



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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March 7, 2019

Via electronic mail

Mr. Michael Weaver
Founder and Publisher
Great Rivers Media
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Via electronic mail

The Honorable Benjamin L. Goetten
Jersey County State's Attorney
201 West Pearl Street
Jerseyville, Illinois 62052
bgoetten@gmail.com

RE: OMA Request for Review – 2018 PAC 55379

Dear Mr. Weaver and State's Attorney Goetten:

This determination 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 explained below, the Public Access Bureau concludes that the Personnel Committee of the Jersey County Board (Board) held a meeting on August 20, 2018, at a location that was not convenient and open to the public, and failed to create a verbatim recording of its closed session meeting held that same day.

BACKGROUND

On October 19, 2018, this office received Mr. Michael Weaver's Request for Review alleging that the Committee held a meeting August 20, 2018, that was not open to the public and that took place in a different location than the one listed on the agenda. Mr. Weaver also alleges that the Committee held a closed session during that meeting and did not create a verbatim recording of the closed session. On November 2, 2018, this office sent a copy of the Request for Review to the Committee and requested that the Committee or its representative provide a written response to the allegations in the Request for Review and to provide certain information and records for this office's review. On November 14, 2018, the Jersey County

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State's Attorney, on behalf of the Committee, provided an answer and the requested materials. Mr. Weaver replied on November 26, 2018.

DETERMINATION

"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 (5th Dist. 1989).

Closed Meeting

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

If a gathering of public body members is determined to be a "meeting," then all the requirements of OMA apply, including proper posting of notice and an agenda (5 ILCS 120/2.02 (West 2016)), and the holding of the meeting at a specified time and place that is convenient and open to the public (5 ILCS 120/2.01 (West 2016)).

In his Request for Review, Mr. Weaver asserted that the Committee posted an agenda for its August 20, 2018, meeting that indicated that the meeting would be held at 6:00 p.m. in the Jersey County Board Room. Mr. Weaver stated that, prior to the start of the meeting, the Board chairman directed him to leave the meeting room because the meeting was to be held in closed session. Mr. Weaver stated that he left the building and waited in his car, and that after several minutes, the chairman opened the door to the building, motioned to Mr. Weaver, and told him that the Committee was starting its open session. Mr. Weaver stated that he then went back into the building and the Board Room, but could not locate the chairman, the other Committee members, or the meeting. Mr. Weaver stated that he eventually observed the chairman leave the Board office; the chairman notified Mr. Weaver that the Committee had just held the open

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session of its meeting in an interior office space and was now convening in closed session, which Mr. Weaver would not be permitted to attend. Mr. Weaver stated that, "[b]y virtue of the building design, there was no way to see the interior office or to know that a meeting was taking place there."¹ Mr. Weaver also alleges that, based on representations of others at the meeting, that no audio recording was made of the proceedings.

In response, the Board and the Committee chairman, Mr. Donald Little, asserted that the agenda improperly listed the location of the meeting as occurring in the "auditorium," instead of the County Board "office," and that he did not notice the error until meeting time when he found the Committee members, Mr. Weaver, and members of a union bargaining team that also intended to attend the meeting, in the auditorium instead of the office. Chairman Little stated that he told Mr. Weaver that the Committee would be holding a closed meeting, and that Mr. Weaver responded by asserting that a closed meeting nevertheless must start in open session. Chairman Little said he agreed, and that he would hold the Committee's open session in the Board office, but that he needed to discuss a matter with the "bargaining team" before beginning, and asked Mr. Weaver to leave until the meeting began. Chairman Little stated that when the Committee members relocated from the auditorium to the office, he went to look for Mr. Weaver, located him outside the building in his vehicle, "motioned for Weaver to come to the Board office and then waited for him to enter the office in order to start the meeting. Weaver did not come to the opening session of the Personnel Committee[.]"² Chairman Little further asserted that the Committee voted in open session to go into closed session, and after that motion was approved, returned to the Auditorium to hold the closed session. Upon his return to the Auditorium, Chairman Little stated that he saw Mr. Weaver and informed him that the Committee had held its open session in the office, was now convening closed session, and therefore, Mr. Weaver would need to leave. Chairman Little did not directly respond to the allegation in the Request for Review that the office in which the meeting was held was an "interior office" and that the design of the building made it difficult to see the interior office or observe a meeting being held there. Finally, Chairman Little acknowledged that the Committee did not make a verbatim recording of the closed session meeting.

Mr. Weaver replied, disputing in part Chairman Little's recitation of the events that occurred that evening. Mr. Weaver stated that after Chairman Little motioned for him to return to the building, he disappeared inside the building before Mr. Weaver could follow him. Mr. Weaver asserted that "[i]t was not possible to see where he went because of the angle of the

¹OMA-Request for Review by Public Access Counsel (PAC), from Michael Weaver (October 19, 2018).

²Letter from Benjamin L. Goetten, Jersey County State's Attorney, to Leah Bartelt, Assistant Attorney General, Public Access Bureau (November 13, 2018), Attachment at 1.

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sun against the glass entrance doors and I assumed he went into the auditorium to open the meeting. I walked into the auditorium and only the union side of the meeting was there. They advised that the board members had left but were not sure where they had went to. I then searched through the entire building but saw no obvious sign of a meeting anywhere.³

There is no dispute that the Committee held a "meeting," as defined in section 1.02 of OMA, on August 20, 2018. We note that Mr. Weaver and Chairman Little appear to use different nomenclature for the room in which the meeting was scheduled to be held. Mr. Weaver and the agenda describe the location as the "Jersey County Board Room," while Chairman Little referred to it as the auditorium. Mr. Weaver asserted that the Jersey County Board Room is a corner of the auditorium in which small meetings are routinely held. Based on Chairman Little's response, it appears that not only Mr. Weaver, but also the Committee members and union representatives, understood the location of the meeting to be the auditorium.

Chairman Little asserted that the agenda erroneously listed the location of the meeting and it should have stated that the meeting was to be held in the Board office. However, upon realizing the error on the agenda, Chairman Little nevertheless convened the meeting in the Board office, instead of the location listed on the agenda. Notably, he did so even though he, the other committee members, and Mr. Weaver (who had already indicated his interest in attending the meeting) were present at the place listed on the agenda, at the date and time at which the meeting was scheduled to begin. Chairman Little did not argue that it was necessary to relocate the meeting from the location listed on the agenda to the Board office, and did not state that he posted any signs re-directing interested members of the public to the new location. Moreover, he did not contest Mr. Weaver's allegation that the Board office is an interior office, that a meeting being held in that office would not be visible from the entrance to the building, and that the Board routinely held smaller meetings in the section of the auditorium known as the Board room. Accordingly, by holding its August 20, 2018, meeting in a location different from that listed on the agenda and in a location that Mr. Weaver was unable to find, the Committee violated sections 2(a) and 2.01 of OMA by holding a meeting at a place other than the place specified on the agenda and at a location that was not convenient and open to the public.

The meeting minutes from the August 20, 2018, meeting indicate that the meeting was called to order at 6:08 p.m., the Committee voted to enter closed session, and then entered closed session at 6:09 p.m. Because the Committee did not take final action at the August 20, 2018, meeting, no remedial action is necessary. However, this office reminds the Committee to ensure that the notice and agenda of all Committee meetings correctly identify the location of the meeting.

³E-mail from Michael Weaver to Public Access (November 26, 2018).

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Closed Session Recording

All public bodies are required to "keep written minutes of all their meetings, whether open or closed, and a verbatim record of all their closed meetings in the form of an audio or video recording." 5 ILCS 120/2.06(a) (West 2016)). Although this requirement is unambiguous, the Committee admitted that it did not create a verbatim recording of the August 20, 2018, closed session meeting. Accordingly, the Committee also violated section 2.06(a) of OMA. Although there does not appear to be any action that the Committee can take at this time to remedy its violation of section 2.06(a) of OMA, this office requests that the Committee take measures to ensure that all closed sessions are properly recorded.

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) 814-6437 or lbartelt@atg.state.il.us. This letter serves to close this file.

Very truly yours,



LEAH BARTELT
Assistant Attorney General
Public Access Bureau

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