



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

May 28, 2025

Via electronic mail



Via electronic mail

Mr. Michael J. Smoron
Zukowski, Rogers, Flood & McArdle
50 Virginia Street
Crystal Lake, Illinois 60014
msmoron@zrfmlaw.com

RE: OMA Request for Review – 2025 PAC 86190

Dear [REDACTED] and Mr. Smoron:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2022)). For the reasons explained below, the Public Access Bureau concludes that the Village of Hebron (Village) Board of Trustees (Board) did not violate OMA in connection with Facebook activity by Board trustees.

BACKGROUND

On April 12, 2025, this office received [REDACTED] complete Request for Review alleging that a majority of a quorum of the Board engaged in discussion of public business on a Facebook page. As part of his Request for Review, [REDACTED] included screenshots of a Facebook post that included comments by three members of the Board.

On April 24, 2025, this office forwarded a copy of the Request for Review to the Board and asked it to respond in writing to the allegations in [REDACTED] Request for Review. Specifically, this office asked the Board to address whether the Facebook communications identified in the Request for Review constituted a "meeting" as defined by section 1.02 of

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OMA.¹ This office also asked the Board to provide this office with copies of any additional written communications and descriptions of verbal communications about this subject matter if they occurred.

On May 5, 2025, the Board provided its written response. On May 9, 2025, this office forwarded a copy of the Board's written response to ██████████; he replied on May 12, 2025.

DETERMINATION

It is "the public policy of this State that its citizens shall be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 2022). "The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (1989).

For the requirements of OMA to apply, a gathering must constitute a "meeting" as defined by section 1.02 of OMA:

"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[.]

The Board is comprised of six trustees and the Village President.² Accordingly, four trustees constitute a quorum, and a majority of the quorum is three trustees.

██████████ Request for Review included copies of messages posted on an unspecified date in a discussion group on a Facebook page in response to a suggestion for a list to be compiled of people who would support an ordinance allowing the use of golf carts on Village streets. Trustee Jonathan Mindham responded to a comment on the post from a constituent by stating, "I will gladly listen to this proposal," and acknowledged a comment from another constituent within that chain of comments.³ Separately, Trustee Josh Stevens

¹5 ILCS 120/1.02 (West 2022), as amended by Public Act 103-626, effective January 1, 2025.

²Hebron, IL., Code § 1-8-1(B) (effective November 18, 2019), *available at* <https://www.villageofhebron.org/media/1926> (last visited May 12, 2025).

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commented, "If someone wants to bring it back up to the board with legwork done, I, for one, would consider reassessing and hearing the facts and figure[s]!"⁴ He further engaged with constituent replies underneath his own comment. Finally, Trustee Dawn Milarski replied to Trustee Stevens's comment, stating, "I would consider reassessing it as well," to which Trustee Mindham replied, "you have 3 trustees that are willing to hear his proposal so far."⁵ Trustee Milarski also stated in response to the thread that included Trustee Stevens, "I would add, a petition of signatures, stating that it is wanted. Also check to see if other villages request insurance, inspections, rider limitations and a map of proposed driving areas. As much information you can get is best. I think the board would be interested in how other villages enforce golf cart ordinances."⁶

In its response to this office, the Board argued that the comments of Trustees Milarski and Mindham were not made "for the purpose of discussing or deliberating public business amongst themselves. Instead, the posts by Trustees Milarski and Mindham were simply those of Village officials acknowledging [for] their constituents that they, again, would be willing to listen to any such proposal."⁷ The Board further argued that these communications "were meant as acknowledgments to Village residents and that there is no deliberation of the advantages or disadvantages of such golf cart ordinance – simply expressions of willingness to listen."⁸ The Board also included affidavits from each of its six trustees attesting that they did not engage in any additional communications on this subject matter. The affidavits from Trustees Milarski, Mindham, and Stevens also averred that the Facebook comments were "only intended to express my willingness to listen to my constituents and not to be a discussion or debate of Village business."⁹ In his reply, ██████████ argued that these communications were a discussion of public business, that a majority of a quorum participated, and that no public notice was provided.

³E-mail from ██████████ to [Public Access Bureau, Office of the Attorney General] (April 8, 2025), attachment 1.

⁴E-mail from ██████████ to [Public Access Bureau, Office of the Attorney General] (April 8, 2025), attachment 1.

⁵E-mail from ██████████ to [Public Access Bureau, Office of the Attorney General] (April 8, 2025), attachments 1 and 2.

⁶E-mail from ██████████ to [Public Access Bureau, Office of the Attorney General] (April 8, 2025), attachment 4.

⁷Letter from Michael J. Smoron, Zukowski, Rogers, Flood & McArdle, to Benjamin J. Silver, Supervising Attorney, Public Access Bureau, Office of the Attorney General (May 5, 2025), at [1].

⁸Letter from Michael J. Smoron, Zukowski, Rogers, Flood & McArdle, to Benjamin J. Silver, Supervising Attorney, Public Access Bureau, Office of the Attorney General (May 5, 2025), at [1-2].

⁹Affidavits of Dawn Milarski, Jonathan Mindham, and Josh Stevens (May 1, 2025).

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OMA "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. A gathering does not constitute a meeting for purposes of OMA when the members of the public body do not participate in examination or weighing of reasons for or against a course of action, an exchange of facts preliminary to a decision, or an attempt to reach accord on a specific matter of public business. *Nabhani v. Coglianesse*, 552 F. Supp. 657, 661 (N.D. Ill. 1982). See also Ill. Att'y Gen. PAC Req. Rev. Ltr. 38142, issued September 2, 2016, at 3 (unable to conclude that a Trustee Workshop convened by the Village Clerk and attended by a majority of a quorum of members of the Board constituted a meeting without any evidence that the members "collectively engaged" in deliberative discussions of public business).

In this matter, the trustees' communications, while related to a potential matter of Board business, were mostly in response to and directed at constituents. Although the trustees did post messages on the same comment threads, those comments did not appear to include any interactive deliberations between the trustees. None of the trustees attempted to reach a consensus with each other or exchange facts for purposes of considering whether to pass a golf cart ordinance. Instead, the trustees' activity amounted to individually notifying constituents of their willingness to reconsider the subject of allowing golf carts on streets at a future time and recommending how constituents could present a proposal to the Board. Therefore, the Facebook activity did not constitute a "meeting" of the Board because the communications did not involve the three Board members interacting with each other to deliberate about public business. Accordingly, this office concludes that the messages posted by the Board members did not violate OMA.

Nevertheless, this office cautions the Board that participation in a thread on Facebook or other interactive media could lead to deliberative discussions of public business that violate the Act. Before participating in discussion forums that involve other Board members, trustees should be mindful of the requirements of OMA and ensure that they refrain from interactive communications that involve at least a majority of a quorum of the members of the Board.

[REDACTED]
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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 (773) 590-7878 or benjamin.silver@ilag.gov. This letter serves to close this file.

Very truly yours,

[REDACTED]

BENJAMIN J. SILVER
Supervising Attorney
Public Access Bureau

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