

# Town Hall Discussion

Open Meetings Law  
*Post-Krueger v. Appleton Area Sch.  
Dist. Bd. of Educ.*

Andrew T. Phillips

Christine V. Hamiel

# Thanks to the webinar sponsor



# All in the same boat...



# *Krueger* Facts in a Nutshell

- Parent complaint regarding book list for a 9<sup>th</sup> grade class
- 2 Administrators created a committee to review the book list
  - The committee was based on curriculum committees as detailed in a department handbook that had been adopted by the Board
  - A board rule provided that the Board is legally responsible for all educational materials
- Committee met 9 times throughout the school year
- Made a recommendation first to a Board committee, and then to the Board as to the book list for the 9<sup>th</sup> grade class

# What was the Issue in the Case?

- What is a governmental body created by “rule” of the Board?
  - Based on:
    - The form it takes
    - The source of its existence - a “rule” of the Board

# What did the Supreme Court Hold?

- The review committee was a “governmental body” created by rule
  - Defined membership
  - Conferred the authority to review books based upon Board rule and the Board adopted Handbook
  - When the Review Committee was created, it was created by District employees on the basis of the Board rule and the Handbook

## What did the Supreme Court Hold, con't.

- “Rule” includes any authoritative, prescribed direction for conduct, such as the regulations governing procedure in a governmental body
  - Here, the Board rule and the Handbook constituted the “rule”
- “[A] committee is created whenever a governmental body, by rule, authorizes the committee and assigns the duties and functions of the committee”

# How the Court Viewed the Facts

¶27. “... First, it qualifies as a “committee” for purposes of the open meetings law because it had a defined membership of 17 individuals upon whom was conferred the authority, as a body, to review and select recommended educational materials for the Board’s approval. This authority to prepare formal curriculum recommendations for Board approval was not exercised by teachers and curriculum specialists on their own. The Board—acting through Rule 361 and the Handbook—provided that the members of review committees would exercise such authority collectively, as a body.”



## The Court's View, cont'd

“Second, CAMRC was created by rule because District employees, when they formed CAMRC, relied on the authority to form review committees that was delegated to them by Rule 361 and the Handbook.”

## Troubling Statements in the Decision...

¶36. “Underscoring the nature of the rule under which CAMRC was formed is the fact that, after forming CAMRC, [an administrator] went before the Board to explain how the Handbook procedures had been modified to create CAMRC. The Board had a chance to ask questions, and it permitted CAMRC to continue. ...”

## Troubling Statements, cont'd.

¶37. “... we conclude that CAMRC was created by Rule 361 and the Handbook, because *even though it was [two administrators]* who put the Handbook process into action when they formed CAMRC, it was the Board's Rule 361 and the Board-approved Handbook that authorized review committees like CAMRC to be created and conferred on them the collective authority to review curriculum materials and make recommendations to the Board.” (emphasis added)

## Troubling Statements, cont'd.

¶42. “... we are not at liberty to exempt CAMRC from the definition of "governmental body" simply because government officials would find it convenient. "Mere government inconvenience is obviously no bar to the requirements of the [open meetings] law.”  
Conta, 71 Wis. 2d at 678.”

## What did the Supreme Court Leave Unresolved?

- Whether a “high ranking official” can create a committee by rule or order?
  - Krueger had argued, in the alternative, that if the school board did not create CAMRC by “rule or order,” then the fact that high-ranking administrators created CAMRC is enough to bring it under the Open Meetings Law.
  - Attorney General voiced support for this proposition.
  - Court did not address the question because of its finding that CAMRC was created by board rule.

# Implications of the *Krueger* Decision

- Determine what committees are created by “rule” of the governing body - ordinances, by-laws, resolutions, policies, handbooks, etc.
- Ensure policies are consistent with practices.
- Revise and amend policies to reflect accurate interpretations of what groups constitute committees created by rule.
- Counsel board members, administrators/managers, department heads, etc., as to proper application of the Open Meetings Law.

## Questions to Ask in Determining if a Committee is a “Governmental Body”

1. What body created the committee?
2. To whom does the committee report?
3. Is there a rule or policy of the governing board that relates to the topic of the committee’s work?
4. Is the committee addressing a topic that is explicitly the governing board’s responsibility?

# Questions?





# For More Information

- Andy Phillips: [aphillips@vonbriesen.com](mailto:aphillips@vonbriesen.com)
  - Chrissy Hamiel: [chamiel@vonbriesen.com](mailto:chamiel@vonbriesen.com)
- [www.vonbriesen.com](http://www.vonbriesen.com)