



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 28, 2017

Via electronic mail

Mr. Joe Cadotte
Reporter
ABC Newschannel 20
jacadotte@sbgvtv.com

Via electronic mail

Mr. Nathan E. Rice
Assistant Corporation Counsel
Office of the Corporation Counsel
City of Springfield
800 East Monroe Street, Room 313
Springfield, Illinois 62701
nathan.rice@springfield.il.us

RE: OMA Request for Review – 2017 PAC 49967

Dear Mr. Cadotte and Mr. Rice:

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 City Council (Council) of the City of Springfield (City) did not violate OMA when eight of the alderman gathered at an event on September 27, 2017.

On October 5, 2017, Mr. Joe Cadotte, on behalf of ABC Newschannel 20, submitted a Request for Review questioning whether the Council violated OMA when "[e]ight of 10 of Springfield's Aldermen met at Saputo's restaurant in downtown Springfield on Sept. 27 where they received thousands of dollars in campaign contributions."¹ Mr. Cadotte stated that the public was not notified of the meeting, and also alleged that some of the aldermen had not

¹E-mail from Joe Cadotte, Reporter, videographer, ABC Newschannel 20, to Public Access [Bureau] (October 5, 2017).

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reported their campaign contributions to the state.² As part of his Request for Review, Mr. Cadotte submitted a copy of a newspaper article which described the September 27, 2017, event as a reception where Springfield aldermen ate hors d'oeuvres and collected campaign contributions. The article also identified Alderman Kris Theilen as stating that during the reception he was never in a conversation with more than two alderman at a time, and that the conversation centered on baseball, Springfield's future, and the need for blue collar jobs.³

On October 16, 2017, this office forwarded a copy of the Request for Review to the Council and asked it to provide a detailed written response addressing the purpose of the September 27, 2017, gathering and the nature of discussions that occurred. On October 27, 2017, Mr. Nathan Rice, Assistant Corporation Council for the City, submitted a written response on behalf of the Council. Mr. Rice included affidavits from each of the aldermen who attended the September 27, 2017, event: Chuck Redpath, Alderman for Ward 1, Hermon Senor, Alderman for Ward Alderman 2, Doris Turner, Alderman for Ward 3, John Fulgenzi, Alderman for Ward 4, Andrew Proctor, Alderman for Ward 5, Kris Theilen, Alderman for Ward 8, Jim Donelan, Alderman for Ward 9, and Ralph Hanauer, Alderman for Ward 10. Each aldermen averred that (1) he or she attended an informal gathering and political fundraiser at Saputo's Restaurant on September 27, 2017; (2) the event, which lasted about an hour, was for social and political fundraising purposes; and (3) conversations were social and informational, and at no point during the event did a majority of a quorum of aldermen deliberate or discuss public business. The Council's response also asserted that "no public business was acted upon by the attending Aldermen."⁴

On November 6, 2017, this office forwarded a copy of the Council's response to Mr. Cadotte. In a telephone conversation on November 7, 2017, Mr. Mike Truett, the News Director at ABC Newschannel 20, informed an Assistant Attorney General in the Public Access Bureau that ABC Newschannel 20 did not plan to submit a reply.

²Section 7(c)(3) of the Attorney General Act (15 ILCS 205/7(c)(3) (West 2016)) limits the Public Access Counselor's authority to reviewing disputes involving potential violations of OMA and the Freedom of Information (5 ILCS 140/1 *et seq.* (West 2016)). Therefore, any allegations concerning campaign financing are not subject to review by the Public Access Bureau.

³Bruce Rushton, *Check, please: Aldermen collect campaign money*, ILLINOIS TIMES (October 5, 2017, 12:08 AM), <http://illinoistimes.com/article-19222-check,-please.html>.

⁴Letter from Nathan E. Rice, Assistant Corporation Counsel, City of Springfield, to Edie Steinberg, Assistant Attorney General, Public Access Bureau (October 27, 2017).

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DETERMINATION

Section 2.01 of OMA (5 ILCS 120/2.01 (West 2016), as amended by Public Act 100-477, effective September 8, 2017) 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 addition, section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016)) generally requires a public body to provide the public with at least 48 hours advance notice of its meetings. 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 2016)):

"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.)

The Council consists of 10 aldermen and the mayor; a quorum of the Council is six members and a majority of a quorum of the Council is four members. Therefore, if four or more members of the Council gather and engage in contemporaneous, interactive, deliberative discussions of public business, the procedural safeguards and requirements of OMA would apply to that gathering.

There is no dispute that a majority of a quorum of the Council attended the event at Saputo's restaurant on September 27, 2017. All of the Council members who attended, however, submitted affidavits denying that they participated in deliberative discussions of public business or that a majority of a quorum of Council members together discussed public business during the event. The requirements of OMA are not automatically triggered merely because a majority of a quorum attends a gathering. See *University Professionals of Illinois v. Stukel*, 344 Ill. App. 3d 856, 868 (1st Dist. 2003) (OMA is not "triggered every time public officials meet and converse"); 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."). OMA "balance[s] the right of the press and the people to view the deliberative and decision-making processes of government first-hand with the right of public officials to speak their minds freely and associate with whomever they choose." *People ex rel. Difanis v. Barr*, 83 Ill. 2d 191, 210 (1980). Accordingly, in determining whether a gathering of a majority of a quorum of members of a public body constitutes a "meeting" subject to OMA, the Illinois Supreme Court has instructed that "[t]he Act is only addressed to meetings designed to discuss or reach an accord with regard to public business which properly should be deliberated or acted upon in an open

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forum." *Barr*, 83 Ill. 2d at 210 (1980). *See also Nabhani v. Coglianese*, 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 Attorney General has noted that "whether a gathering falls within the definition of a 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 7. While informal gatherings cannot be used to thwart the intent of OMA, "[t]he Act is not intended to prohibit bona fide social gatherings[.] * * * 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." *Barr*, 83 Ill. 2d at 202. Accordingly, the Public Access Counselor has determined in some other instances that public bodies have not violated OMA where members attended political or campaign events in their capacity as elected officials or candidates, but did not discuss public business in a deliberative fashion. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 16557, issued May 23, 2012, at 2-3 (participation of City Council members at question and answer session involving matters of public business hosted by political party was not a meeting as defined in section 1.02 of OMA); Ill. Att'y Gen. PAC Req. Rev. Ltr. 13792, issued July 6, 2011, at 2 (attendance of school board members at campaign-related social gathering was not a meeting subject to OMA).

In *Barr*, the Illinois Supreme Court held that nine public officials, a majority of a 15-member city council, violated OMA by holding a private meeting during which they discussed a new ward map, the appointments of public officers for two separate agencies, and a housing development, all items which were set to be discussed in a public meeting later that same night. *Barr*, 83 Ill. 2d at 202, 211. Here, by contrast, the available information indicates that the September 27, 2017, event was a social gathering for the purposes of collecting campaign contributions. Although aldermen attending the event may have discussed matters that relate to public business of the City, such as the future of Springfield and the need for blue collar jobs, there is no indication that during the event four or more members—a majority of a quorum of the Council—engaged in deliberative discussions of City business, took action on City business, or otherwise attempted to reach an accord on any specific matter within the purview of the Council. Accordingly, this office is unable to conclude that the fund raising event held on September 27, 2017, constituted a "meeting" of the Council subject to the requirements of OMA.

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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,

A solid black rectangular redaction box covering the signature of Edie Steinberg.

EDIE STEINBERG
Assistant Attorney General
Public Access Bureau

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