

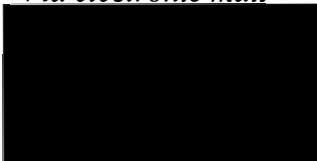


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 18, 2017

Via electronic mail



Via electronic mail

Mr. Gregory A. Brady
Acting Vice President and General Counsel
Northern Illinois University
Office of the General Counsel
Altgeld Hall 330
DeKalb, Illinois 60115-2828
gbrady@niu.edu

RE: OMA Request for Review – 2017 PAC 47674

Dear [REDACTED] and Mr. Brady:

This determination letter 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 attendance of two members of the Executive Committee (Executive Committee) of the Board of Trustees (Board) of Northern Illinois University (NIU) at joint sessions with members of the NIU Foundation and members of the NIU Alumni Association did not violate OMA.

On May 1, 2017, [REDACTED] submitted a Request for Review to the Public Access Bureau alleging that a majority of a quorum of the Executive Committee met in violation of OMA when two of its members met with two members of the NIU Foundation Board and two members of the NIU Alumni Association Board. Although [REDACTED] did not provide this office with the dates of those joint sessions, he alleged that he learned about these joint sessions at a March 9, 2017, Board meeting. As part of his Request for Review, [REDACTED] provided this office with a link to the Bylaws of the Board (Bylaws), a link to audio of the

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March 9, 2017, Board meeting, and a copy of the section of the Bylaws pertaining to the Executive Committee.¹

On May 25, 2017, this office forwarded a copy of the Request for Review to the Executive Committee and asked it to provide a detailed written response to [REDACTED] Request for Review. On June 6, 2017, Mr. Gregory A. Brady, Acting Vice President and General Counsel of Northern Illinois University, submitted a written response on behalf of NIU. Mr. Brady explained:

At no time during any of these sessions was there business before the Executive Committee. No Executive Committee was scheduled, and no matters within the purview of the Executive Committee were discussed at these sessions. The participants watched informational presentations by University and Foundation administrators. The participants spoke generally about challenges facing higher education in Illinois, and they were thanked for their leadership and commitment. * * * No Final Action was ever taken by the NIU Board Chair and Vice Chair at these joint informational sessions.^[2]

Mr. Brady also explained that five joint sessions occurred:

Date	NIU Board Attendees	Discussion
7/12/16	Mark Strauss (then-NIU Board Chair) [and voting member of the Executive Committee]; John Butler (then-NIU Board Vice Chair) [and voting member of the Executive Committee].	Informational discussion on the priorities of the University and the activities of the NIU Foundation and NIU Alumni Association in support of those priorities.
8/18/16	Mark Strauss and John Butler.	Presentation on branding by Interim Vice President for Marketing and Communications and the Director of University Marketing.
11/17/16	Mark Strauss and John Butler.	Presentation on recruitment by former Vice President for Student Affairs and Enrollment Management and former Director of

¹E-mail from [REDACTED] to Public Access (May 1, 2017).

²Letter from Gregory A. Brady, Acting Vice President and General Counsel, Northern Illinois University, to Edie Steinberg, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General, at 3-4 (June 6, 2017).

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		Admissions.
2/17/17	John Butler (NIU Board Chair) [and voting member of the Executive Committee], and Wheeler Coleman (NIU Board Vice Chair) [and voting member of the Executive Committee] appeared after the presentation to thank participants.	Presentation on the new NIU marketing campaign presented by Interim Vice President for Marketing and Communications and the Director of University Marketing.
5/28/17	No members of the Board or Executive Committee attended.	Presentation on a new Foundation campaign presented by NIU Foundation President. ³

On June 9, 2017, this office forwarded a copy of NIU's response to [REDACTED]
On June 13, 2017, [REDACTED] submitted his reply.

DETERMINATION

Section 2.01 of OMA (5 ILCS 120/ 2.01 (West 2016)) provides that "[a]ll *meetings* required by this Act to be public shall be held at specified times and places which are convenient and open to the public." (Emphasis added.) In order for the requirements of OMA to apply, a gathering must constitute a "meeting" as defined by section 1.02 of OMA (5 ILCS 120/1.02 (West 2014)):

"Meeting" means any *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.)

This office has listened to the audio recording of the March 9, 2017, Board meeting. During that meeting, the Chair of the NIU Foundation Board spoke about members of the Board meeting with members of the NIU Foundation Board and NIU Alumni Association Board, focusing their discussions on four strategies: recruitment, capital projects, corporate

³Letter from Gregory A. Brady, Acting Vice President and General Counsel, Northern Illinois University, to Edie Steinberg, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General, at 3 (June 6, 2017).

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relationships, and raising unrestricted revenue.⁴ The Board Chair explained that the Board Chair and Vice Chair had been meeting with two members of each of the other boards and stated that the joint meetings were useful to raise awareness of what the other groups were doing.⁵ He also clarified that because of the requirements of OMA, the Board was being mindful that no more than two members of Board could meet for any purpose that concerns University business.⁶ ██████████ contends that because the Board Chair and Vice Chair, who attended those meetings, are also on the Executive Committee, an Executive Committee meeting was held in violation of OMA.

The Bylaws pertaining to the Executive Committee provide that "[t]he Executive Committee shall be comprised of the Board Chair, the Board Vice Chair, the Board Secretary and a Member of the Board elected by the Board. The President shall be a nonvoting member of the Committee."⁷ The Bylaws further provide that instead of meeting regularly, "[t]he Executive Committee shall meet upon the request of the Board Chair, the President, or any two of the members of the Committee."⁸ ██████████ has not alleged that any such meeting was requested. Rather, ██████████ contends that because the Executive Committee is comprised of four voting members, a majority of a quorum consists of two members of the Executive Committee, and two members of the Executive Committee attended the joint sessions. Accordingly, a majority of a quorum of the Executive Board attended the joint sessions. However, the requirements of OMA are not automatically triggered merely because a majority of a quorum attends a gathering. *See* Ill. Att'y Gen. Op. No. 95-004, issued July 14, 1995, at 9-10 ("The Act does not, however, apply to every gathering of a majority of a quorum of a public body.").

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." 1974 Ill. Att'y Gen. Op. No. S-726, issued March 22, 1974, at 7. "In theory, there is no absolute prohibition against the members of a public body attending an 'informational

⁴Board of Trustees of Northern Illinois University, Meeting, March 9, 2017, audio available at <http://niu.edu/board/meetings/2017/index.shtml>, at approximately 57:20.

⁵Board of Trustees of Northern Illinois University, Meeting, March 9, 2017, audio available at <http://niu.edu/board/meetings/2017/index.shtml>, at approximately 1:18:36.

⁶Board of Trustees of Northern Illinois University, Meeting, March 9, 2017, audio available at <http://niu.edu/board/meetings/2017/index.shtml>, at approximately 1:18:36.

⁷Board of Trustees of Northern Illinois University, Bylaws, Article VI, §1.B.

⁸Board of Trustees of Northern Illinois University, Bylaws, Article VI, §1.C.

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meeting' without triggering the application of' OMA, as long as the members do not make "[d]eliberational statements" or engage in "unrecorded discussions" amongst themselves. Ill. Att'y Gen. Op. No. 95-004, 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" did not make the presentation subject to OMA, but 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 v. Coglianesi*, 552 F. Supp. 657, 661 (N.D. Ill. 1982) (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.")

Mr. Brady explained in the response submitted on behalf of NIU that:


The joint sessions * * * were the idea of the Chair of the NIU Foundation Board, Jeff Yordon. The purpose of these sessions was to identify priorities of the University and specifically how the NIU Foundation and the NIU Alumni Association (both separate legal entities from Northern Illinois University) can help with those priorities. With this idea, the NIU Foundation extended invitations to representatives of the NIU Board of Trustees and the NIU Alumni Association to attend the sessions.^{9]}

The Bylaws provide that the purpose of the Executive Committee is "to act on behalf of the Board and to discuss and offer counsel on *University operations* as needed."¹⁰ (Emphasis added.) "The Executive Committee shall meet upon the request of the Board Chair, the President, or any two of the members of the Committee."¹¹ The Bylaws further provide that the powers and duties of the Executive Committee are to "discuss and act upon all matters pertaining to the Board * * * between meetings of the Board except policy changes. The Executive Committee will only take action on routine matters that require Board action between

⁹Letter from Gregory A. Brady, Acting Vice President and General Counsel, Northern Illinois University, to Edie Steinberg, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General, at 2 (June 6, 2017).

¹⁰Board of Trustees of Northern Illinois University, Bylaws, Article VI, §1.A.

¹¹Board of Trustees of Northern Illinois University, Bylaws, Article VI, §1.C.




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regular Board meetings or on other matters when specifically requested to do so by the full Board."¹²

The available information indicates that the purpose of the joint sessions was to share information regarding the challenges facing higher education in Illinois and at NIU and, in particular, to find ways for the NIU Foundation and NIU Alumni Association to help NIU. There is no indication that during the joint sessions the two members of the Executive Committee engaged in deliberative discussion of University operations, took action on routine matters that require Board action between regular Board meetings, or otherwise attempted to reach an accord on any specific matter within the purview of the Executive Committee. Further, there is no indication that any of the individuals empowered to request a meeting of the Executive Committee did so. Thus, it does not appear that the Board members who attended the meetings in question did so in their capacities as members of the Executive Committee. Accordingly, based on the available information, this office is unable to conclude that the joint sessions attended by two members of the Executive Committee constituted a "meeting" of the Executive Committee subject to the requirements of OMA.¹³

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, you may contact me at (312) 814-5201 or at the Chicago address on the bottom of the first page of this letter.

Very truly yours,


EDIE STEINBERG
Assistant Attorney General
Public Access Bureau 

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¹²Board of Trustees of Northern Illinois University, Bylaws, Article VI, §1.D.

¹³This office notes that the Board has recently amended its Bylaws to increase the membership of the Executive Committee to five voting members, with the President as a non-voting member. Letter from Gregory A. Brady, Acting Vice President and General Counsel, Northern Illinois University, to Edie Steinberg, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General, at 4-5 (June 6, 2017); Board of Trustees of Northern Illinois University, Bylaws, Article VI, §1.B., available at <http://www.niu.edu/board/bylaws/index.shtml#B6> (last viewed August 10, 2017). Because a majority of a quorum of the Executive Committee is now three, the attendance of two members of the Executive Committee at a gathering would not ordinarily violate OMA.