible item on the agenda.<sup>172</sup> Mr. Heidbreder did not just stand up at a random time during the meeting and state, "there is another resolution present."<sup>173</sup> He did so when the meeting had gotten down to *New Business* on the agenda.<sup>174</sup> The *Rice* defendants took many steps to provide that notice would be given to the public.<sup>175</sup> Therefore, the *Rice* court could have ruled in favor of the defendants if they applied the notion of substantial compliance.

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164. *Id.* (Ordinance No. 0-12-81 was a utility tax ordinance.).

165. *Id.*

166. *Id.*

167. *Id.* at 388.

168. *Id.*

169. *Rice v. Board of Trustees*, 762 N.E.2d 1205, 1206 (Ill. App. Ct. 2002).

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

## D. The Future

Taking all these factors into consideration, even if justification could be found in favor of the *Rice* court's ruling, future problems may still arise because of the court's lack of discussion behind its reasoning. The legislature gave Illinois an Open Meetings Act that undoubtedly contained some ambiguity.<sup>176</sup> Thus, the job of the court should be to interpret the legislature and give the people of the State of Illinois as much help as possible in determining what they can and cannot do under the Act. The *Rice* opinion consists of approximately three pages.<sup>177</sup> Perhaps the court should have spent a little bit more time explaining its rationale to help avoid future confusion in cases dealing with similar issues. The *Rice* court's failure to provide reasoning creates uncertainty and will lead to additional litigation, in addition to possible legislative inefficiency. This missed opportunity will undoubtedly lead to delays and loss of money as Illinois public bodies have to hold extra meetings for issues that arise but are not on the posted agenda.

One question *Rice* does not answer is whether a public body can take action on items in emergency meetings and, if so, what procedures should be followed. Section 2.02(a) of the Illinois Open Meetings Act does suggest that notice of an emergency meeting needs to be given "as soon as practicable."<sup>178</sup> The Illinois Open Meetings Act is not clear as to whether an agenda is needed for an emergency meeting, however.<sup>179</sup> In the May 2002 *Law Pulse* edition of the *Illinois Bar Journal*, one practitioner advised, "the public body might end its regular meeting and announce that an emergency meeting will be convened in order to take the needed action."<sup>180</sup> The 1973 Illinois Appellate Court case, *Illinois State Toll Highway Authority v. Karn*,<sup>181</sup> involved an emergency meeting in which the plaintiff's board of directors adopted a resolution to construct the East-West Extension of the Northern Illinois Toll Highway.<sup>182</sup> The plaintiff posted a copy of the notice of this November

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176. *People ex rel. Difanis v. Barr*, 397 N.E.2d 895, 899 (Ill. App. Ct. 1979); 5 ILL. COMP. STAT. 120/1-6 (2002).

177. *Rice*, 762 N.E.2d at 1205.

178. 5 ILL. COMP. STAT. 120/2.02(a) (2002).

179. *Id.*

180. Gunnarsson, *supra* note 72, at 230.

181. 293 N.E.2d 162 (Ill. App. Ct. 1973).

182. *Id.* at 165.

27 emergency meeting on the main bulletin board of its principal office in Oak Brook, Illinois, and supplied copies to all local newspapers and to other news media which had requested it.<sup>183</sup> The court held this notice to be sufficient.<sup>184</sup> The agenda requirement of the Illinois Open Meetings Act did not come into being until 1995.<sup>185</sup> *Karn* was decided in 1973.<sup>186</sup> Thus, *Karn* would not totally clear up the post-*Rice* dilemma of whether an emergency meeting requires an agenda, but it does provide a small safety net for public bodies in Illinois who hold such a meeting without an agenda.

The true answer to the question of whether a public body can hold an emergency meeting without an agenda may be found by looking to jurisdictions other than Illinois. Although only persuasive, *Eastwold v. Garsaud*<sup>187</sup> revolves around an open meeting statute with similar language to that of Illinois' Open Meeting Act.<sup>188</sup> Both states' Sunshine Laws require an agenda for regular meetings of public bodies.<sup>189</sup> Section 2.02(a) of the Illinois Open Meetings Act contemplates that notice of emergency meetings should be given "as soon as practicable."<sup>190</sup> The notice section of the Louisiana Open Meetings Act<sup>191</sup> provides notice of an emergency meeting should be given as the public body "deems appropriate and circumstances permit."<sup>192</sup> An agenda is one way to give notice of a meeting. The *Eastwold* court held, "the posting of the notice without the agenda in two locations in the city hall" was sufficient for the emergency meeting in controversy.<sup>193</sup> Applying this persuasive ruling to Illinois would suggest that public bodies might not need to have an agenda for emergency meeting in order to comply with the requirements of the Illinois Open Meetings Act.

Another question that may arise as a result of the ruling in *Rice* is whether final action on an item not specifically addressed in the regular meeting agenda can be taken in an open meeting after a closed

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183. *Id.*

184. *Id.* at 166.

185. 5 ILL. COMP. STAT. 120/2.02(a) (2002); *see supra* Part II.C.

186. *Karn*, 293 N.E.2d at 162.

187. 427 So.2d 48 (La. Ct. App. 1983).

188. *Id.* at 50.

189. LA. REV. STAT. ANN. § 42:7 (West 1990); 5 ILL. COMP. STAT. 120/2.02(a) (2002).

190. 5 ILL. COMP. STAT. 120/2.02(a) (2002).

191. LA. REV. STAT. ANN. § 42:1-13 (West 1990).

192. *Id.* § 42:7.

193. Jay M. Zitter, Annotation, *Emergency Exception Under State Law Making Proceedings by Public Bodies Open to the Public*, 33 A.L.R.5th 731, 753 (1995).

session.<sup>194</sup> In *Gosnell*, the court held that the Illinois Open Meetings Act did not require notice in the agenda of topics to be considered in closed session.<sup>195</sup> The court noted only subjects specified in the vote to close may be considered during the closed session.<sup>196</sup>

What the court did not discuss, which now becomes a question after the ruling in *Rice* is whether a public body can vote in open session on something discussed in closed session. The Illinois Open Meetings Act prohibits “final action” in a closed session.<sup>197</sup> For example, in *Jewell v. Board of Ed.*,<sup>198</sup> the plaintiff, Sue Jewell, was employed by the defendant, the Board of Education of Community Unit School District No. 300, Perry County, Illinois, as a guidance counselor.<sup>199</sup> On March 25, 1971, the defendant board went into closed session to talk about whether or not the plaintiff would be rehired.<sup>200</sup> The board unanimously decided the plaintiff should not be rehired and prepared a motion in accordance with this conclusion.<sup>201</sup> Upon returning to open session, a roll call vote was taken and the motion not to rehire the plaintiff passed.<sup>202</sup>

In *Jewell*, the issue was whether the motion prepared in closed session violated the Illinois Open Meetings Act rule about not taking final action in closed session.<sup>203</sup> The reason the legislature wanted final action taken in public, logically, can be linked to the first purpose of the Illinois Open Meetings Act requiring public bodies to conduct their deliberations and take their actions openly.<sup>204</sup> In fact, the true legislative intent was to allow closed meetings only when absolutely necessary for this very reason.<sup>205</sup> The *Jewell* court ruled that making the

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194. Mark Schuster, *Sunshine in Meetings*, 5 (2002) (unpublished handout distributed at Illinois Township Attorneys Association seminar) (on file with Southern Illinois University Law Journal). A closed session is a meeting not open to the public. 5 ILL. COMP. STAT. 120/2a (2002). At any open meeting of a public body for which proper notice under the Illinois Open Meetings Act has been given, the body may have a closed meeting. *Id.* A public body may have a closed meetings only for exceptions to the open meeting rule enumerated in subsection (c) of section 2 of the Illinois Open Meetings Act. *Id.* § 2.

195. *Gosnell v. Hogan*, 534 N.E.2d 434, 444 (Ill. App. Ct. 1989).

196. *Id.*

197. 5 ILL. COMP. STAT. 120/2 (2002); *Jewell v. Bd. of Educ.*, 312 N.E.2d 659, 662 (Ill. App. Ct. 1974).

198. *Jewell*, 312 N.E.2d at 659.

199. *Id.* at 660.

200. *Id.* at 661.

201. *Id.*

202. *Id.*

203. *Id.* at 662.

204. 5 ILL. COMP. STAT. 120/1 (2002).

205. *People ex rel. Ryan v. Villa Park*, 570 N.E.2d 882, 886 (Ill. App. Ct. 1991).

motion was not final action and, thus, not in violation of the Illinois Open Meetings Act.<sup>206</sup> However, the issue of whether the roll call vote would be allowed under the Illinois Open Meetings Act because it was not placed on the agenda was not raised.<sup>207</sup> Once again, the agenda requirement of the Illinois Open Meetings Act was not enacted until 1995, and this case was decided in 1974.<sup>208</sup> Thus, this explains the lack of such an issue in the case. However, very few Illinois cases after the 1995 amendment deal with the issue of whether a public body can vote in open session on an item discussed in closed session but not specifically addressed in the meeting's agenda. As a result of the ruling in *Rice*, subsequent courts might have to decide this very important new question.

The Illinois legislature could lessen the confusion over *Rice* by amending the Illinois Open Meetings Act to define "consideration." This is unlikely to occur, however because Illinois courts recognize the legislature would be unable to predict every conceivable interpretation of a statute and codify the language of those numerous interpretations.<sup>209</sup> As the court in *People ex rel. Difanis v. Barr*<sup>210</sup> stated:

No law can be so clear and extensive that it will provide in advance for all cases that may arise. We must tolerate at least a modicum of ambiguity and uncertainty, because the prescience of even the most ingenious drafters is finite. The human imagination is limited, and the variety of circumstances great: the meaning of a statute is honed on the cases that are not anticipated but do arise.<sup>211</sup>

Until the Illinois legislature decides to clarify the Illinois Open Meetings Act or another Illinois court overrules *Rice*, the notice standards set forth by *Rice's* holding are what public bodies in Illinois must tolerate. After all, any person who violates any provision of the Illinois Open Meetings Act is guilty of a Class C misdemeanor.<sup>212</sup> Thus, as the Illinois Association of School Boards recently suggested in its March, 2002, News Bulletin, public bodies in Illinois "should limit board action to published agenda topics."<sup>213</sup> It is better to be safe

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206. *Jewell*, 312 N.E.2d at 662.

207. *Id.*

208. *Id.* at 659; 5 ILL. COMP. STAT. 120/2.02(a) (2002).

209. *People ex rel. Difanis v. Barr*, 397 N.E.2d 895, 900 (Ill. App. Ct. 1979).

210. *Id.* at 895.

211. *Id.* at 900.

212. 5 ILL. COMP. STAT. 120/4 (2002); see *supra* Part II.A.

213. *Ruling May Limit Local Board Voting to Items on Agenda*, SCH. BD. NEWS BULL., (Mar. 2002), <http://www.iasb.com/files/nb0302.htm#a5>.



than sorry. Even though the *Rice* court's ruling may make Illinois public bodies' jobs harder, it is now the law of the land until further notice.

#### V. CONCLUSION

Since its inception, the ambiguity encompassed in the Illinois Sunshine Laws has led to uncertainty concerning the level of notice public bodies need to give the public for meetings. Illinois courts should take the lead in trying to clear up some of the confusion involving this rather important administrative statute. However, rather than helping to resolve some of the remaining questions about the Illinois Open Meetings Act, the *Rice* court actually seems to add a few of its own. Instead of shedding light on the notice requirements set out in section 2.02(a) of the Illinois Open Meetings Act, the *Rice* court conversely creates a large shadow.

The township board meeting is finally winding down after a long night of debate.<sup>214</sup> The board supervisor as chairman of trustees courageously asks, "Is there any *New Business*?" The female member of the crowd jumps up and proposes the board should vote that the township be sprayed for mosquitoes that carry the West Nile Virus. The chairman confers with the rest of the board, and after some discussion with the audience makes a motion that a vote should be taken on the mosquito spraying matter. The motion is seconded. The vote is taken. The issue passes by a majority vote of the township board, and a committee is formed to accept bids for the planned spraying of the mosquitoes.

The result in this situation is the ideal outcome for any public body's meeting in Illinois. Public officials are in office to serve the public. Both the public and public officials want matters to be resolved as quickly and as pain-free as possible. Unfortunately, due to the *Rice* court ruling, the happy ending depicted above will most likely become a trend of the past.

If the *Rice* court had given more reasoning supporting its decision perhaps public officials in Illinois would have a better understanding of the notice requirements of the Illinois Open Meetings Act. Instead, by applying narrow rules of statutory interpretation, the *Rice* court lays down its ruling without much discussion about why it did so. By

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214. *See supra* p. 175.

looking at those same principles of statutory interpretation more broadly and considering other factors such as public business efficiency, substantial compliance with the Illinois Open Meetings Act, and future problems, it is apparent the exact opposite ruling would have been more fitting. A public body's agenda item, *New Business*, should be allowed to stand as giving enough advance notice for new issues presented for the first time at meetings. In addition, in the context of section 2.02(a) of the Illinois Open Meetings Act, the term, "consideration," should not only include discussing agenda items, but also taking action on them.