

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

JENNY THORNLEY,

Plaintiff,

v.

Case No.: 2020CH000063

ILLINOIS STATE POLICE MERIT
BOARD,

Defendant.

COMPLAINT

Now comes Plaintiff, Jenny Thornley, by Carl Draper of Feldman Wasser and Donald M. Craven of Donald M. Craven P.C., and for her Complaint against the Illinois State Police Merit Board states as follows:

1. Plaintiff is a resident of Sangamon county Illinois, and is an employee of the Defendant, Illinois State Police Merit Board (hereinafter Board).
2. Defendant Board is a public body, created by statute, (20 ILCS 2610/3) and is a public body subject to the Illinois Open Meetings Act.
3. Plaintiff reported allegations of a physical sexual assault and other ethical misconduct against the Executive Director of the Board, Jack Garcia, The formal complaints were submitted to the Office of the Executive Inspector General for the State of Illinois on or about January 30, 2020 and to the Illinois Department of Human Rights on January 27, 2020.

4. The Board became aware of these allegations of misconduct on or before February 2, 2020.
5. On February 4, 2020, at 12:00 p.m. (Noon), the Board posted a notice and agenda of an emergency meeting to be held at 3:00 p.m. that same day.
6. That notice and agenda were posted, according to the Board, at the Board's office in Springfield, at the Thompson Center in Chicago, and on the Board's website. The notice and agenda, as they appear on the Board's website, are attached hereto as Exhibit A.
7. On Information and belief, there was no bona fide emergency faced by the Board on February 4.
8. On February 13, Plaintiff received a letter from the Board, attached hereto as Exhibit B.
9. From the face of that letter, it appears that at its meeting on February 4, the Board purportedly appointed Mr. Dykstra as the Acting Executive Director of the Board, although that item does not appear on the Agenda posted by the Board.
10. From the face of that letter, it appears that at its meeting on February 4, the Board purportedly retained the services of MaguireWoods (a law firm) to investigate the complaint of misconduct which Plaintiff had lodged against the Board's Executive Director. That complaint of misconduct and been lodged

not with the Board, but with the Office of the Inspector General of the State of Illinois, an independent agency designed to investigate allegations of wrongdoing by state employees. No item on the agenda makes reference to the Board retaining a law firm for any purpose.

11. A public body is required to list all action items on an agenda for a regular, special or emergency meeting:

(c) Any agenda required under this Section shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting. The public body conducting a public meeting shall ensure that at least one copy of any requested notice and agenda for the meeting is continuously available for public review during the entire 48-hour period preceding the meeting. Posting of the notice and agenda on a website that is maintained by the public body satisfies the requirement for continuous posting under this subsection (c).

5 ILCS 120/2.02(c).

There are no other meeting minutes or agendas on the Board website with items related to the appointment of Mr. Dykstra or retaining Maguire Woods.

12. The Fourth District Appellate Court has affirmed a decision of the trial court, setting aside action taken by a public body when an item has not been listed on the agenda:

The Act references the "actions of public bodies" and, in a separate reference, "their deliberations," and also "business * * * discussed" and, in a separate reference, business "acted upon." We find "the consideration of" items not specifically set forth in the agenda to be in the nature of deliberations and discussion and not actions taken.

Rice v. Bd. of Trustees of Adams Cty., Ill., 326 Ill. App. 3d 1120, 1123, 762 N.E.2d 1205, 1207 (2002) attached hereto for the court's convenience).

13. In addition to the agenda requirements of the Act, it appears that the Board also violated section 120/2 of the act, requiring that final action be taken in an open meeting.

(e) Final action. No final action may be taken at a closed meeting. Final action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted.

5 ILCS120/2

14. Injunctive relief is specifically authorized by the Open Meetings Act, and actions for an injunction against violations of the Act are subject to truncated pleading requirements.

However, an exception to this burden (the well-recognized four elements necessary for injunctive relief) exists where injunctive relief is expressly authorized by statute. *Postma v. Jack Brown Buick, Inc.*, 157 Ill.2d 391, 400, 193 Ill. Dec. 166, 626 N.E.2d 199, 204 (1993). This exception is limited—it applies only where either (1) injunctive relief is provided “for public officials to use in enforcing” the statute or “to afford citizens a private right of action to restrain public officials from” violating a statute defining official duties or powers; or (2) “even an isolated violation” of the statute is presumed to cause irreparable harm to the public. *Id.* In such cases, the plaintiff must allege and show only that (1) the defendant has violated the statute and (2) the plaintiff has standing—“there is no necessity to prove irreparable damage or the absence of an adequate remedy at law.”

Roxana Cmty. Unit Sch. Dist. No. 1 v. WRB Ref., LP, 2012 IL App (4th) 120331, ¶ 24, 973 N.E.2d 1073, 1080

15. The injunctive power of the Court, upon a finding of a violation of the Open Meetings Act extends beyond any meetings relating to the subject matter of the Complaint. The court has the authority to enjoin all meetings of that public body:

Accordingly, when a public body is called into court to defend claims that it violated the Open Meetings Act, the trial court has jurisdiction to enjoin any future meetings of that public body that are likely to violate the statute, regardless of whether the matters discussed at those meetings affect the plaintiffs or any other named party.

Roxana Cmty. Unit Sch. Dist. No. 1 v. WRB Ref., LP, 2012 IL App (4th) 120331, ¶ 32, 973 N.E.2d 1073, 1082.

16. To assist the Court in its determination of complaints of violations of the Open Meetings Act, the Act requires that a verbatim record of all closed meetings be maintained by the Board and made available to the Court for an in-camera review.

WHEREFORE, Plaintiff prays that this Court enter an Order as follows:

1. Declaring that the Board violated the Open Meetings Act as follows:
 - a. By holding an emergency meeting on February 4, 2020, in the absence of a bona fide emergency.
 - b. By taking final action to appoint Mr. Dykstra as Acting Executive Director in the absence of an agenda item to allow final action.

c. By taking final action to retain MaguireWoods to investigate a complaint filed with the OEIG, in the absence of an agenda item to allow final action.

2. Ordering the defendant board to produce to this court the verbatim record of the closed meeting held on February 4, 2020 as required by 5 ILCS 120/2.06(a) for in camera inspection.

3. Declaring void all action taken at the February 4, 2020 meeting of the Board and enjoining all future meetings of the Board, pending further order of this Court.

JENNY THORNLEY,
Plaintiff,

By: /s/ Carl R. Draper
Carl R. Draper, #03128847
FeldmanWasser
1307 S. Seventh Street
Springfield, IL 62705
217-544-3403
cdraper@feldman-wasser.com

and

Donald M. Craven
1005 N 7th Street
Springfield, IL 62702
217-544-1777
dmcraven@aol.com