



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 6, 2017

Via electronic mail

Mr. Adam Chudzik
Norwood Park Watchdog



Via electronic mail

Dr. Paul O'Malley, Superintendent
Norridge School District 80
Administration Office
8151 West Lawrence Avenue
Norridge, Illinois 60706
pomalley@norridge80.net

RE: OMA Request for Review – 2016 PAC 45537

Dear Mr. Chudzik and Dr. O'Malley:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2015 Supp.)). For the reasons that follow, the Public Access Bureau concludes that the requirements of OMA did not apply to a December 20, 2016, gathering of the Superintendent's Task Force (Task Force) in Norridge School District 80 (District).

On December 21, 2016, Mr. Adam Chudzik filed this Request for Review questioning the Task Force's holding of a private meeting on December 20, 2016. He stated that the District posted a timeline of its Ad Hoc Deficit Reduction Planning Committee (Ad Hoc Committee) meetings, which included a Task Force meeting on that date that was described as "invite only." On January 3, 2017, this office sent a copy of the Request for Review to the District and asked it to provide this office with copies of any recordings, written minutes, or other documentation of the Task Force's December 20, 2016, meeting for this office's review, together with a written response addressing whether the Task Force is a public body for purposes

Mr. Adam Chudzik
Dr. Paul O'Malley
April 6, 2017
Page 2

of OMA. This office also sought clarification as to whether notice was posted for the meeting and whether it was open to the public. On February 3, 2017, the District submitted a written response. Mr. Chudzik did not reply.

DETERMINATION

"In order that the people shall be informed, the General Assembly finds and declares that it is the intent of [OMA] to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2014). Section 1.02 of OMA (5 ILCS 120/1.02 (West 2014)) defines "public body" as including:

all legislative, executive, administrative or advisory bodies of the State, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, and any subsidiary bodies of any of the foregoing including but limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue[.]

An "advisory body," for purposes of OMA, is an entity that has defined responsibilities and is a formal part of the structure of the public body that it advises. *Board of Regents of the Regency University System v. Reynard*, 292 Ill. App. 3d 968, 977-78 (4th Dist. 1997). In contrast, OMA "is not intended to open to the public the deliberations of merely informal advisory committees who discuss internal" affairs of a public body. *Pope v. Parkinson*, 48 Ill. App. 3d 797, 800 (4th Dist. 1977). Factors to consider in determining whether a group constitutes an advisory body under OMA include:

who appoints the members of the entity, the formality of their appointment, and whether they are paid for their tenure; the entity's assigned duties, including duties reflected in the entity's bylaws or authorizing statute; whether its role is solely advisory or whether it also has a deliberative or investigative function; whether the entity is subject to government control or otherwise accountable to any public body; whether the group has a budget; its place within the larger organization or institution of which it is a part; and the impact of decisions or recommendations that the group makes. *University Professionals of Illinois v. Stukel*, 344 Ill. App. 3d 856, 865 (1st Dist. 2003).

Mr. Adam Chudzik
Dr. Paul O'Malley
April 6, 2017
Page 3

Similarly, courts have considered three primary factors in determining whether a group is a "subsidiary body" of a public body under OMA: "(1) whether the entity has a legal existence independent of government resolution; (2) the nature of functions performed by the entity; and (3) the degree of governmental control over the entity." *Hopf v. Topcorp, Inc.*, 256 Ill. App. 3d 887, 892 (1st Dist. 1993).

In its response to this office, the District explained the distinction between the Ad Hoc Committee and the Task Force:

The Ad Hoc Committee was created by the School District's Board of Education and was designed to address the feasibility of and proposal for an operating tax rate referendum to be placed on the ballot for the November 2016 General Election. It was also designed to help the Board come up with a way to present to the public the idea that the School District had to raise revenue from local sources. The Ad Hoc Committee's members were appointed by the Board. To assist the Committee in carrying out its function, the Board engaged a consultant who prepared a survey that was circulated to the public to determine support for various options to reduce spending and generate revenue for the School District. Agendas for all meetings of the Ad Hoc Committee were properly posted and minutes maintained. The Ad Hoc Committee presented the results of the survey to the Board, and the Board then had a referendum placed on the ballot for the November 2016 General Election. The referendum failed.^[1]

According to the District, after the referendum failed, the Superintendent exercised discretion to create his own task force, independent of the Ad Hoc Committee, to assist him in developing a set of options that the Committee could consider for a ballot measure in upcoming elections. The Task Force developed three recommendations to submit to the Superintendent, who then decided to submit them to the Ad Hoc Committee as his own recommendations. The District described the Task Force as follows:

The Task Force was a purely internal body in that it was the brainchild of the Superintendent and not the Board; the Superintendent created the Task Force to help *him* come up with a set of options to be presented to the Ad Hoc Committee and the

¹Letter from John M. Izzo, Hauser Izzo, LLC, to Laura S. Harter, Assistant Attorney General, Public Access Bureau (February 3, 2017), at 1-2.

Board as the Board considered revenue generating/deficit reduction measures that would ultimately go on the ballot; the Superintendent served as the head of the Task Force; the Superintendent had the final say so on who would be invited to serve on the Task Force; the Task Force meetings took place separate and apart from the Ad Hoc Committee meetings and the Board's meetings; the Board did not make a special appropriation of monies to fund the Task Force or to compensate the Superintendent or any Task Force activities; no member of the Board served on the Task Force; only one member of the Ad Hoc Committee served on the Task Force and that member did not participate in the vote on the recommendations to present to the Superintendent; the Task Force's recommendations were presented to *the Superintendent*; neither the Superintendent nor the Board was bound by any recommendation that the Task Force made; no minutes were kept of Task Force meetings; no resolutions were adopted by the Task Force; and no member of the Task Force was paid for their service other than the consultant who had already been employed by the School District prior to the formation of the Task Force. (Emphasis in original).¹²¹

The District also contended that the Task Force was not part of the Board's internal structure, and therefore not a subsidiary body of the Board within the meaning of OMA. The District explained that the Task Force was not a standing committee of the Board or a special committee created by the Board, but rather a Superintendent Committee that was created by the Superintendent pursuant to Board Policy 2:150.³ Superintendent Committees report to the Superintendent and the Board policies do not mandate any particulars of such committees, such as required structure, staff, or officers. The District explained that "the Superintendent is free to create and abolish his committees as he chooses, and the creation of Superintendent Committees is not required by any provision of the Illinois School Code pertaining to school board organization."⁴

²Letter from John M. Izzo, Hauser Izzo, LLC, to Laura S. Harter, Assistant Attorney General, Public Access Bureau (February 3, 2017), at 3.

³Norridge School District 80, Policy 2:150, Committees (adopted March 15, 2016) ("The Superintendent creates Superintendent committees as deemed necessary and makes all appointments. Superintendent committees report to the Superintendent.").

⁴Letter from John M. Izzo, Hauser Izzo, LLC, to Laura S. Harter, Assistant Attorney General, Public Access Bureau (February 3, 2017), at 4.

Mr. Adam Chudzik
Dr. Paul O'Malley
April 6, 2017
Page 5

After careful review of the relevant information in light of the relevant factors, this office concludes that the Task Force is not a public body under OMA. Even though the Task Force meetings were posted on the District's website on a list titled "Ad Hoc Deficit Planning Committee Timeline,"⁵ which suggests that the Task Force was part of the Ad Hoc Committee, on balance, the facts show that the Task Force was an internal group formed to assist the Superintendent rather than any public body. Although the Superintendent sought input from the Board on Task Force members, the Superintendent made the final determination regarding whom to appoint. No members of the Board were invited to or attended the Task Force meetings. The Task Force did not have any bylaws or an authorizing statute, and had no deliberative or investigative functions. Further, it was not accountable to any public body, as its role was to assist the Superintendent in carrying out his duties, not to provide any service to a public body subject to OMA such as the Ad Hoc Committee or the Board. The Task Force did not have a budget and its existence was purely at the discretion of the Superintendent. It was not part of the formal structure of the Ad Hoc Committee or the Board, nor was it created by those bodies. Whether to accept or reject any of the Task Force's recommendations was within the discretion of the Superintendent, and the recommendations had no binding authority on the Ad Hoc Committee or the Board. Although one Task Force member was paid by the District as a consultant before the creation of the Task Force and one member of the Ad Hoc Committee was also a member of the Task Force, those facts alone are insufficient to support a finding that the Task Force is a public body. Accordingly, based on the available information, this office concludes that the Task Force is not an advisory or subsidiary body of the Board, and therefore is not a "public body" subject to the requirements of OMA.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, you may contact me at (217) 524-7958.

Very truly yours,



LAURA S. HARTER
Assistant Attorney General
Public Access Bureau

⁵See News and Info Regarding District 80's Referendum, Norridge School District 80
<http://www.norridge80.org/referendum/index.asp> (last visited March 31, 2017);
http://www.norridge80.org/referendum/Ad_Hoc_Deficit_Planning_Committee_Timeline.pdf (last visited March 31, 2017).

Mr. Adam Chudzik
Dr. Paul O'Malley
April 6, 2017
Page 6

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cc: *Via electronic mail*
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