



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 6, 2023

Via electronic mail



Via electronic mail

Dr. Darcy G. Benway
Superintendent
O'Fallon Township High School
600 South Smiley Street
O'Fallon, Illinois 62269
benwayd@oths.us

RE: OMA Request for Review – 2023 PAC 75047

Dear [REDACTED] and Dr. Benway:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2020)). For the reasons explained below, the Public Access Bureau concludes that the Education Committee (Committee) of the Board of Education (Board) of O'Fallon Township High School ("OTHS" or "High School") did not violate OMA in connection with its "Conversations Over Coffee" meetings at a local restaurant on May 9, 2022, and December 7, 2022.

In a Request for Review submitted on January 10, 2023, [REDACTED] alleged, in relevant part, that the Board failed to post proper notice for the May 9, 2022, and December 7, 2022, "Conversations Over Coffee" meetings, and that it was improper for the Board (or one of its committees) to hold the meetings in this private establishment. In particular, he alleged that the Board did not post notice of the December 7, 2022, meeting until December 6, 2022. [REDACTED] also claimed that he did not learn of the May 9, 2022, meeting until the agenda belatedly posted for the December 7, 2022, meeting contained a typo listing the meeting date as May 9, 2022. He also alleged that the restaurant at which the meetings occurred was not suitable for an open meeting because the restaurant had control over access to the meeting on its private

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property and could do things such as require a purchase to allow members of the public to stay for the duration of the meeting.

On January 26, 2023, this office forwarded a copy of the Request for Review to the Board and asked it to provide copies of any agendas, minutes, and recordings of the May 9, 2022, and December 7, 2022, "Conversations Over Coffee" meetings, and a written response to those allegations raised by [REDACTED]. On January 30, 2023, Superintendent Darcy G. Benway provided a written response, as well as the meeting agendas and minutes.¹ In denying that the Committee violated OMA in connection with its "Conversations Over Coffee" meetings, Dr. Benway gave the following background:

As part of its community outreach initiative, the Education Committee provides opportunities for students, parents, guardians, employees and citizens to meet with Board Members and the Administration in an informal setting known as "Conversations Over Coffee". These Conversations Over Coffee events are typically held in restaurants throughout various areas of the OTHS community. It is believed that a casual, non-institutional setting is more welcoming and will allow for more open dialogue on matters of interest to our stakeholders. As opposed to [REDACTED] assumption that these meetings are used to obfuscate Board business, the purpose of Conversations Over Coffee is transparency and access to the public.^[2]

On February 1, 2023, [REDACTED] submitted a reply to the Board's response.

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 2020). "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).

¹This office notes that while the Committee questioned the timeliness of [REDACTED] complaint as to the May 9, 2022, meeting, this determination letter concludes that the Committee committed no violation regardless of whether the complaint is timely.

²Letter from Darcy G. Benway Ed.D., Superintendent, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General – State of Illinois (January 30, 2023), at 1.

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As an initial matter, [REDACTED] made a wide variety of allegations in his submission that do not concern the requirements of OMA. These allegations pertain to matters such as furniture expenses, the alleged exposure of personal information during the meetings, the taking of minutes by a person other than the Board's Clerk, and the purchasing of meals for Board members. The Public Access Counselor's authority to resolve disputes, in contrast, is limited to alleged violations of OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2020)). *See* 15 ILCS 205/7(c)(3) (West 2020). Accordingly, this determination letter addresses only the OMA allegations [REDACTED] properly raised: that the Committee provided insufficient notice for the "Conversations Over Coffee" meetings, and held the meetings in a place that was not convenient and open to the public.

Meeting Notice

The May 9, 2022, and December 7, 2022, "Conversations over Coffee" meetings were special meetings of the Committee, as opposed to regular meetings. For special meetings, a public body must give notice by posting the agenda at its principal office at least 48 hours in advance of the meeting. 5 ILCS 120/2.02(a) (West 2020). Section 2.02(b) of OMA (5 ILCS 120/2.02(b) (West 2020)) adds that "a public body that has a website that the full-time staff of the public body maintains shall post notice on its website of all meetings of the **governing body** of the public body." (Emphasis added.) The High School's governing body is the Board. Accordingly, while posting notice of Committee meetings on the High School's website may be helpful to members of the public, the Committee does not violate OMA when it does not post meeting notices on the High School's website.

In the Committee's response to this office, Dr. Benway stated:

OTHS uses the electronic platform BoardDocs to post meeting agendas, meeting minutes, and related documents online, in addition to the physical paper postings at the District Offices. OTHS conveniently posts meetings online in BoardDocs and releases them as "Featured Meetings" at least 48 hours in advance of each meeting as required by Illinois School Code. There have been one or two occasions during my 16-year tenure as Superintendent when a meeting notice was accidentally overlooked and posted within the 48-hour requirement. OTHS has since implemented checks and balances in an effort to prevent any untimely postings. Accordingly, it is believed the two meetings questioned by [REDACTED] for Conversations Over Coffee were

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posted to BoardDocs and at the District Office at least 48 hours prior to the meeting.^[3]

Dr. Benway added that "an email is also sent via the District's automatic notification system to all employees, parents, guardians, and students, encouraging them to participate in Conversations Over Coffee."⁴

In his reply, [REDACTED] claimed that the BoardDocs site is confusing in how it presents information, but did not set forth evidence indicating that the Committee failed to timely post notice of the meetings at the District offices.

Having reviewed the information submitted by both parties, the Committee demonstrated that it posted sufficient notice of its May 9, 2022, and December 7, 2022, "Conversations Over Coffee" meetings by posting the agenda at OTHS's principal office. Therefore, the Committee did not violate OMA in connection with notice for the meetings.

Section 2.01 of OMA

Section 2.01 of OMA (5 ILCS 120/2.01 (West 2020)) provides that "[a]ll meetings required by this Act to be public shall be held at specified times and places which are convenient and open to the public." "By its plain terms, section 2.01 requires a venue that is not only 'open,' but 'convenient,' to the public." *Gerwin v. Livingston County Board*, 345 Ill. App. 3d 352, 359 (4th Dist. 2003).

In addressing the meaning of "convenient" for purposes of section 2.01 of OMA, the *Gerwin* court stated that "[a] meeting can be open in the sense that no one is prohibited from attending it, but it can be held in such an ill-suited, unaccommodating, unadvantageous place that members of the public, as a practical matter, would be deterred from attending it." *Gerwin*, 345 Ill. App. 3d at 361. Still, the court found that "[i]t would be unreasonable to suppose the legislature intended * * * that public bodies hold their meetings 'at such locations as are sufficient to accommodate *all* interested members of the public, such that they may see and hear all proceedings in reasonable comfort and safety.'" (Emphasis in original.) *Gerwin*, 345 Ill. App. 3d at 361. Accordingly, the court construed section 2.01 as requiring "not 'absolute accessibility' but 'reasonable accessibility.'" *Gerwin*, 345 Ill. App. 3d at 362 (quoting *State ex*

³Letter from Darcy G. Benway Ed.D., Superintendent, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General – State of Illinois (January 30, 2023), at 2.

⁴Letter from Darcy G. Benway Ed.D., Superintendent, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General – State of Illinois (January 30, 2023), at 2.

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rel. Badke v. Village Board of Greendale, 173 Wis. 2d 553, 579, 494 N.W.2d 408, 418 (Wis. 1993)).


In denying that the "Conversations Over Coffee" meetings were held in an inconvenient manner, Dr. Benway asserted:

OTHS has working relationships with the chosen venues where Conversations Over Coffee have been held. No purchases are required to attend the meeting. The venue is a public restaurant and meets accessibility standards and codes as are required for guests. Members of the public attending the Conversations Over Coffee event at the restaurant are free to come and go throughout the meeting as they desire. If any restaurant or venue was (a) not accessible, (b) did not have the space to accommodate attendees, or (c) required a purchase, the venue would not be used by the District to hold these community events.^[5]

In his reply, ██████████ argued that it was improper for the Committee to choose its meeting venue based on the anticipated attendance. However, ensuring that a meeting is open and convenient necessarily involves anticipating the number of attendees and making arrangements accordingly, and there is no indication that the venue was inadequate to accommodate all interested members of the public at either meeting. ██████████ also maintained that because the restaurant is a private business, it could refuse service to anyone and thus the Committee did not have sufficient control over the meeting space. Yet, this office did not receive information at odds with Dr. Benway's assertion that OTHS has an established relationship with the restaurant that allowed the Committee to hold the meetings on its own terms.

The "Conversations Over Coffee" meetings are distinguishable from the meetings at issue in the two binding opinions ██████████ alluded to: Ill. Att'y Gen. Pub. Acc. Op. No. 12-008, issued April 4, 2012, and Ill. Att'y Gen. Pub. Acc. Op. No. 13-014, issued September 5, 2013. In the former binding opinion, this office concluded that a special meeting for adopting a tax levy that was held in a superintendent's home was improper because "the fact that the meeting was held at a private residence, instead of at a public location, could reasonably be expected to deter citizens from attending the gathering." Ill. Att'y Gen. Pub. Acc. Op. No. 12-008, at 4. In contrast to the significant business conducted at that meeting, the "Conversations Over Coffee" meetings are purely discussion-based, with no agenda items and no votes. Moreover, holding such an informal meeting at a local fast casual restaurant like St. Louis Bread

⁵Letter from Darcy G. Benway Ed.D., Superintendent, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General – State of Illinois (January 30, 2023), at 2.



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Company does not have the same deterrent effect as holding a meeting in a private residence, as a restaurant is a public accommodation and thus subject to protective laws such as the Americans with Disabilities Act. While there may be instances in which holding a meeting in a restaurant is not convenient and open to the public, the facts do not reflect that holding the "Conversations Over Coffee" meetings in this manner under the particular circumstances here was inappropriate. Similarly, the latter binding opinion is inapplicable because in that matter the meeting was held 26 miles from the public body's standard meeting location, whereas here the restaurant is less than three miles from OTHS. Ill. Att'y Gen. Pub. Acc. Op. No. 13-014, at 4. This office received no evidence suggesting that any members of the public were deterred from attending the "Conversations Over Coffee" meetings as a result of the meeting location.

For the reasons explained above, the Public Access Bureau concludes that the Committee did not violate OMA in connection with its May 9, 2022, and December 7, 2022, "Conversations Over Coffee" meetings.

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 joshua.jones@ilag.gov. This letter serves to close this file.

Very truly yours,


JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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