



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

July 5, 2017

Via electronic mail

Mr. Stuart Bloom
Editor
The Earlville Post
P.O. Box 487
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Via electronic mail

The Honorable Michael S. Hall
Mayor
City of Earlville
210 West Railroad Street
P.O. Box 98
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mayor@earlvilleil.org

RE: OMA Request for Review – 2016 PAC 41800

Dear Mr. Bloom and Mr. Hall:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the City of Earlville (City) City Council (City Council) violated the requirements of OMA.

On May 9, 2016, Mr. Stuart Bloom submitted this Request for Review, on behalf of the *Earlville Post*, alleging that three City Council members held a gathering without (1) providing the public with advance notice of the meeting and (2) keeping written minutes of the meeting as required by OMA. Specifically, Mr. Bloom stated that the gathering of City Council members first became public at a meeting held by the City Council on May 4, 2016, when Mayor Hall mentioned that on April 21, 2016, three particular aldermen met to discuss city business. Mr. Bloom asserts that during the May 4, 2016, meeting an alderman "publicly acknowledged

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that the meeting had taken place but said it was not subject to the Open Meetings Act because it did not involve 'deliberations' but only 'information gathering.'¹ He also alleged that three named aldermen failed to complete their OMA training within 90 days of taking their oaths of office on May 15, 2015, as required by section 1.05(b) of OMA (5 ILCS 120/1.05(b) (West 2014)).

On May 18, 2016, this office sent a copy of the Request for Review to the City Council and requested that it provide a detailed response to the allegations in the Request for Review. On June 8, 2016, this office received the City Council's written response. On August 22, 2016, this office forwarded a copy of the City Council's response to Mr. Bloom; he did not reply.

DETERMINATION

Gathering of City Council Members

Section 2(a) of OMA (5 ILCS 120/2(a) (West 2014)) provides that "[a]ll meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." Section 2.06(a) (5 ILCS 120/2.06(a) (West 2014), as amended by Public Act 99-515, effective June 30, 2016) provides in relevant part, "[a]ll public bodies shall keep written minutes of all their meetings."

Section 1.02 of OMA (5 ILCS 120/1.02 (West 2014)) 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***[.] (Emphasis added.)

If a gathering of public body members is determined to be a "meeting," then all the requirements of OMA apply, including proper posting of notice and an agenda (5 ILCS 120/2.02) (West 2014)), and keeping minutes (5 ILCS 120/2.06(a) (West 2014)).

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

¹Letter from Stuart Bloom, Editor, *The Earlville Post*, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (May 5, 2016).

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situation." 1974 Ill. Att'y Gen. Op. No. S-726, issued March 22, 1974, at 126. A "meeting" has been described by some courts as a gathering "'designed to discuss or reach an accord with regard to public business[.]'" *Nabhani v. Coglianese*, 552 F. Supp. 657, 661 (N.D. Ill. 1982) (quoting *People ex rel. Defanis v. Barr*, 83 Ill.2d 191, 210).

In *People ex rel. Defanis v. Barr*, 83 Ill.2d 191, 198 (1980), the Illinois Supreme Court determined that a gathering of nine city council members that occurred prior to a city council meeting in which the city council members discussed party matters, a future election, and matters that the city council would consider at its meeting later that night, violated the intent and the terms of OMA even though the meeting was informal and no votes were taken. In reaching this decision, the *Barr* court stated that the public policy of a presumption of openness as articulated in section 1 of OMA (5 ILCS 120/1 (West 2014))² would "be poorly served were we to carve out exceptions * * * for informal [meetings] where, as here, public business was deliberated." *Barr*, 83 Ill.2d at 199.

Further, in *State v. Swanson*, 92 Wis.2d 310, 315-16, 284 N.W.2d 655, 658 (Wis. 1979), the Wisconsin Supreme Court found that aldermen holding a "conference" with a neighboring city for the purpose of exchanging information regarding annexation issues was a "meeting" for the purposes of that state's open meeting law. *See also, Orange County Publications, Division of Ottaway Newspapers, Inc. v. Council of Newburgh*, 60 A.D.2d 409, 401 N.Y.S.2d 84 (N. Y. App. Div. 1978) (rejecting a city council's contention that informally gathering in the city manager's office to discuss matters four days prior to city council meetings were not "meetings" in violation of the State of New York's open meeting law); *Sacramento Newspaper Guild v. Sacramento Cty. Bd. of Sup'rs*, 263 Cal. App. 2d 41, 50, 69 Cal. Rptr. 480 (Cal. Ct. App. 1968) ("There is rarely any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors. Only by embracing the collective inquiry and discussion stages, as well as the ultimate step of official action, can an open meeting regulation frustrate these evasive devices.")

Here, the City Council is comprised of six aldermen. Accordingly, four City Council members comprise a quorum, and a majority of the quorum is three members. In his

²Section 1 of OMA provides in relevant part:

It is the public policy of this State that public bodies exist to aid in the conduct of the people's business and that the people have a right to be informed as to the conduct of their business. In order that the people shall be informed, the General Assembly finds and 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.

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Request for Review, Mr. Bloom asserts that three of the six trustees gathered on April 21, 2016, and the City Council does not dispute this assertion. The question, therefore, is whether the aldermen's gathering constituted a City Council meeting.

In its response to this office, the City Council describes the April 21, 2016, gathering as follows:

Superintendent of Public Works, Roger Torman, called Alderman Michael Konsoer to request to meet with him at one of the properties the city owns to discuss a possible proposal from an adjacent property owner. Mr. Konsoer returned Mr. Torman's call and they set up a time to meet on April 21, 2016. When Mr. Torman arrived for the meeting Alderman Michael Konsoer was there as well as Alderman Kenneth Bonine and Alderman Walter Grimm. Mr. Torman had not spoken to Alderman Bonine or Alderman Grimm about meeting with them on that date and time. The location of the city property lines and structure was *discussed* as well as a possible proposal by the adjacent property owner to trade some property for an access easement and repairs to the roof on a city structure at the location. To my knowledge there were no votes taken.^{3]} (Emphasis added.)

As described in the City Council's response to this office, the purpose of the April 21, 2016, gathering was to discuss a potential land deal between an adjacent private property owner and properties that the City owned. The City Council's response described the general topics discussed as the location of property lines, the possibility of trading City property in exchange for granting a member of the public an easement, as well as other such matters concerning the City. These topics clearly and directly pertain to the public business of the City.

The City Council asserted in its response to this office that the City employee who arranged the April 21, 2016, gathering did not anticipate a majority of a quorum of City Council members to be in attendance. However, OMA's broad definition of "meeting" is not limited to gatherings in which it is anticipated that at least a majority of a quorum of a public body will be present. Rather, any gathering held by a majority of a quorum of a public body for the purpose of discussing public business constitutes a "meeting" under the Act.

^{3]}Letter from Michael S. Hall, Mayor, City of Earlville, to Shari L. West, Assistant Attorney General, Public Access Bureau (June 1, 2016).

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In this instance, the facts are undisputed that a majority of a quorum of the City Council engaged in deliberative discussions of public business during the April 21, 2016, gathering. Accordingly, this office concludes that the City Council violated (1) section 2.02 of OMA by holding that meeting without proper posting of notice and an agenda; and (2) section 2.06(a) of OMA by failing to keep minutes of the meeting. Because the City Council does not appear to have voted upon items of final action at the meeting, no remedial action is required, but this office cautions the City Council to comply with all of the requirements of OMA when holding meetings subject to the Act.

OMA Training

Section 1.05(b) of OMA provides the requirements for members of public bodies to complete the electronic training program developed by the Public Access Counselor:

Except as otherwise provided in this Section, each elected or appointed member of a public body subject to this Act who becomes such a member after the effective date of this amendatory Act of the 97th General Assembly shall successfully complete the electronic training curriculum developed and administered by the Public Access Counselor. For these members, the training must be completed *not later than the 90th day after* the date the member:

- (1) *takes the oath of office*, if the member is required to take an oath of office to assume the person's duties as a member of the public body; or
- (2) otherwise assumes responsibilities as a member of the public body, if the member is not required to take an oath of office to assume the person's duties as a member of the governmental body.

Each member successfully completing the electronic training curriculum shall file a copy of the certificate of completion with the public body.

* * *

The failure of one or more members of a public body to complete the training required by this Section does not affect the validity of an action taken by the public body.

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An elected or appointed member of a public body subject to this Act who has successfully completed the training required under this subsection (b) and filed a copy of the certificate of completion with the public body is not required to subsequently complete the training required under this subsection (b). (Emphasis added.)

In his Request for Review, Mr. Bloom alleged that Aldermen Konsoer, Bonine, and Grimm failed to complete their OMA training within 90 days of taking their oaths of office on May 15, 2015. The City Council confirmed in its response to this office that all three of the above-mentioned aldermen took their oaths of office on May 15, 2015. In addition, the City Council furnished this office with copies of the certificates of completion reflecting that all three of these aldermen have successfully completed the OMA electronic training.

Because the aldermen were sworn in on May 15, 2015, they had until August 11, 2015 – 90 days after the day they took the oath of office – to complete their OMA electronic training. The certificates of completion provided by the City Council shows that Mr. Konsoer successfully completed the OMA training on November 6, 2015; Mr. Bonine successfully completed the OMA training on November 9, 2015; and Mr. Grimm successfully completed the OMA training on November 12, 2015. Accordingly, this office concludes that Mr. Konsoer, Mr. Bonine, and Mr. Grimm failed to comply with the training requirements of OMA.

Because the City Council has demonstrated that the aldermen in question have now successfully completed the OMA electronic training and because the plain language of section 1.05(b) provides that any violation of the training requirements does not invalidate any action taken by the City Council, no further remedial action is required. However, this office cautions the City Council members to comply with all of the training requirements of OMA in the future.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have questions, you may contact me by e-mail at sbarnaby@atg.state.il.us, by mail at the address listed on the first page of this letter, or by phone at (312) 550-4480. This letter serves to close this file.

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Very truly yours,



SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

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