

## **Legal Alert: 501(c)(3) and 501(c)(6) Organizations, Should Your Meetings and Records Be Open to the Public?**

In order to provide for transparency of public business, the Illinois Open Meetings Act (OMA) requires "public bodies" to hold open meetings, and provide proper notice of those meetings. OMA's definition of a "public body" includes "all...bodies of the [government], and all other municipal corporations, boards, bureaus, committees or commissions of this State, and any subsidiary bodies of any of the foregoing... which are supported in whole or in part by tax revenue, or which expend tax revenue" <sup>1</sup>.

While bodies like private, not-for-profit organizations are not generally covered under OMA, many charities and neighborhood chambers of commerce who receive significant government funding (tax revenue) worry that they will be considered a "subsidiary body" of the government, and therefore subjected to the requirements of OMA.

The act itself does not define what constitutes a "subsidiary body", but Illinois has developed a test for determining when private, non-profit organizations are considered "subsidiary bodies" and therefore governed by OMA.

### **The Rockford Test<sup>2</sup>**

In 1976, the Northern Illinois Council on Alcohol and Drug Dependence (NICADD) excluded a Rockford Newspapers, Inc. reporter from a meeting. Rockford Newspapers, Inc. sued NICADD for violating OMA. The newspaper argued that the Open Meetings Act applied to NICADD because 90% of its funding came from government, and the government regulated their activities and programs.

The court ruled that the amount of funding from the government alone was not enough to make a private, non-profit organization a government subsidiary. The court stated it would look at the following list of factors, now known as the *Rockford* test, to determine if an entity was a subsidiary body and subject to the Open Meetings Act:

1. The legal nature of the entity;
2. The independence of the Board of Directors and the employees from direct government control;
3. The amount of public funding and the nature of the financial interest;
4. The degree of government control;

<sup>1</sup> 5 ILCS 120/1.02.

<sup>2</sup> *Rockford Newspapers, Inc. v. Northern Illinois Council on Alcoholism & Drug Dependence*, 64 Ill.App.3d 94, 380 N.E.2d 1192, 21 Ill.Dec. 16 (2d Dist. 1978)

## 5. The nature of functions performed by the entity.

The court maintained that the first two factors were the most significant in determining whether the private not-for-profit is a subsidiary body. Additionally, it emphasized that the amount of funding was relevant to the determination, but never enough on its own. The court ruled that NICADD was not a subsidiary because it was a private, not-for-profit and because there was no direct government control of the organization's operations.

In another case, the court found that although general supervision by the government would not cause an organization to be subject to the Open Meetings Act; involvement in the organization's day-to-day activities would be cause for concern, and may indicate that the organization is a subsidiary body and subject to OMA.

### **What Could This Mean for My Organization?**

The court and the Illinois Attorney General<sup>3</sup> have been clear that receiving substantial government funding is alone not enough to make OMA applicable to your 501(c)(3) or 501(c)(6) but may be an indicator. Therefore, you should also assess the other factors, particularly the degree of control the government exerts over your day-to-day operations. If your organization receives significant government funding but the government has little or no control over the day to day operations of your organization, it is reasonable to conclude that the organization is not subject to the Open Meetings Act.

### **What about my Organization's Records?**

The Illinois Freedom of Information Act provides an assumption that records in the custody and possession of a "public body" must be open and accessible to any person wanting to inspect and make copies of the information. The Freedom of Information Act's definition of a "public body" includes the same language about subsidiary bodies that is in OMA. You can analyze whether your organization is subject to FOIA requests utilizing the same questions you would contemplate if someone claims your organization is subject to the Open Meetings Act: how much control does the government exert over your organization and what percentage of funding do you receive from the government? Additionally, outside of this consideration there are other regulations that require disclosure of tax information that 501(c) organizations should keep in mind.

### **Can The Law Project Help my Organization?**

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<sup>3</sup> <https://www3.rps205.com/District/Pages/openmeet.pdf>