



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

September 21, 2021

PUBLIC ACCESS OPINION 21-009
(Request for Review 2021-PAC-C-0069)

OPEN MEETINGS ACT:
Duty to Provide Opportunity for
Public Comment in Open Session

Mr. Ryan Mahan
Sports Writer
The State Journal-Register
529 South Glenwood Avenue
Springfield, Illinois 62704

The Honorable Matt Lentz
President, Board of Education
Hillsboro Community Unit School District No. 3
1311 Vandalia Street
Hillsboro, Illinois 62049

Dear Mr. Mahan and Mr. Lentz:

This is a binding opinion issued by the Attorney General pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2020)). For the reasons discussed below, this office concludes that the Board of Education of Hillsboro Community Unit School District No. 3 (Board) violated section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2020)) at its June 15, 2021, meeting because it did not provide an opportunity for public comment in open session.

BACKGROUND

On June 24, 2021, Mr. Ryan Mahan, Sports Writer for *The State Journal-Register*, sent an e-mail to the Illinois Executive Ethics Commission (Commission) questioning

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whether the Board improperly restricted public comment at its June 15, 2021, meeting. In his e-mail, Mr. Mahan explained that during the meeting:

There were sign-up sheets for the public to address the school board. It was a packed board meeting and the primary topic of interest for much of the public was the previous week's decision not to re-hire Hillsboro High School boys basketball coach Joe Vanzo, despite a 14-0 record.

Almost as soon as the school board meeting roll call was taken, the board went into a closed, executive session. There, superintendent David Powell told the crowd, anyone who had signed up to speak to the board would do so.^[1]

Mr. Mahan explained that the members of the public who wished to address the Board were then called into the Board's closed session one by one. When the closed session ended, Mr. Mahan stated, the Board "wrapped up all motions in a matter of minutes. No members of the public made public statements."² Mr. Mahan provided a link to the news story he wrote about the meeting,³ in which members of the public described the comments they made to the Board in closed session. Mr. Mahan concluded his e-mail: "I was told by current and former colleagues of mine I should reach out to the Attorney General's office. I hope I've found the right department to inquire if this closed, executive session was an overreach."⁴

On June 28, 2021, Ms. Michelle Casey, Executive Director of the Commission, forwarded Mr. Mahan's correspondence to the Public Access Counselor pursuant to section 20-15(2) of the State Officials and Employees Ethics Act (5 ILCS 430/20-15(2) (West 2020)) ("Any other allegations of misconduct received by the Commission from a person other than an Executive Inspector General shall be referred to the Office of the appropriate Executive

¹E-mail from Ryan Mahan, Sports writer, *The State Journal-Register*, to To whom it may concern (June 24, 2021).

²E-mail from Ryan Mahan, Sports writer, *The State Journal-Register*, to To whom it may concern (June 24, 2021).

³Ryan Mahan, *Hillsboro board of education declines to reinstate Vanzo as boys basketball coach*, THE STATE JOURNAL REGISTER (June 16, 2021, 10:31 a.m.), <https://www.sj-r.com/story/sports/2021/06/16/hillsboro-school-board-twice-votes-remove-joe-vanzo-basketball-coach/5293147001/>.

⁴E-mail from Ryan Mahan, Sports writer, *The State Journal-Register*, to To whom it may concern (June 24, 2021).

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Inspector General.")).⁵ Based on the plain language of Mr. Mahan's submission, which clearly stated that he was seeking to contact the Attorney General's Office concerning the Board's actions, this office recognized Mr. Mahan's correspondence as a Request for Review alleging that the Board may have violated section 2.06(g) of OMA during its June 15, 2021, meeting.⁶

On July 1, 2021, the Public Access Bureau sent a copy of the Request for Review to Mr. Matt Lentz in his capacity as Board President. The Public Access Bureau also sent Mr. Lentz a letter requesting, for this office's confidential review, a copy of any rules the Board had established and recorded concerning public comment, and the agenda, open and closed session minutes (in draft form, if necessary), and closed session verbatim recording from its June 15, 2021, meeting.⁷ In a letter dated July 6, 2021, and received by the Public Access Bureau on July 12, 2021, Mr. Lentz provided this office with the requested materials and copies of ten "Public Comment Cards" filled out by members of the public before the meeting.⁸

On that same date, the Public Access Bureau forwarded a copy of the Board's written answer to Mr. Mahan and notified him of his opportunity to reply.⁹ On July 28, 2021, Mr. Mahan replied that he had nothing further to state.¹⁰

⁵Letter from Michelle Casey, Executive Director, Illinois Executive Ethics Commission, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (June 28, 2021).

⁶Because it is apparent on the face of Mr. Mahan's June 24, 2021, e-mail that he was seeking to contact the Attorney General's Office about a possible violation of OMA, the mistaken submission of that correspondence to the Illinois Executive Ethics Commission does not deprive the Attorney General of jurisdiction to issue a binding opinion in this matter. *See Moeser v. Human Rights Commission*, 292 Ill. App. 3d 402, 408 (5th Dist. 1997) (Illinois Human Rights Commission retained jurisdiction over timely complaint even though it was erroneously submitted to the Illinois Department of Human Rights because "it is the timing of filing this complaint that is jurisdictional, not whether it is mailed to the Department or the Commission. Filing the complaint with the Commission is mandatory, but it is not jurisdictional.").

⁷Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to The Honorable Matt Lentz, President, Board of Education, Hillsboro Community [Unit] School District No. 3 (July 1, 2021).

⁸Letter from Matt Lentz, President, HCUSD3 Board of Education, Hillsboro Community Unit School District #3, to Joshua M. Jones, Public Access Bureau, Office of the Attorney General (July 6, 2021).

⁹Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Ryan Mahan, Sports writer, *The State Journal-Register* (July 12, 2021).

¹⁰E-mail from Ryan Mahan to Joshua M. Jones (July 28, 2021).

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On August 23, 2021, the Public Access Bureau properly extended the time within which to issue a binding opinion by 21 business days, to September 22, 2021, pursuant to section 3.5(e) of OMA.¹¹

ANALYSIS

OMA declares that "it is the intent of this Act to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2020). Section 2.06(g) of OMA provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." A public body violates section 2.06(g) of OMA when it prohibits "public comment" during a meeting by denying members of the public an opportunity to address the members of the public body in open session. *Roxana Community Unit School Dist. No. 1 v. Environmental Protection Agency*, 2013 IL App (4th) 120825, ¶¶17, 57-58, 998 N.E.2d 961, 965, 971 (2013) (board violated OMA by prohibiting the public from addressing the board in open session). While it is unambiguous in the context of OMA that section 2.06(g) mandates an opportunity to address public officials in open session, this intent was also made clear during legislative debate. One of the House sponsors of the legislation that enacted section 2.06(g)¹² emphasized during legislative debate that the provision "requires that all the entities of government have public comment under their own rules and regulation and that people have the right to speak at... at meetings." Remarks of Rep. Kosel, March 25, 2010, House Debate on House Bill No. 5483 at 129. This office has issued a variety of binding opinions affirming that a public body must provide an opportunity for public comment at each open meeting, subject to any reasonable rules it has established and recorded. Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 2; Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 2; Ill. Att'y Gen. Pub. Acc. Op. No. 19-002, issued January 9, 2019, at 3; Ill. Att'y Gen. Pub. Acc. Op. No. 19-009, issued October 1, 2019, at 3.

In the Board's answer to this office, Board President Lentz asserted:

Prior to the start of our meeting, ten members of our community submitted 'Public Comment Form'" cards to Superintendent Powell. He spoke briefly with each individual. Each indicated to Superintendent Powell that s/he intended to speak about whether a specific employee (one of three coaches)

¹¹Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Ryan Mahan, Sports writer, *The State Journal-Register*, and The Honorable Matt Lentz, President, Board of Education, Hillsboro Community School District No. 3 (August 23, 2021).

¹²Public Act 96-1473, effective January 1, 2011.

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should be fired or rehired. * * * Superintendent Powell suggested to President Matt Lentz and the rest of the Board that these comments should be heard in closed session since each community member planned to speak on **the performance of a specific employee**, a clear exception to the OMA requirement that most business be conducted in open session. Each and every member of the public that wished to address the Board was given unlimited time to do so. Individual board members asked questions of some of the community members that addressed the board. To have held these conversations in open session would have violated the rights of the employees whose performance was being discussed.^[13] (Emphasis in original.)

This office has reviewed the recording of both the open and closed sessions of the Board's June 15, 2021, meeting. Immediately after taking attendance at the start of open session, Board President Lentz read the agenda item "recognition of the audience."¹⁴ Superintendent Powell promptly interjected:

President Lentz, I have here cards from a number of members of the community that would like to speak to the Board. I believe it would be most appropriate for each one of these to be, uh, for them to address the Board in closed session. So I have nothing for the open session of recognition of the audience.^[15]

Next, the Board voted to go into closed session pursuant to section 2(c)(1) of OMA (5 ILCS 140/2(c)(1) (West 2020)), the open meeting exception that authorizes closed session discussions of "[t]he appointment, employment, compensation, discipline, performance, or dismissal of specific employees[]" of the public body.

As an initial matter, the Board's established and recorded public comment rules make no mention of requiring members of the public who wish to provide public comment to address the Board in closed session. The rules provide that "[a]t each regular and special open

¹³Letter from Matt Lentz, President, HCUSD3 Board of Education, Hillsboro Community Unit School District #3, to Joshua M. Jones, Public Access Bureau, Office of the Attorney General (July 6, 2021), at 1-2.

¹⁴Board of Education of Hillsboro Community Unit School District No. 3, Open Meeting, June 15, 2021, Audio File, at :47 (on file with Public Access Bureau, Office of the Attorney General).

¹⁵Board of Education of Hillsboro Community Unit School District No. 3, Open Meeting, June 15, 2021, Audio File, at :50 (on file with Public Access Bureau, Office of the Attorney General).

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meeting, members of the public and District employees may comment to or ask questions of the School Board, subject to reasonable constraints."¹⁶ Thus, while it is doubtful that a public body could lawfully adopt a rule requiring members of the public who wish to address the public body do so in closed session, the Board had no such established and recorded rule.

In addition, although the Board appears to suggest that it was required to hear any public input about the coaches in closed session, section 2a of OMA (5 ILCS 120/2a (West 2020)), which governs closed session procedure, provides, in relevant part:

A public body may hold a meeting closed to the public, or close a portion of a meeting to the public, upon a majority vote of a quorum present, taken at a meeting open to the public for which notice has been given as required by this Act. * * * **Nothing in this Section or this Act shall be construed to require that any meeting be closed to the public.** (Emphasis added.)

Under the plain language of section 2a, OMA does not prohibit a public body from publicly discussing a matter in open session that it could also permissibly discuss in closed session. Although the Board could properly discuss the performance of the athletic coaches in closed session pursuant to section 2(c)(1), the Board was neither required to restrict all discussion of that issue to closed session nor authorized to prohibit the public from addressing it in open session. This office's review of the closed session verbatim recording confirmed that members of the public who addressed the Board had intended their remarks for public consumption. Each of those members of the public had filled out a "Public Comment Form" affirming that they agreed to the Board's "procedures for Public Participation at School Board Meetings[,]" quoted above.¹⁷

Finally, as to the Board's argument about violating the rights of the coaches who it discussed in closed session, no provision of OMA prohibits public comment on personnel decisions. Although a public body may properly adopt reasonable public comment rules aimed at fostering order and decorum and may stop disruptive conduct during a meeting, a rule or practice of forbidding public comment on the retention of public employees would unduly restrict the right of speakers to address the Board. The Board has not identified what other sort of "rights" outside of OMA the Board believes would have been violated by allowing public comment on the matter in open session. Nonetheless, the Public Access Counselor's authority to

¹⁶Hillsboro Community Unit School District No. 3, Board of Education Policy Manual, §2:230 (adopted September 10, 2019), available at https://boardpolicyonline.com/?b=lyons_103.

¹⁷Hillsboro Community Unit School District #3, Public Comment Forms (on file with Public Access Bureau, Office of the Attorney General).

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resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2020)). *See* 15 ILCS 205/7(c)(3) (West 2020). The Board violated OMA during its June 15, 2021, meeting by failing to allow the public to address it in open session.

FINDINGS AND CONCLUSIONS

After full examination and giving due consideration to the arguments presented, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

1) On June 15, 2021, the Board of Education of Hillsboro Community Unit School District No. 3 closed a portion of its meeting to discuss the appointment, employment, compensation, discipline, performance, or dismissal of specific athletic coaches employed by the District. The members of the public in attendance who intended to address the Board regarding the retention of the coaches were told that they must do so in closed session. The Board took no public comment in open session.

2) In an e-mail sent to the Illinois Executive Ethics Commission on June 24, 2021, Mr. Ryan Mahan, on behalf of *The State Journal-Register*, set forth facts concerning the Board's June 15, 2021, meeting. He also expressly stated that he was seeking to contact the Attorney General's Office concerning the legality of allowing members of the public to address the Board only in closed session. On June 28, 2021, the Illinois Executive Ethics Commission forwarded Mr. Mahan's submission to this office. This office recognized Mr. Mahan's e-mail as a Request for Review of a potential violation of section 2.06(g) of OMA. Mr. Mahan's Request for Review was timely filed and otherwise complies with the requirements of section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2020)).

3) On July 1, 2021, the Public Access Bureau sent a copy of the Request for Review to Board President Matt Lentz and asked the Board to provide, for this office's confidential review, copies of any rules it had established and recorded concerning public comment and the agenda, open and closed session minutes, and closed session verbatim recording from its June 15, 2021, meeting.

4) In a letter dated July 6, 2021, and received by the Public Access Bureau on July 12, 2021, Mr. Lentz provided this office with the requested materials and copies of ten "Public Comment Cards" signed by members of the public before the meeting.

5) On that same date, this office sent a copy of the Board's answer to Mr. Mahan and notified him of his opportunity to reply. On July 28, 2021, Mr. Mahan replied that he had nothing further to state.

6) On August 23, 2021, the Public Access Bureau properly extended the time within which to issue a binding opinion by 21 business days, to September 22, 2021, pursuant to section 3.5(e) of OMA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

7) Section 2.06(g) of OMA provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." This provision requires that all public bodies subject to the Act provide an opportunity for public comment, meaning a chance for members of the public to address the members of the public body in open session.

8) The Board did not provide the public with the opportunity to address its members in open session during its June 15, 2021, meeting. Rather, the Board required the members of the public who signed up for public comment to address the Board in closed session.

9) Because OMA does not prohibit public comment concerning a public body's personnel decisions in open session, the Board had no authority to bar public comment on retention of the coaches. The Board violated OMA by requiring members of the public to address it during the closed session portion of its June 15, 2021, meeting. Because the members of the public who addressed the Board concerning the coaches' employment did so in closed session, however, and may have adjusted or altered their comments accordingly, release of the closed session minutes is not an appropriate remedy here.

In accordance with these findings of fact and conclusions of law, the Board is directed to provide an opportunity for public comment in open session at all of its future meetings. As required by section 3.5(e) of OMA, the Board shall either take necessary action as soon as practical to comply with the directives of this opinion or shall initiate administrative review under section 7.5 of OMA. 5 ILCS 120/7.5 (West 2020).

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This opinion shall be considered a final decision of an administrative agency for the purpose of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2020). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review in the Circuit Court of Cook County or Sangamon County within 35 days of the date of this decision, naming the Attorney General of Illinois and Mr. Ryan Mahan as defendants. *See* 5 ILCS 120/7.5 (West 2020).

Very truly yours,

KWAME RAOUL
ATTORNEY GENERAL

By:



Brent D. Stratton
Chief Deputy Attorney General

CERTIFICATE OF SERVICE

Sarah L. Pratt, Public Access Counselor, hereby certifies that she has served a copy of the foregoing Binding Opinion (Public Access Opinion 21-009) upon:

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by causing a true copy thereof to be sent electronically to the addresses as listed above and by causing to be mailed a true copy thereof in correctly addressed, prepaid envelopes to be deposited in the United States mail at Springfield, Illinois on September 21, 2021.



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