



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 13, 2018

Via electronic mail

The Honorable Allen Skillicorn
State Representative, 66th District
245 Dunridge Circle
East Dundee, Illinois 60118
[REDACTED]

Via electronic mail

Ms. Mallory A. Milluzzi
Klein, Thorpe & Jenkins, Ltd.
20 North Wacker, Suite 1660
Chicago, Illinois 60606-2903
mamilluzzi@ktjlaw.com

RE: OMA Request for Review – 2018 PAC 51521 and 51896

Dear Representative Skillicorn and Ms. Milluzzi:

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 East Dundee Village Board of Trustees (Board) did not violate OMA in connection with public forums concerning a referendum.

On February 1, 2018, Representative Allen Skillicorn submitted a Request for Review (2018 PAC 51521) alleging that on January 31, 2018, a quorum of Board members attended a public forum concerning a referendum on whether to repeal the Village's home rule authority¹ and discussed public business without providing advance notice, taking meeting minutes, or otherwise complying with the requirements of OMA. Representative Skillicorn asserted that four of the Board's seven members "attended the meeting, interrupted the speaker,

¹Erin Sauder, *Divided audience argues over repealing East Dundee home rule*, ELGIN COURIER-NEWS (February 1, 2018, 1:15 p.m.), <http://www.chicagotribune.com/suburbs/elgin-courier-news/news/ct-ecn-east-dundee-anti-home-rule-meeting-st-0202-20180201-story.html>

The Honorable Allen Skillicorn
Ms. Mallory Milluzzi
June 13, 2018
Page 2

and tried to dominate the discussion."² He also provided an internet link to a video of the public forum. On February 13, 2018, this office sent a copy of the Request for Review to the Board and asked it to provide a written response to the allegation that the Board members' attendance and participation in the public forum constituted a Board meeting.

On February 26, 2018, Representative Skillicorn submitted another Request for Review alleging that the Board violated OMA on that date in connection with an informational meeting concerning the home rule referendum. He stated that five members of the Board attended, and that Village business, taxes and finances were discussed. On March 5, 2018, this office sent a copy of the Request for Review to the Board and asked it to respond to that allegation.

On March 23, 2018, counsel for the Board provided a consolidated response to both Requests for Review and a video recording of the February 26, 2018, event. On March 26, 2018, this office forwarded a copy of that response to Representative Skillicorn. On March 30, 2018, Representative Skillicorn submitted a reply to which counsel for the Board responded on April 3, 2018. This office has considered all of the parties' submissions.

DETERMINATION

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[.]

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 126. "In 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 "unrecorded discussions" among 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

²E-mail from State Representative IL 66, Allen Skillicorn to Public Access [Bureau, Office of the Attorney General] (February 1, 2018).

The Honorable Allen Skillicorn
Ms. Mallory Milluzzi
June 13, 2018
Page 3

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. Coglianesse*, 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.")

The Board is comprised of the Village president and six trustees. Thus, if three members of the Board engaged in deliberative discussions of public business during the January 31, 2018, and February 26, 2018, events, all of the procedural safeguards and requirements of OMA would apply. It is undisputed that the Board did not post an agenda or follow the requirements of OMA for either event. Therefore, this office must analyze whether those events constituted meetings of the Board under OMA.

This office has reviewed a video recording of the January 31, 2018, event, which was a forum sponsored by the Fox Valley Libertarian Party concerning the referendum on the Village's home rule authority. Representative Skillicorn alleged that four Board members attended, while the Board acknowledged that three of its members attended. Regardless, three members is a majority of a quorum of the Board. Two of the Board members made substantive comments related to the referendum and the Village's exercise of home rule authority.

In his Request for Review, Representative Skillicorn asserted that the Board members "were active participants in the discussion. All four were in the room together at the same time and they made no effort to limit how many trustees were in the room, how they would speak, or any efforts to comply with the Open Meetings Act."³ In response, counsel for the Board contended that the forum did not constitute a Board meeting because only two Board members, which is less than a majority of a quorum, participated in the discussion. The response further asserted that the "trustees were not engaged in a deliberation as to a decision. They provided some factual information as part of an open discussion with other people about state laws and past actions of the village. * * * The trustees were not sitting together and were not speaking together about this issue."⁴ In addition, the response contended that the referendum is not the public business of the Board because the voters, rather than the Board, ultimately decided whether to approve the referendum. In his reply, Representative Skillicorn stated that he exchanged pleasantries with two of the Board members and that the other two Board members

³E-mail from State Representative IL 66, Allen Skillicorn to Public Access [Bureau, Office of the Attorney General (February 1, 2018).

⁴Letter from Mallory Milluzzi, Assistant Village Attorney, Klein, Thorpe and Jenkins, Ltd., to Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General (March 23, 2018), at 5.

The Honorable Allen Skillicorn
Ms. Mallory Milluzzi
June 13, 2018
Page 4

actively discussed public business. He alleged that "the mere presence of elected officials in a public setting where village business is discussed, is a violation of the intent and letter of the law. One does not have to speak at a meeting to be present."⁵

This office also has reviewed a video recording of the February 26, 2018, event, which was an informational forum concerning the home rule referendum hosted by the Village. The forum consisted of a presentation by the Village administrator followed by a question and answer session. At the beginning of the forum, the administrator stated that members of the Board as well as several public employees such as the police chief were in attendance, and encouraged members of the public to ask them questions afterward. However, none of the Board members spoke during the presentation or the question and answer session that was recorded. The Board's response to this office denied that there was any "discussion or deliberation by Village Board members about any topic."⁶ In his reply to the Board's response, Representative Skillicorn alleged that after the administrator gave her presentation and responded to questions, "[a]ll seven elected officials stayed and discussed this matter, in an official capacity, with the attendees for another 30 minutes. Again the mere presence is a violation of OMA and the active engagement of the attendees by all seven elected officials is further evidence of a violation."⁷ The Board's supplemental response noted that most of those details did not appear in Representative Skillicorn's Request for Review, which only stated that Board members attended a forum in which public business was discussed, but characterized his submissions as still lacking any evidence of an OMA violation: "He merely states that elected officials were present for 30 minutes after the information forum and may have talked with residents, but has no personal knowledge as to what they talked about, nor does he provide any evidence or even allegations that more than two of them were talking to a single resident at a time."⁸

The available information does not include facts from which this office could conclude that either of the events in question were meetings of the Board subject to the requirements of OMA. Only two members of the Board publicly spoke at the January 31, 2018, forum. Many if not most of their comments appeared to be made in response to criticism or comments made by others in attendance; the Board members' comments were separated in time and did not appear to be coordinated. At no time during the forum did three or more members of the Board engage in deliberative discussions of public business. The fact that a majority of a

⁵E-mail from State Representative Allen Skillicorn to Lidia Sanchez (March 30, 2018).

⁶Letter from Mallory Milluzzi, Assistant Village Attorney, Klein, Thorpe and Jenkins, Ltd., to Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General (March 23, 2018), at 2.

⁷E-mail from State Representative Allen Skillicorn to Lidia Sanchez (March 30, 2018).

⁸E-mail from Mallory A. Milluzzi, Senior Associate, Klein, Thorpe & Jenkins, Ltd., to [Steve] Silverman (April 3, 2018).

The Honorable Allen Skillicorn
Ms. Mallory Milluzzi
June 13, 2018
Page 5

quorum or a quorum of Board members attended the forum did not transform that event into a Board meeting.⁹

Likewise, this office has not received evidence that at least a majority of a quorum of Board members held deliberative discussions of public business among themselves during or after the February 26, 2018, public forum. Even if members of the public spoke with Board members after the administrator's presentation, as they were encouraged to do by the Village administrator, such discussions do not constitute deliberations among Board members which trigger the requirements of OMA. Accordingly, this office concludes that the Board did not violate OMA in connection with either event.

This letter serves to close this file. If you have any questions, please contact me at (312) 814-6756.

Very truly yours,



STEVE SILVERMAN
Bureau Chief
Public Access Bureau

51521 51896 o no vio mun

⁹Letter from Mallory Milluzzi, Assistant Village Attorney, Klein, Thorpe and Jenkins, Ltd., to Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General (March 23, 2018), at 5.