

Don't be resigned to public bodies accepting resignations in closed session

It's time to launch a crusade! No more! It's time for public bodies to be reminded about one Sunshine Law issue in particular. It's time to end closed meetings of public bodies where resignations are accepted. Such meetings are not provided for under the Sunshine Law and should no longer be tolerated!

Just last month a paper in Missouri reported, in reference to a school board meeting, that "action was also taken in a closed session to accept three resignations of teachers." Probably the notice of that closed meeting said it was being held under auspices of Section 610.021 (3), the exception that relates to personnel matters.

But when you look at that section, it allows for closure for meetings relating to "Hiring, firing, disciplining or promotion of particular employees ... where personal information about the employee is discussed or recorded." The key is the first four words of that exception. Hiring, firing, disciplining or promotion. None of those words are the word "resignations."

Hiring an employee is just what it says — a vote is taken on a motion to hire a new employee. Firing an employee is just the opposite — a vote is taken on a motion to fire a current employee. Firing an employee means you terminate someone's employment without their consent. It's an involuntary action, not a voluntary action.

Disciplining an employee is a motion to punish an employee for some action that is severe enough that they need to be formally warned against doing it again. And promoting an employee is a vote taken on a motion to give someone a title with more authority or a new position with new responsibilities beyond what they have been doing. Neither of those two tasks relates to an employee who is voluntarily leaving the public body's employment.

But it is painfully clear public bodies

across the state routinely receive resignation letters and then go into a closed meeting to discuss whether or not to accept the resignation. There is no ability to "refuse a resignation" of an employee — no public body can force someone to continue employment against their will.

And that is the key here — a resignation does not require any act by a public body to be effective. If a body wants to acknowledge the resignation, that certainly can be done in an open session; but again, it is not a closed meeting action to "hire," "fire," "discipline" or "promote" an employee.

Perhaps there is an argument that the document was an "individually identifiable personnel record" or a "performance ... record[s] pertaining to employee" as noted in Exception 13 of that statute. Maybe the resignation letter contains a significant amount of personal information about their health or other personal matters. But since the body is not "hiring, firing, disciplining or promoting" an employee, whatever happens in regard to that resignation should happen in an open meeting.

There is no need for a vote at all in regard to a resignation. It is fine to announce a list of those who have resigned and read any public comments as are appropriate. If the content of the letter contains personal information, perhaps the letter itself becomes "individually identifiable personnel" information and could be a closed record. But there should never be a vote taken in a closed meeting to accept

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(or not accept) a resignation letter.

Is there NEVER a situation where a resignation should be discussed in a closed meeting? A lawyer learns early to "never say never." If the public body had the employee under a long-term contract and the employee was resigning, then possibly there might be facts

that would lead to a discussion as to whether to sue the employee for breach of contract. If so, then that could be discussed in a closed meeting, but it would be under exception 1, commonly known as the "litigation exception."

Or if the board just wanted to explain to individual board members why the employee was resigning, due to a personal matter, then the letter could be discussed if the meeting was closed under exception 13, but again, there should not be a vote taken to accept the resignation. Rather, it would seem appropriate to just release a list of persons who resigned with no further public details given.

So, my point is we need to start questioning this. Why is the resignation being taken up in a closed meeting? Voting on a resignation is not "hiring, firing, disciplining or promoting." Grab your Sunshine Law book and go have that chat next time this comes up!



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