



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

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ATTORNEY GENERAL

June 8, 2015

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Mr. Brian P. Crowley  
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Attorneys and Counselors  
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RE: OMA Request for Review – 2013 PAC 24827

Dear Mr. Rohrscheib and Mr. Crowley:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2012)). For the reasons that follow, the Public Access Bureau concludes that the Champaign Unit School District 4 Board of Education (Board) did not hold improper meetings concerning appointments of Board members to leadership positions and negotiation teams, or take final action via private e-mail communications.

On June 6, 2013, Mr. Josh Rohrscheib submitted a Request for Review alleging that then-incumbent Board President Stig Lanesskog "sent out emails that appear to have the effect of deciding Board action prior to a meeting. These emails included all the incoming members of the school board."<sup>1</sup> Specifically, Mr. Rohrscheib alleged that Mr. Lanesskog sent Board members e-mails concerning negotiation teams and appointed Board members to negotiation teams via e-mail.

On June 17, 2013, this office forwarded a copy of the Request for Review to the

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<sup>1</sup>E-mail from Josh Rohrscheib to Sarah Pratt, Public Access Counselor, Office of the Attorney General (June 6, 2013).

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District and asked it to provide a written response to the allegations in the Request for Review together with copies of all e-mails that Board members exchanged with other Board members concerning leadership positions or negotiation teams since April 6, 2013. The District furnished the records together with a written response asserting that none of the e-mails constituted a meeting under OMA.

### DETERMINATION

Section 2(a) of OMA (5 ILCS 120/2(a) (West 2012)) 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 (5 ILCS 120/1.02 (West 2012)) 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.

Under this statutory definition, a "meeting" may include communications through e-mail or other electronic means. The Board is comprised of seven members. Accordingly, four Board members comprise a quorum, and a majority of the quorum is three members. Therefore, if at least three members of the Board engaged in contemporaneous, interactive e-mail communications concerning "public business" those discussions would have constituted a meeting or meetings of the Board subject to the procedural safeguards and requirements of OMA.

This office has reviewed the e-mails in question. Most of those e-mails were exchanged by no more than two members of the Board. With respect to e-mails that were sent by Mr. Lanesskog to at least a majority of a quorum of the Board, the District asserted:

Under the law, it is impossible for Mr. Lanesskog's emails standing alone to violate OMA. For there to be a violation, there must be a contemporaneous discussion, such as a reply email delivered in close proximity in time to the original email. There, however, is no evidence of any contemporaneous interaction between any individuals as a result of Mr. Lanesskog's email. The only reply of

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which the School District is aware is \* \* \* from an individual who was not yet a Board member, is written five hours after Mr. Lanesskog's email, and merely congratulates Mr. Lanesskog on his election.<sup>2</sup>

This office's review of the records in question confirms that none of the e-mails sent by Mr. Lanesskog elicited responses in which a majority of a quorum of the Board discussed public business. Accordingly, this office concludes that the e-mails sent and received by Board members did not constitute a meeting subject to the requirements of OMA.

The Request for Review also asserted that Mr. Lanesskog appointed Board members to certain positions via e-mail. We construe that claim as alleging that the Board violated section 2(e) of OMA (5 ILCS 120/2(e) (West 2012)), which provides that "[f]inal action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted." The Board responded to that allegation by acknowledging that certain e-mails discussed the possibility of appointing Board members to certain positions, but asserted that "no definitive decisions are made. Instead, the Board voted for officers at its organization meeting on May 6 in open session and appointed negotiation team members in open session at an open meeting on June 10[.]"<sup>3</sup>

In one of the e-mails, Mr. Lanesskog appears to tentatively appoint negotiation teams, but indicates that the appointments have not been finalized. Such a tentative statement by a single Board member does not manifest final action by the Board. Further, the District confirmed that the Board subsequently voted to elect officers and appoint negotiation teams during open meetings. Accordingly, we conclude that the Board did not violate section 2(e) of OMA by taking final action via e-mail.

Although we recognize that it is sometimes expedient for members of a public body to communicate with one another between meetings, e-mails concerning public business which are sent to or received by a majority of a quorum skirt the purpose of OMA,<sup>4</sup> and have the potential to violate the Act, albeit unintentionally. We therefore caution the members of the Board to be mindful of the requirements of OMA, as well as the public policy favoring the open

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<sup>2</sup>Letter from Brian P. Crowley, Franczek Radelet, Assistant Public Access Counselor, Illinois Attorney General's Office (July 2, 2013).

<sup>3</sup>Letter from Brian P. Crowley, Franczek Radelet P.C., Assistant Public Access Counselor, Illinois Attorney General's Office (July 2, 2013).

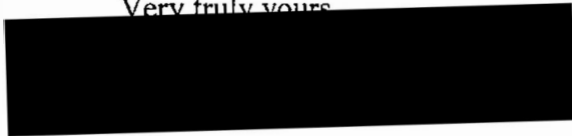
<sup>4</sup>Section 1 of OMA (5 ILCS 120/1 (West 2012)) provides that "is is the intent of this Act to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly."

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discussion of matters affecting the public interest, before engaging in such e-mail communications.

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 (312) 814-6756.

Very truly yours



STEVE SILVERMAN  
Assistant Bureau Chief  
Public Access Bureau

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