

Quorums in the Time of Corona

By Marlo Del Percio and
Victor P. Filippini, Jr. ¹

© 2020

The novel coronavirus known as the COVID-19 virus has made international headlines for the resulting quarantines and work-stoppages as much as for the actual symptoms of the virus. Should the COVID-19 virus become widespread in Illinois, certain legal barriers may hamper local governments' ability to continue to operate safely and effectively.

The Illinois Municipal Code has provisions for empowering a mayor or village president to exercise emergency management of local governmental affairs unilaterally. See 65 ILCS 5/11-1-6. Although such emergency powers are appropriate for certain types of emergency, they are not necessarily useful in ensuring the ongoing conduct of municipal business. Matters that should rightly be addressed through a deliberative process rather than marshal law are disserved by the emergency provisions in 65 ILCS 5/11-1-6.

Likewise, the Illinois Open Meetings Act (the "**Act**") leaves local governmental bodies ill-equipped to managing governmental affairs in the event of a public health quarantine. The Act does permit local officials to attend public meetings remotely (5 ILCS 120/7(a)), but that opportunity is limited and requires that a "quorum of members of a public body must be **physically present** at the location of an open meeting." 5 ILCS 120/2.01 (emphasis added). In times of a quarantine, the "physically present" requirement would preclude the calling of a proper meeting. Further, the Act currently has no provisions that address emergency situations in which an entire governing body may be prevented from physically attending, due to personal illness or mandatory or recommended quarantines.

One might suggest that emergency times warrant emergency measures, and simply conduct meetings remotely with the intention of ratifying all actions at the next meeting where a quorum is physically present. While reasonable and perhaps in the best interest of the health, safety, and welfare of the general public, it is a perilous strategy because it would be a technical violation of the Act. Such violations of the Act may result in conviction of a Class C misdemeanor. (5 ILCS 120/4). The provisions of the Illinois Emergency Management Agency Act, 20 ILCS 3305, may provide protection for certain actions that may be taken in violation of the Act, see *id.* at 3305/10(j), but this authority is not fully clear regarding the extent of protection against the penalties under the Act, nor does it cover all the areas within which a local government needs to operate in the ordinary course of business.

The General Assembly should take quick legislative action to carve out emergency exceptions to the Act. The Act could be amended to allow meetings without a quorum being physically present for local governments in counties where the Governor declares a state of emergency and specifically waives the "physically present" requirement. An amendment should also include a "best efforts" requirement to make the meetings accessible either telephonically or online so that technology can compensate as much as possible for any loss of access to the public. Presumably

¹ Marlo Del Percio and Victor Filippini are partners of Filippini Law Firm LLP. Their practices focus on local government and land use law.

such declarations would be used sparingly, and one hopes never at all. But the Act should remove unneeded obstacles to representative government when public health emergencies prohibit a quorum from safely gathering. The requirements of the Act should not make public service life-threatening.

Even in the absence of a quick response from the General Assembly, public bodies should review their facilities for holding public meeting to assess whether protocols can be established to reduce the likelihood of the spreading dangerous diseases. Even if a public body may feel that it can safely assemble a quorum, there may be concerns with the general public's physical access to the meeting. In that case, local governments may wish to investigate video or call-in options to allow the public to maintain access, but without requiring the public's physical presence. (Note that the Act currently would preclude a restriction on the public's attendance for other than executive sessions.)

Should an emergency necessitate public action without the conduct of a public meeting, municipalities should consider adopting (or amending existing) ordinances allowing the mayor or village president to exercise emergency powers. Those ordinances should also incorporate provisions for ratifying actions taken during such emergency conditions.

While a uniform state legislative solution is certainly preferable, in times of public health emergencies, local governments can take steps to be prepared to continue to operate effectively, while also keeping the public informed and involved.