



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

April 12, 2019

*Via electronic mail*

*Via electronic mail*

Mr. Kurt S. Asprooth  
Ancel Glink  
140 South Dearborn Street, 6th Floor  
Chicago, Illinois 60603  
kasprooth@ancelglink.com

RE: OMA Request for Review – 2015 PAC 37831

Dear [REDACTED] and Mr. Asprooth:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)).

On October 2, 2015, [REDACTED] submitted a Request for Review alleging that the Maine Township (Township) Board of Trustees (Board) had potentially violated OMA by: (1) holding a meeting on September 29, 2015, without having provided proper advance notice on the Township's website, and (2) holding a series of unnoticed meetings about funding between the end of August 2015 and the Board's September 29, 2015, meeting. On October 6, 2015, this office sent a copy of the Request for Review to the Township and asked it to respond to [REDACTED] allegations. On October 14, 2015, the Township's then-attorney, Mr. Daniel J. Dowd, responded, acknowledging that the Township had not posted the agenda for the Board's September 29, 2015, meeting on its website. He argued, however, that the "agency funding hearings" the Board had held on September 21, 2015, and September 28, 2015, did not qualify as meetings subject to OMA.<sup>1</sup>

<sup>1</sup>Letter from Daniel J. Dowd, Dowd, Dowd & Mertes, Ltd., to Josh Jones, Supervising Attorney, Public Access Bureau, Office of the Attorney General (October 14, 2015).

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On October 19, 2015, this office forwarded a copy of the Board's response to ██████████. On October 23, 2015, he submitted a reply, asking that the Board re-vote on the action items pertaining to expenditures from the Board's September 29, 2015, meeting to remedy the lack of proper notice for that meeting. He also continued to question why the "agency funding hearings" were not held in accordance with OMA.

On October 26, 2015, an Assistant Attorney General in the Public Access Bureau contacted Mr. Dowd by telephone and asked: (1) whether the Board would consider re-voting on the action items from its September 29, 2015, meeting, and (2) whether he had sat in on the "agency funding hearings" or was otherwise able to corroborate that the Board had not deliberated during those hearings. Mr. Dowd stated that he would follow up with the Board about re-voting and that he had not been present for the "agency funding hearings" but that he would seek to provide verification that no deliberation among the members of the Board had occurred. On October 30, 2015, Mr. Dowd notified this office that the Board had agreed to include as action items on its November 24, 2015, meeting agenda all of the items on which it had voted during its September 29, 2015, meeting, in order to ratify those actions. On December 30, 2015, the Board sent this office a copy of the minutes of its November 24, 2015, meeting, and asserted that the minutes document the ratification of the action items from the September 29, 2015, meeting. The Board also provided a signed statement from the Township Supervisor, Carol A. Teschky, pursuant to this office's request for verification that the Board did not deliberate about public business during the "agency funding hearings." On January 4, 2016, this office forwarded a copy of that supplemental response to ██████████ he did not submit a reply.

### ANALYSIS

"The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

#### **The September 29, 2015, Meeting**

Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016)) provides, in relevant part:

An agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting. A public body that has a website that the full-time staff of

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the public body maintains shall also post on its website the agenda of any regular meetings of the governing body of that public body.

In its response to this office, the Board acknowledged that the Township's website was maintained by full-time Township staff and that it had neglected to post the agenda for its September 29, 2015, meeting on the Township's website. As ██████████ requested, however, the Board subsequently re-voted on the action items from that meeting during its November 24, 2015, meeting. Therefore, the Board remedied that violation. *See Board of Education School District No. 67 v. Sikorski*, 214 Ill. App. 3d 945, 952 (1st Dist. 1991) (concluding that a public body had "ratified and cured" a decision made during an unauthorized closed session by subsequently discussing and voting on the matter in open session).

### **The "Agency Funding Hearings"**

The requirements of OMA apply to each "meeting" of a public body. 5 ILCS 120/1 (West 2016). Section 1.02 of OMA (5 ILCS 120/1.02 (West 2016)) defines "meeting" as:

[A]ny gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business[.]

If a gathering of the members of a public body meets this definition, then all the requirements of OMA apply, including proper posting of notice and an agenda (5 ILCS 120/2.02 (West 2016)), holding the meeting at a specified time and place that is convenient and open to the public (5 ILCS 120/2.01 (West 2016)), keeping minutes (5 ILCS 120/2.06(a) (West 2016)), and allowing public comment (5 ILCS 120/2.06(g) (West 2016)).

OMA "is not intended to prohibit bona fide social gatherings of public officials, or truly political meetings at which party business is discussed. Rather, the Act is designed to prohibit secret deliberation and action on business which properly should be discussed in a public forum due to its potential impact on the public." *People ex rel. Difanis v. Barr*, 83 Ill. 2d 191, 202 (1980); *see also Nabhani v. Coglianese*, 552 F. Supp. 657, 660-61 (N.D. Ill. 1982):

A "meeting" under the Act, has been variously described as a gathering "designed to discuss or reach an accord with regard to public business," [citation], or as "collective discussion . . . and exchange of facts preliminary to the ultimate decision." [Citation]

Webster's Third New International Dictionary (1976) defines "deliberate" as follows: "to ponder or think about with measured careful consideration and often with formal discussion before reaching a decision or conclusion."

The Office of the Attorney General has stated that "whether a gathering falls within the definition of meeting as used in the Act, would depend upon the peculiar facts in each situation." Ill. Att'y Gen. Op. No. S-726, issued March 22, 1974, at 126. The Office of the Attorney General has also noted that "[i]n theory, there is no absolute prohibition against the members of a public body attending an 'informational meeting' without triggering the application of" OMA, as long as the members do not make "[d]eliberational statements" or engage in the discussion of public business amongst themselves. Ill. Att'y Gen. Op. No. 95-004, issued July 14, 1995, at 10-11. In that opinion, the Attorney General concluded that the "mere fact that a majority of a quorum of the members of a public body attend and participate in a bona fide presentation on new legislative developments in an area of public concern" does not make a gathering subject to OMA, but that the extensive discussions of public business by members of two county boards during the presentation did trigger the requirements of OMA. (Emphasis in original.) Ill. Att'y Gen. Op. No. 95-004, at 10-11; *see also Nabhani*, 552 F. Supp. at 661 (a gathering does not constitute a meeting for purposes of OMA when there is "no examining or weighing of reasons for or against a course of action, no exchange of facts preliminary to a decision, [and] no attempt to reach accord on a specific matter of public business.").

In his Request for Review, ██████████ alleged that between the Board's August 2015 regular meeting and its September 29, 2015, meeting, the Board had "apparently held a series of 'funding meetings' which are a crucial part of the annual budget for Maine Township, as in a significant amount of the funds the Township allocates annually."<sup>2</sup> ██████████ further alleged that the Board had not posted agendas for those meetings. In the Board's response to this office, Mr. Dowd addressed the notion that the Board had not conducted its September 21, 2015, and September 28, 2015, "agency funding hearings" in accordance with OMA as follows:

At these hearings, interested social service agencies are allotted 15 minutes each to present a request for a funding grant to the Township Board of Trustees for the upcoming Township fiscal year. There is no agenda per se for these meetings, but a list of the agencies presenting and the time of their presentment is passed out to the Board of Trustees members and the public at the beginning of the meeting. There is no deliberation or action taken by the

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<sup>2</sup>E-mail from ██████████ to Public Access Counselor, Office of the Attorney General (October 2, 2015).

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Board at these hearings and no public participation is allowed. Decisions on the funding requests made at these hearings is acted upon by the Board of Trustees later as a specified agenda item at one of its regular monthly meetings.<sup>[3]</sup>

After this office sought further verification from Mr. Dowd about whether the Board had deliberated about public business during these hearings, as mentioned above, he provided the following statement from Supervisor Teschky:

On September 21, 2015, September 28, 2015 and October 14, 2015 Maine Township held Agency Funding Hearings.

Various social service agencies appeared before the Trustees, Supervisor and Maine Township Department heads to make a 15 minute presentation followed by questions from the above. No minutes were ever taken and no votes were taken.

These hearings have been held every year since 1985.<sup>[4]</sup>

Under the definition of "meeting" set forth in OMA, the Board was required to conduct its "agency funding hearings" in accordance with the Act if it deliberated about public business. Mr. Dowd asserted to this office, based on what he was told by the Board, that the Board did not deliberate during these hearings. When asked for some sort of verification for that assertion, such as a signed statement or affidavit, he provided Supervisor Teschky's signed statement, which did not directly state that the Board did not deliberate during the hearings but indicated that they consisted of presentations followed by questions. Yet, "[d]eliberation \* \* \* connotes not only collective discussion, but the collective acquisition and exchange of facts preliminary to the ultimate decision." Ill. Att'y Gen. Op. No. S-726, at 125 (quoting *Sacramento Newspaper Guild v. Sacramento County Board of Supervisors*, 263 Cal. App. 2d 41, 47-48, 69 Cal. Rptr. 480, 485 (Cal. Ct. App. 1968)). In the same opinion, the Attorney General also quoted *Sacramento Newspaper Guild* for the proposition that open meetings regulations must encompass "the **collective inquiry** and discussion stages, as well as the ultimate step of official action." (Emphasis added.) Ill. Att'y Gen. Op. No. S-726, at 125 (quoting *Sacramento Newspaper Guild*, 263 Cal. App. 2d at 50, 69 Cal. Rptr. at 487).

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<sup>3</sup>Letter from Daniel J. Dowd, Dowd, Dowd & Mertes, Ltd., to Josh Jones, Supervising Attorney, Public Access Bureau, Office of the Attorney General (October 14, 2015), at 2.

<sup>4</sup>Supervisor's Statement by Carol A. Teschky, Maine Township Supervisor (undated).

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Agency funding decisions are an important aspect of the Township's public business. The information available to this office indicates that the "Agency Funding Hearings" involved an "exchange of facts preliminary to a decision" on which agencies to fund within the meaning of *Nabhani*. The Board appears to have engaged in collective inquiry phase of deliberation during these "Agency Funding Hearings," gathering information as a group as part of its decision-making process on the expenditure of public funds. Under these circumstances, this office concludes that the Board violated OMA by holding the "Agency Funding Hearings" in private.

On March 29, 2019, this office contacted the Township to ask whether the Board was still holding "Agency Funding Hearings" in the same manner as in September 2015. The Board's current attorney, Mr. Kurt Asprooth, confirmed to this office that the Board had held the hearings in the same or a similar manner since that time. Mr. Asprooth also confirmed, however, that the Board would hold its future "Agency Funding Hearings" as part of open meetings held in full compliance with OMA, including providing proper advance notice, keeping minutes, and allowing public comment, as he had counseled the Board to that effect and had received the Board's agreement. This is a welcome development, as this is the remedy this office would have asked the Board to implement.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, please contact me at (312) 814-8413.

Very truly yours,

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JOSHUA M. JONES  
Deputy Bureau Chief  
Public Access Bureau

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