

COVID-19 Impact on Pension Board Operations ***By Richard Reimer and Brian LaBardi***

The COVID-19 pandemic will no doubt dramatically affect pension boards from an economic standpoint. Besides the obvious long-term economic impact, the current environment will have other short-term impact on pension board operations.

Conducting Quarterly or Special Board Meetings

On April 1, 2020, Governor Pritzker entered Executive Order 2020-18 continuing the suspension of certain portions of the Open Meetings Act until April 30, 2020. The prior Executive Order 2020-07 entered March 16 initially impacting meeting requirements had been set to expire April 7.

As pertains to meetings of public bodies, it prohibits “public and private gatherings of any number of people occurring outside a single household” and further prohibits gatherings of 10 or more people unless exempted by the order. The Order also suspends portions of the Open Meetings Act (“OMA”) to make it easier for public bodies to meet remotely. The source of this authority as applied to non-State agencies is unclear.

While remote participation in a public meeting is provided under limited circumstances in the OMA, the Statute as written requires the physical attendance of a quorum (3 members in the case of a pension board). The Governor’s Order waives the physical attendance requirement of the OMA in addition to the qualifying events necessary for phone participation by a trustee. If a meeting is held pursuant to the terms of the Order, the public body may provide video, audio, and/or telephonic access to the meetings to allow for public participation. At the time of this writing, exemptions provided by the Executive Order expire on April 30, 2020.

The Attorney General’s Office has also issued a guide to which public bodies can refer. What the Executive Order did not do was suspend the requirement meetings be held in locations open and accessible to the public nor did it suspend the requirement the public be allowed to comment. This would seem to suggest that, while physical attendance by the trustees may be waived, there must still be a way for the public to participate even by phone in a location that is convenient and open to the public. At a minimum, the Attorney General suggests providing the conference call number and log-in information on the notice of the meeting thereby allowing for public participation via phone. In addition to providing the call-in information, the Public Access counselor also suggests allowing the public to comment in advance by email or voicemail. Any comments received in that manner would be read into the record at the meeting.

Another frequent question given the current climate involves “emergency” as opposed to “special” meetings under the OMA. There is no case law or statutory definition of what constitutes an “emergency” under the OMA. However, as noted in one of our past newsletters, in prior opinions, the PAC has adopted the dictionary definition of emergency as, “an unforeseen combination of circumstances or the resulting state that calls for immediate action.” Prior PAC decisions focused on “unanticipated

circumstances” as the lynchpin for whether a meeting was an emergency. Depending on the action the Board is contemplating, a meeting may be able to meet this definition. However, the safer route would still be to call a “special” meeting with 48 hours’ notice. Please note, the posting requirements of the OMA were not modified by the Governor’s Executive Order. A special meeting must be posted at least 48 hours’ in advance at both the principal office and location of the meeting. Notice for an emergency meeting must be given as soon as practicable, but in any event prior to the holding of such meeting, and to any news medium which has filed an annual request for notice.

The situation remains very fluid and seems to change on a day to day basis. It is certainly possible additional executive orders will be issued impacting pension board meetings. For the time being, as noted above, the current order will expire April 30, 2020.

Impact on Disability and Annual Examinations

In addition to complications in conducting quarterly or special meetings, the COVID-19 pandemic will also have a dramatic impact on disability pension applications pending before pension boards. Many pension boards are facing a delay in obtaining treating physicians medical records. Custodians for medical records are either closed or operating on minimum staffing levels. The same is true for outside medical record storage companies. This has the effect of delaying the scheduling of independent medical examinations inasmuch as those are not set until all medical records from treating and examining physicians are obtained.

Most vendors providing independent medical examination services have suspended scheduling due to the COVID-19 pandemic. Physicians are either wary of any patient contact or have been tied up rendering medical care and treatment to patients. In some cases, these physicians will perform a “medical records review”, but the Board should do so sparingly, and only in cases where an actual medical examination is not necessary.

The same is true for required annual examinations of police officers and firefighters receiving disability benefits under the age of 50. Those exams can be rescheduled or postponed until such time as the physician feels safe to conduct annual exams.

Further updates will be provided as additional developments warrant.