



**OFFICE OF THE ATTORNEY GENERAL**  
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**Jim Ryan**  
ATTORNEY GENERAL

FILE NO. 03-002

MEETINGS:  
Restrictions on Public  
Access to Meetings of the  
Prisoner Review Board

Ms. Anne R. Taylor  
Chairman  
Prisoner Review Board  
319 East Madison Street, Suite A  
Springfield, Illinois 62701

Dear Ms. Taylor:

I have your letter wherein you inquire whether the Prisoner Review Board may amend its rules for the conduct of adult parole hearings (20 Ill. Adm. Code 1610.10 et seq. (January 1, 2002)) to authorize the Board or its chairman to restrict or deny public access to an otherwise open parole hearing in order to ensure the safety of the Prisoner Review Board members, without violating the provisions of the Open Meetings Act (5 ILCS 120/1 et seq. (West 2000)). For the reasons hereinafter stated, it is my opinion that the proposed changes to the Prisoner Review Board's rules are generally consistent with the provisions of the

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Open Meetings Act and the other pertinent statutory provisions, provided: (1) that any decision to limit or deny access to Prisoner Review Board hearings should be made by the Board or a panel thereof acting as a body, not unilaterally by the chairman; and (2) that a live audio or video feed to broadcast the proceedings of a parole hearing is limited to those circumstances where safety or security concerns so require.

The establishment and appointment of the Prisoner Review Board was authorized by Public Act 80-1099, effective February 1, 1978 (now codified at 730 ILCS 5/3-3-1 et seq. (West 2000)), which provided, in part, that it is the duty of the Prisoner Review Board to "\* \* \* set[ ] conditions for parole and mandatory supervised release under Section 5-8-1(a) of this Code \* \* \*". (730 ILCS 5/3-3-2 (West 2000).) To assist in carrying out its duties, the General Assembly has provided that the Prisoner Review Board "\* \* \* shall promulgate rules for the conduct of its work \* \* \*". (730 ILCS 5/3-3-2(d) (West 2000).) The General Assembly has also enacted the Open Parole Hearings Act (730 ILCS 105/1 et seq. (West 2000)) to address issues that may arise during, and which are unique to, the Prisoner Review Board's conduct of parole hearings. Section 30 of the Open Parole Hearings Act (730 ILCS 105/30 (West 2000)) grants the

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Prisoner Review Board the authority to "\* \* \* develop rules in accordance with this Act."

Pursuant to its grants of statutory authority, the Prisoner Review Board (hereinafter referred to as the "Board") has promulgated rules for the conduct of parole hearings. (See 3 Ill. Reg. 1, p. 144, effective December 31, 1978; codified at 8 Ill. Reg. 1, p. 211 (1984).) The Board's rules address, inter alia, general administrative issues (20 Ill. Adm. Code 1610.10 (January 1, 2002)) and the procedures to be followed by parole release panels. (20 Ill. Adm. Code 1610.40 (January 1, 2002).) With respect to administrative issues, the Board's rules state that "[f]ull administrative authority for conducting the business of the \* \* \* Board shall be vested in the Chairman, including but not limited to the time and place of assignments, time and place of Board conferences, opening and adjournment times of Board meetings, caucuses and conferences, and such other general administrative powers as shall be necessary to effectively carry out the work of said Board." (20 Ill. Adm. Code 1610.10(b)(1) (January 1, 2002).) In addition, the Board is authorized to "\* \* \* meet and order its actions in panels for purposes of granting and revoking parole." (20 Ill. Adm. Code 1610.10(c)(1) (January 1, 2002).)

Similarly, 20 Ill. Adm. Code 1610.40 (January 1, 2002) addresses the conduct of adult parole hearings, providing, in pertinent part:

" \* \* \*

b) Parole Release Panels

1) General Considerations. The Board shall schedule hearings at the various institutions and facilities each month. Panels of at least three members of the Board will consider those cases of persons whose names appear on the respective hearing dockets. At least one member of the panel shall interview the inmate and hear any witnesses. The decision to grant or deny parole requires the action of a panel of at least three members of the Board. The decision to release on parole requires the affirmative vote of a simple majority of the members participating in the vote.

2) Evidence. The Board is not bound by strict rules of evidence in the conduct of a parole release hearing and will consider all evidence presented, so long as the evidence is not cumulative, repetitive or inherently unreliable (as, for example, would be testimonials of Department of Corrections employees who are not authorized to make parole recommendations) and so long as it has some relevance to the parole release decision, as described in Section 1610.50.

3) Presiding Member. One member of the panel will be designated to act as presiding member for each parole hearing. The presiding member will administer an oath or affirmation to the inmate and any witnesses, conduct the inmate interview, examine any witnesses and rule on evidentiary matters and objections. In addition, any other members

present may question the inmate and witnesses. When fewer than all members who will participate in the release decision are present at the hearing, the presiding member will orally summarize the hearing for their benefit prior to a vote on the question of release. Where a case is not decided on the same day as the hearing, the presiding member shall prepare a written summary for use by the other members.

\* \* \*

c) Appearances. The Parole Release Panel shall consider the testimony of persons who appear at the parole release hearing under Board guidelines, in accord with Section 1610.30, unless the presiding member determines that the witness can provide no information which is relevant to the hearing or that the testimony would be merely repetitive or cumulative. Any testimony may be offered in the form of a personal appearance or written statements. Where Department of Corrections security considerations bar personal appearances within the institution, the witness may submit written testimony or may testify orally at the Springfield Office of the Board or at some other designated location.

\* \* \*

d) Conference. Following the hearing the Parole Release Panel shall adjourn into a conference. In conference the Panel will discuss all evidence and testimony received and will exchange views concerning the weight and credibility to be given the evidence considered, prior to entering the decision phase.

\* \* \*

"

You have stated that although the Open Meetings Act expressly authorizes the Board to hold closed meetings when deliberating on its decisions (see 5 ILCS 120/2(c)(18) (West 2000)), the Board has traditionally granted the public access to its deliberations regarding parole release requests. Recently, however, the number of people attending the Board's parole release hearings has increased, and there have been concerns expressed regarding the physical safety of the Board members, primarily because of the frustration voiced by the family members of defendants who have repeatedly been denied release by the Board. Therefore, the Board has drafted a proposed amendment to its administrative rules which provides:

" \* \* \*

**Open Meetings Act.** Upon a motion and a majority vote of the Prisoner Review Board members present, the en banc meetings of the Prisoner Review Board deliberations on the decisions of whether to grant or deny parole shall be closed to the public pursuant to 5 ILCS 120/2[(c)](18) of the Open Meetings Act. If the Prisoner Review Board does not vote to close the deliberations of the en banc meeting, then the Chairman, after considering the safety and security of the Prisoner Review Board, can provide other methods to monitor the en banc meetings including but not limited to: limiting the number of persons who can be present, allowing cameras, monitors, radios, tape recorders and other recording devices to be present. The chairman can also

provide that there be a live audio and/or video feed to another location[.]

\* \* \*

"

(Emphasis added.)

Under the proposed rule, the Board anticipates four particular types of action: (1) closing a meeting pursuant to the provisions of subsection 2(c)(18) of the Open Meetings Act (5 ILCS 120/2(c)(18) (West 2000)) to deliberate on requests for parole; (2) limiting the number of persons who may attend an open parole hearing for safety and security reasons; (3) allowing cameras, monitors, radios, tape recorders and other recording devices into a parole hearing; and (4) providing a live audio or video feed of the parole hearing proceedings to another location. You have inquired whether these proposed administrative rule changes are consistent with the provisions of the Open Meetings Act and the Open Parole Hearings Act (730 ILCS 105/1 (West 2000)).

It is well established that administrative agencies possess only those powers that are expressly granted to them by statute, together with those powers that may be implied necessarily therefrom to effectuate the powers which have been granted. (Lake County Board of Review v. Property Tax Appeal Board (1988), 119 Ill. 2d 419, 427; Illinois Bell Telephone Co. v. Illinois Commerce Comm'n (1990), 203 Ill. App. 3d 424, 438.) As quoted

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above, subsection 3-3-2(d) of the Unified Code of Corrections grants the Board the authority to promulgate rules for the conduct of its business. Similarly, section 30 of the Open Parole Hearings Act (730 ILCS 105/30 (West 2000)) authorizes the Board to develop rules in accordance with the provisions of that Act. Thus, the Board clearly possesses the requisite authority to adopt administrative rules. It must also be determined, however, whether the revisions contained in the proposed amendment to the Board's rules are consistent with the provisions of the Open Meetings Act and the Open Parole Hearings Act.

You have inquired, firstly, regarding the propriety of that part of the proposed amendment providing that "\* \* \* [u]pon a motion and a majority vote of the Prisoner Review Board members present, the en banc meetings of the Prisoner Review Board deliberations on the decisions of whether to grant or deny parole shall be closed to the public pursuant to 5 ILCS 120/2 [(c)](18) of the Open Meetings Act". The principal mandate of the Open Meetings Act is found in subsection 2(a) of the Act (5 ILCS 120/2(a) (West 2000)), which provides that "\* \* \* [a]ll meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." As referenced in the proposed rule change, subsection 2(c)(18) of



the Open Meetings Act expressly authorizes the Board to hold closed meetings in limited circumstances:

" \* \* \*

(c) Exceptions. A public body may hold closed meetings to consider the following subjects:

\* \* \*

(18) Deliberations for decisions of the Prisoner Review Board.

\* \* \*

"

The primary purpose of statutory construction is to ascertain and give effect to the intent of the General Assembly. (In re Marriage of Kates (2001), 198 Ill. 2d 156, 163.) Legislative intent is best evidenced by the language used in the statute. (Yang v. City of Chicago (2001), 195 Ill. 2d 96, 103.) Where statutory language is clear and unambiguous, it must be given effect as written. In re Consolidated Objections to Tax Levies of School District No. 205 (2000), 193 Ill. 2d 490, 496.

Assuming that the meeting is closed in accordance with the provisions of section 2a of the Open Meetings Act (5 ILCS 120/2a (West 2000)), subsection 2(c)(18) of the Open Meetings Act clearly authorizes the Board to hold a closed meeting to deliberate on decisions concerning whether to grant or deny a parole request. Similarly, section 15 of the Open Parole Hearings Act.

(730 ILCS 105/15 (West 2000)) permits the Board to exclude certain persons from parole hearings or to close a meeting altogether to consider testimony or information bearing upon a decision to grant or deny parole:

" \* \* \*

(a) The [Prisoner Review] Board may restrict the number of individuals allowed to attend parole or parole revocation hearings in accordance with physical limitations, security requirements of the hearing facilities or those giving repetitive or cumulative testimony.

(b) The Board may deny admission or continued attendance at parole or parole revocation hearings to individuals who:

(1) threaten or present danger to the security of the institution in which the hearing is being held;

(2) threaten or present a danger to other attendees or participants; or

(3) disrupt the hearing.

(c) Upon formal action of a majority of the Board members present, the Board may close parole and parole revocation hearings in order to:

(1) deliberate upon the oral testimony and any other relevant information received from applicants, parolees, victims, or others; or

(2) provide applicants and parolees the opportunity to challenge information other than that which if the person's identity were to be exposed would possibly sub-

ject them to bodily harm or death, which they believe detrimental to their parole determination hearing or revocation proceedings." (Emphasis added.)

Consequently, it is my opinion that the proposed rule change setting forth the circumstances under which the Board may close a meeting to the public simply incorporates into the Board's rules the provisions of subsection 2(c)(18) of the Open Meetings Act and subsection 15(c)(1) of the Open Parole Hearings Act, and is therefore consistent with those provisions.

Secondly, the amendments would authorize the chairman of the Board to limit the number of persons who may attend a parole hearing for safety and security purposes. In this regard, the proposed rule provides that if the Board does not vote to close its deliberations on a petition for parole, "\* \* \* then the Chairman after considering the safety and security of the Prisoner Review Board can \* \* \* limit \* \* \* the number of persons who can be present \* \* \*". Nothing in the provisions of the Open Meetings Act specifically authorizes the Board or any public body to limit the number of people who may attend an open meeting. As quoted above, however, subsection 15(a) of the Open Parole Hearings Act does provide that "[t]he Board may restrict the

number of individuals allowed to attend parole \* \* \* hearings in accordance with physical limitations \* \* \* [and] security requirements of the hearing facilities \* \* \*." (Emphasis added.)

The provisions of subsection 15(a) of the Open Parole Hearings Act, being specific and applicable only to such proceedings, will be considered an implied exception to the general principle that the public must be admitted to open meetings of public bodies without limitation. The proposed amendment to the rules, however, contemplates unilateral action by the chairman of the Board to restrict attendance. This is inconsistent with the plain language of subsection 15(a) of the Act. Thus, it is my opinion that the proposed rule change authorizing limiting the number of persons who may be present at parole hearings for safety and security reasons should vest that power in the Board or the panel thereof conducting the hearing, rather than in the chairman of the Board.

The Board has also proposed a rule change allowing cameras, monitors, radios, tape recorders and other recording devices to be present at a parole hearing. Nothing in the provisions of the Open Parole Hearings Act addresses the use of recording devices at parole hearings. Section 2.05 of the Open Meetings Act (5 ILCS 120/2.05 (West 2000)), however, provides:

"Subject to the provisions of 'An Act in relation to the rights of witnesses at proceedings conducted by a court, commission, administrative agency or other tribunal in this State which are televised or broadcast or at which motion pictures are taken', approved July 14, 1953, as amended, any person may record the proceedings at meetings required to be open by this Act by tape, film or other means. The authority holding the meeting shall prescribe reasonable rules to govern the right to make such recordings.

\* \* \*

"

(Emphasis added.)

Under section 2.05 of the Open Meetings Act, "any person may record the proceedings of a meeting required to be open" under the provisions of the Act, except as provided in section 8-701 of the Code of Civil Procedure (735 ILCS 5/8-701 (West 2000)), which provides that no witness can be compelled to testify in a proceeding if the testimony is to be broadcast or televised or if motion pictures will be taken of his or her testimony. Recordings may be made using "tape, film or other means." Absent a vote pursuant to section 2a of the Open Meetings Act to go into a closed meeting for purposes of deliberating on parole decisions or a determination pursuant to section 15 of the Open Parole Hearings Act to restrict access to a parole hearing, the Board is to conduct its meetings openly. The recording devices set forth in the proposed rule change would all appear to use "tape, film or other means." Consequently, it is

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my opinion that the proposed amendment essentially incorporates into the Board's rules the general requirements of section 2.05 of the Open Meetings Act permitting the recording of open meetings of public bodies, except to the extent limited by section 8-701 of the Code of Civil Procedure.

Lastly, the Board proposes using a live audio or video feed to broadcast its parole hearings to another location. In reviewing the information you have provided, it is unclear whether the Board intends to use a live audio or video feed to a separate location only where there are security or space issues involved or whether the Board proposes using a live audio or video feed broadcast to another location in lieu of permitting access to a meeting, thus requiring members of the public to utilize the alternative facility in order to "attend" a parole hearing. Neither the Open Meetings Act nor the Open Parole Hearings Act expressly authorizes public bodies generally, or the Prisoner Review Board specifically, to use a live audio or video feed to conduct a meeting. However, in Freedom Oil Co. v. Pollution Control Board (1995), 275 Ill. App. 3d 508, the appellate court concluded that public bodies may conduct meetings by telephone conference call without violating the provisions of the Open Meetings Act, noting:

" \* \* \*

When it comes to executing its official duties, an administrative agency is given discretion to accomplish its purpose. While it is a creature of statute, no specific statutory authority to conduct telephone conference meetings is required. [Citations.] The Board has specific authority to conduct meetings which must comply with the Open Meetings Act, and that act does not prohibit telephone conferences.

\* \* \* "

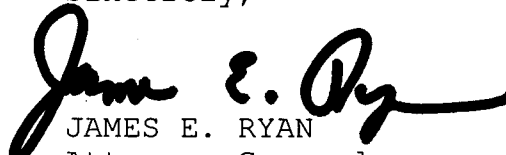
Consequently, it is my opinion that the Board may use a live audio or video feed to broadcast a meeting to another location in the appropriate circumstances. That does not mean that the Board can elect to substitute remote viewing for the opportunity to be physically present at a parole hearing, however.

Section 2.01 of the Open Meeting Act (5 ILCS 120/2.01 (West 2000)) requires that "[a]ll meetings required by this Act to be public shall be held at specified times and places which are convenient and open to the public. \* \* \*" (Emphasis added.) In addition, under the Open Parole Hearings Act, the Board may deny admission to a parole hearing only to individuals who pose a security threat or who are a disruption to the proceedings. For the Board to establish a procedure whereby members of the public may "attend" prisoner review board meetings only by listening to

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an audio feed or by viewing a video feed broadcast to another location would be inconsistent with the provisions and spirit of both the Open Meetings Act and the Open Parole Hearings Act. Therefore, it is my opinion that although the Board may utilize a live audio or video feed to broadcast the proceedings of a parole hearing to another location, it cannot, as a matter of procedure, restrict members of the public to "attending" a hearing at an alternative location, except where security or safety concerns so require and where the provisions of the Open Meetings Act are otherwise complied with. Therefore, the proposed rule change authorizing a live audio or video feed to be broadcast to another location should be revised to reflect these limited circumstances.

Sincerely,

  
JAMES E. RYAN  
Attorney General