



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 31, 2018

Via electronic mail

Mr. Tom Robb
Elk Grove Journal
Political Editor
Journal & Topics Newspapers
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Via electronic mail

Via electronic mail

The Honorable Barbara Somogyi, President
Board of Education
Community Consolidated School District 59
2123 South Arlington Heights Road
Arlington Heights, Illinois 60005
somogyi.barbara@ccsd59.org

RE: OMA Requests for Review – 2017 PAC 49878; 2017 PAC 49981

Dear Mr. Robb, [REDACTED] and Ms. Somogyi:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). This office has consolidated these Requests for Review because they contain closely-related allegations. For the reasons explained below, the Public Access Bureau concludes that the Community Consolidated School District 59 Board of Education (Board) did not violate OMA.

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BACKGROUND

On October 2, 2017, Mr. Tom Robb, on behalf of the *Elk Grove Journal*, submitted a Request for Review alleging that the Board violated OMA by conducting public business concerning a referendum petition via e-mail. On October 6, 2017, [REDACTED] submitted a Request for Review with a similar allegation. On October 6, 2017, and October 16, 2017, this office sent copies of the Requests for Review to the Board and requested a written response to Mr. Robb's and [REDACTED] allegations. This office asked the Board to address whether the e-mails among Board members regarding the referendum petition constituted a "meeting" as defined by OMA and to provide copies of all e-mail correspondence related to the referendum petition, including, but not limited to, correspondence between and among Board members, and to describe other forms of communications, if any, between Board members concerning the referendum petition. On November 7, 2017, the Board provided the requested materials. Mr. Robb replied on November 7, 2017, and [REDACTED] replied on November 22, 2017.

DETERMINATION

Section 2(a) of OMA (5 ILCS 120/2(a) (West 2016), as amended by Public Acts 100-201, effective August 18, 2017; 100-465, effective August 31, 2017) provides that "all meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." Section 1.02 of OMA (5 ILCS 120/1.02 (West 2016)) defines a "public 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 or, for a 5-member public body, a quorum of the members of a public body held for the *purpose of discussing public business*. (Emphasis added.)

Under the definition in section 1.02 of OMA, a "meeting" may include communications through e-mail or other electronic means. Mr. Robb and [REDACTED] alleged that certain Board members held a meeting under OMA by exchanging e-mails concerning the filing of objections to a referendum petition prepared by residents of the school district. The referendum and objections to the referendum arose in the context of a Board budgetary issue. On July 10, 2017, the Board approved a resolution of intent to issue working cash fund bonds in

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an amount not to exceed \$20 million. In response to the Board's resolution, on August 11, 2017, certain residents of the school district submitted a referendum petition to place the issuance of the bonds on the March 20, 2018, ballot. On August 18, 2017, a different group of citizens filed objections to the validity of the referendum petition.¹ The e-mails provided to this office by the Board reflect Board members' discussions concerning the filing of the objections. Because it is dispositive of the issue of whether a "meeting" occurred, this office first analyzes the question of whether the e-mail communications concerned public business.

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). 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." *Barr*, 83 Ill. 2d at 210.

The Board argues that the e-mails at issue concerned the process and status of individuals' review of referendum petition signatures, which was not the public business of the Board:

Board members that [*sic*] participated in the email discussions would have no authority to bind the School District or the Board with regards to the objection or petition. The Board and School District have no role to play regarding a referendum petition. First, a school district is prohibited from expending resources in support of or against a referendum and there is no indication from these emails that the expenditure of School District resources occurred or was contemplated. *See* 10 ILCS 5/9-25.1. Further, while some time ago school boards oversaw objections to petitions, the General Assembly has divested that authority from school boards and transferred the review of petitions and objections to the county electoral board. *See* 10 ILCS 5/10-9(2.5). Simply stated, objections to referendum petitions are not the "public business" of school districts or their boards.^[2]

¹Letter from Brian P. Crowley, Franczek Radelet, to Laura S. Harter, Assistant Attorney General, Public Access Bureau (November 7, 2017), at 2.

²Letter from Brian P. Crowley, Franczek Radelet, to Laura S. Harter, Assistant Attorney General, Public Access Bureau (November 7, 2017), at 4.

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The Board also argues that the context of the discussions was political and that the Board members were acting as private citizens exercising their political rights, not as representatives of the Board.

Mr. Robb and [REDACTED] assert that the discussions concerning the objections are pertinent to the Board's business. Mr. Robb contended that Board will likely discuss the bond issuance at future meetings and "that would appear to make the referendum to place a question on whether to issue those bonds on the March 20, 2018 election ballot relevant school district related business."³

The e-mails concern the mechanics of filing the objections to the petition for referendum. The Board members provided findings and updates to each other as they checked the validity of signatures.⁴ They also discussed the specifics of how to check the petition, the logistics of going to the Cook County Clerk's office to review signatures in the voter database, and the timing of delivering the objections to an attorney.⁵

The petition for a referendum and the objections to that petition are generally relevant to the public business of the Board, as the bond issuance directly affects the Board's budget. There is a distinction, however, between the general topics of the referendum and objections and the specific topic of filing the objections. The discussions in the e-mails at issue were limited to the mechanics of filing the objections. The e-mails did not include conversations about broader subjects that could be considered Board business, such as the Board's budget, the impact of the referendum or the objections, or what measures to take in light of the referendum and objections. As the Board explained in its answer, the Board itself could not file objections to the petition. In an e-mail from the school district's Superintendent to the Board President and Board Secretary, the Superintendent provided an attorney's advice regarding the process for filing objections: "[n]either the District nor the Board as an entity can be an objector, but an individual Board member can, acting in his or her private capacity, take the lead as an objector or work with a group in doing research and development [*sic*] objections."⁶

³E-mail from Tom Robb to Laura Harter (November 7, 2017).

⁴See CCSD_007, CCSD_008, CCSD_009; CCSD_010, CCSD_012; CCSD_017, CCSD_019.

⁵See CCSD_022, CCSD_023, CCSD_024, CCSD_025, CCSD_026, CCSD_027.

⁶E-mail from Tom Robb, Reporter, Elk Grove Journal, to Laura Harter, Assistant Attorney General, Public Access Bureau (October 13, 2017), attachment at 35 (e-mail from Dr. Art Fessler, Superintendent, Community Consolidated School District 59, to Sunil Bhawe and Barbara Somogyi (August 11, 2017)).

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Consistent with the advice the Board members received, there did not appear to be an attempt to file objections on behalf of the Board. Rather, Board members were acting as private citizens in their work on the objections. While the objections were relevant to a matter of public business, preparing the objections for filing was not the public business of the Board, but rather the personal, or private, action of the individuals preparing the filing. Although the filing of the objections may have aligned with certain Board members' positions regarding the issuance of the bonds, the Board members' private actions are not automatically converted into the business of the Board solely because the actions could have an impact on the business of the public body. The discussions were akin to political discussions and "[t]he Open Meetings Act does not prohibit political discussions between or among members of public bodies[.]" *Barr*, 83 Ill. 2d at 209; *see also* 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). Therefore, based on the available information, the e-mails submitted by the Board for this office's review did not constitute a "meeting" of the Board because they were not exchanged for the purpose of discussing public business. Accordingly, there is insufficient evidence from which this office can conclude that the Board violated OMA.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at (217) 524-7958 or LHarter@atg.state.il.us. This letter serves to close these files.

Very truly yours,

[REDACTED]

LAURA S. HARTER
Assistant Attorney General
Public Access Bureau

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cc: *Via electronic mail*
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