

SUPREME COURT OF ILLINOIS

Illinois Education Ass'n v. Illinois State Board of Education, 204 Ill.  
2d 456

791 N.E.2d 522 (2003) · No. 93347 · Decided May 22, 2003

SUMMARY

The Illinois Supreme Court considers whether the Freedom of Information Act requires the Illinois State Board of Education to disclose materials submitted to the Illinois Attorney General in connection with a request for a formal opinion. The court holds that the attorney-client exemption may apply to such materials, but the public body must establish a reasonable expectation of confidentiality and provide objective, document-specific support for the exemption. The court reverses the lower courts and remands for in camera review and possible redaction.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Illinois                                                                                                                                                                                                                                                                                                                                                                                      |
| WRITING FOR THE COURT | Justice Rarick                                                                                                                                                                                                                                                                                                                                                                                                 |
| JURISDICTION          | Illinois                                                                                                                                                                                                                                                                                                                                                                                                       |
| DECIDED               | May 22, 2003                                                                                                                                                                                                                                                                                                                                                                                                   |
| DOCKET                | 93347                                                                                                                                                                                                                                                                                                                                                                                                          |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                                                                                                                          |
| PROCEDURAL POSTURE    | The Illinois Education Association sought declaratory and Freedom of Information Act relief after the Illinois State Board of Education denied access to materials submitted to the Attorney General in connection with a request for an Attorney General opinion. The circuit court granted the Board summary judgment, the appellate court affirmed, and the Illinois Supreme Court granted leave to appeal. |
| STANDARD OF REVIEW    | Summary judgment is reviewed de novo. Summary judgment is proper when the pleadings, depositions, admissions, affidavits, and other materials show no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.                                                                                                                                                          |
| PRECEDENTIAL VALUE    | published precedential opinion of the Supreme Court of Illinois                                                                                                                                                                                                                                                                                                                                                |
| PARTIES               | Illinois Education Association v. Illinois State Board of Education                                                                                                                                                                                                                                                                                                                                            |

## TOPICS

judicial review of agency action

administrative law

statutory interpretation

summary judgment

civil procedure

## PRACTICE AREAS

administrative law

government transparency

civil procedure

## QUESTIONS PRESENTED

1. Whether materials submitted by a public body to the Attorney General in requesting an Attorney General opinion may fall within the FOIA attorney-client exemption in 5 ILCS 140/7(1)(n).
2. Whether the Board established that the Attorney General was representing the Board for purposes of section 7(1)(n).
3. Whether the Board established a reasonable expectation of confidentiality and provided the detailed, objective justification necessary to withhold the requested material.
4. Whether summary judgment for the Board was proper without an in camera examination of the requested material.

## HOLDINGS

1. The attorney-client exemption in section 7(1)(n) may apply to materials submitted by a public body when requesting an Attorney General opinion, but only to material for which a reasonable expectation of confidentiality exists.
2. A public body seeking to withhold records under section 7(1)(n) must provide a detailed justification supported by objective indicia showing that the exemption applies; conclusory affidavits and assertions that documents are privileged or contain legal advice are insufficient.
3. Summary judgment for the Board was improper because its affidavits were conclusory and the circuit court neither conducted an in camera review nor determined that review was unnecessary. On remand, the court must conduct an in camera review, apply the exemption narrowly, and redact only properly privileged portions before disclosing the remainder.

## KEY QUOTATIONS

*“In summary, we hold that the attorney-client exemption set forth in section 7(1)(n) of the Act may apply to material submitted by a public body requesting an Attorney General opinion.”*

*“Rather, the public body can meet its burden only by providing some objective indicia that the exemption is applicable under the circumstances.”*

## FACTUAL BACKGROUND

The Illinois Education Association requested materials that the Illinois State Board of Education had provided to the Illinois Attorney General when seeking an opinion concerning agency authority related to teacher

certification and child-support delinquencies. The Board denied the request under the FOIA exemption for communications between a public body and an attorney that would not be subject to discovery. The Board submitted affidavits asserting that the communications were confidential and made to obtain legal advice, but the record contained no in camera review of the requested letter.

## PROCEDURAL HISTORY

The IEA submitted a FOIA request on July 17, 2000. The Board denied the request under section 7(1)(n), and the State Superintendent affirmed the denial. The Sangamon County circuit court granted the Board summary judgment on February 13, 2001. A divided appellate court affirmed, and the Illinois Supreme Court reversed both judgments and remanded for further proceedings, including in camera review.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The circuit court must conduct an in camera review of the requested material, construe section 7(1)(n) narrowly, determine which portions are reasonably understood to be privileged and confidential communications with the Attorney General, redact any exempt portions, and disclose the remainder.

## CASES CITED

- Travelers Insurance Co. v. Eljer Manufacturing, Inc., 197 Ill. 2d 278 (2001)
- Lieber v. Board of Trustees of Southern Illinois University, 176 Ill. 2d 401 (1997)
- American Federation of State, County & Municipal Employees v. County of Cook, 136 Ill. 2d 334 (1990)
- Bowie v. Evanston Community Consolidated School District No. 65, 128 Ill. 2d 373 (1989)
- Carter v. Meek, 322 Ill. App. 3d 266 (2001)
- Baudin v. City of Crystal Lake, 192 Ill. App. 3d 530 (1989)
- Cooper v. Department of the Lottery, 266 Ill. App. 3d 1007 (1994)
- Carbondale Convention Center, Inc. v. City of Carbondale, 245 Ill. App. 3d 474 (1993)
- Williams v. Klinkar, 237 Ill. App. 3d 569 (1992)
- Environmental Protection Agency v. Pollution Control Board, 69 Ill. 2d 394 (1977)
- Fergus v. Russel, 270 Ill. 304 (1915)
- State ex rel. Caryl v. MacQueen, 182 W. Va. 50, 385 S.E.2d 646 (1989)
- Jarvis v. South Oak Dodge, Inc., 201 Ill. 2d 81 (2002)
- Fischel & Kahn, Ltd. v. Van Straaten Gallery, Inc., 189 Ill. 2d 579 (2000)
- In re Himmel, 125 Ill. 2d 531 (1988)
- People v. Adam, 51 Ill. 2d 46 (1972)
- People v. Simms, 192 Ill. 2d 348 (2000)
- Dickerson v. Dickerson, 322 Ill. 492 (1926)

- People v. Werhollick, 45 Ill. 2d 459 (1970)
- Minneapolis Star & Tribune Co. v. Housing & Redevelopment Authority, 310 Minn. 313, 251 N.W.2d 620 (1976)

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