

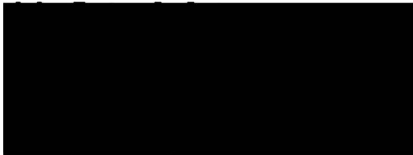


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 7, 2017

Via electronic mail



Via electronic mail

Mr. Christopher L. Petrarca
Hauser Izzo, LLC
1415 West 22nd Street, Suite 200
Oak Brook, Illinois 60523
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Via electronic mail

The Honorable Randy Alexander
President, Board of Education
Rich Township High School District No. 227
20550 South Cicero
Matteson, Illinois 60443
ralexander@rich227.org

RE: OMA Requests for Review – 2017 PAC 48860; 2017 PAC 49185

Dear  Mr. Petrarca, and Mr. Alexander:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). This office has consolidated these Requests for Review because they contain closely-related allegations concerning the same meetings. For the reasons discussed below, the Public Access Bureau is unable to conclude that the special meetings of certain members of the Rich Township High School District No. 227 Board of Education (Board) on July 15, 2017, July 18, 2017, and July 22, 2017, violated the requirements of OMA.

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On July 24, 2017, ██████████ submitted this Request for Review alleging that a majority of a quorum of Board members held improper meetings on July 15, 2017, and July 18, 2017, because a quorum¹ of Board members was not physically present at the meeting location. Additionally, on July 28, 2017, the Board's legal counsel, Mr. Christopher L. Petrarca, submitted a letter to the Public Access Bureau self-reporting these same alleged violations. Mr. Petrarca confirmed that three Board members, which constituted a majority of a quorum of Board members, convened meetings to discuss public business on those two dates, and added that it did the same on July 22, 2017.

On August 3, 2017, this office sent a copy of ██████████ Request for Review to the Board and asked it to respond to her allegations, together with copies of the notices, agendas, and minutes for the meetings in question. On August 7, 2017, Mr. Petrarca furnished agendas for the July 15, 2017, July 18, 2017, and July 22, 2017, meetings, and a written response referencing his July 28, 2017, letter to this office. The information submitted indicated that notice and an agenda were posted for each of these meetings, and the public had the opportunity to attend and address the Board members who were present. ██████████ did not submit a reply

DETERMINATION

In order for the requirements of OMA to apply, a gathering must constitute a "meeting" as defined by section 1.02 of OMA (5 ILCS 120/1.02 (West 2016)):

"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[.]
(Emphasis added.)

The first sentence of the second paragraph of section 2.01 of OMA (5 ILCS 120/2.01 (West 2016)) further provides that "[a] quorum of members of a public body must be physically present at the location of an open meeting." As detailed below, the remainder of this provision addresses how a quorum is calculated for certain public bodies that hold meetings through interactive video conferences, and the requirement that a quorum of other types of public bodies must be physically present at the meeting location in order to allow additional members of those public

¹ ██████████ specifically alleged that four Board members would have constituted a quorum under the requirements of section 10-12 the School Code (105 ILCS 5/10-12 (West 2016) ("A majority of the full membership of the board of education shall constitute a quorum.")).

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bodies to participate through audio or video conference. Reading section 2.01 in its entirety, it is unclear whether the sentence requiring a quorum of members to be "physically present at the location of an open meeting[]" is intended to apply to all meetings of public bodies, or only those in which members participate by audio or video conferences. Therefore, the meaning of that sentence is ambiguous.

"In determining the meaning of a statute, a court will not read language in isolation, but must consider it in the context of the entire statute." *Slepicka v. Illinois Dept. of Public Health*, 2014 IL 116927, ¶14, 21 N.E.3d 368, 373 (2014). When the meaning of statutory language is ambiguous, a reviewing body may consider the statute's purpose, the policy considerations that led to its passage, and "the statute's context, reading the provision at issue in light of the entire section in which it appears and the Act of which that section is a part." *In re Marriage of Mathis*, 2012 IL 113496, ¶20, 986 N.E.2d 1139, 1144-45 (2012).

The provision that "[a] quorum of members of a public body must be physically present at the location of an open meeting" was added to section 2.01 of OMA by Public Act 94-1058, effective January 1, 2007. Prior to the passage of Public Act 94-1058, the following language constituted the entirety of section 2.01 of OMA: "**All meetings required by this Act to be public shall be held at specified times and places which are convenient and open to the public. No meeting required by this Act to be public shall be held on a legal holiday unless the regular meeting day falls on that holiday.**" (Emphasis added.) Public Act 94-1058 added the following language to section 2.01 as the second and third paragraphs:

A quorum of members of a public body must be physically present at the location of an open meeting. If, however, an open meeting of a public body (except one with jurisdiction limited to a specific geographic area that is less than statewide) is held simultaneously at one of its offices and one or more other locations in a public building, which may include other of its offices, through an interactive video conference and the public body provides public notice and public access as required under this Act for all locations, then members physically present in those locations all count towards determining a quorum. * * * The requirement that a quorum be physically present at the location of an open meeting shall not apply, however, to State advisory boards or bodies that do not have authority to make binding recommendations or determinations or to take any other substantive action.

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A quorum of members of a public body that is not a public body with statewide jurisdiction must be physically present at the location of a closed meeting. Other members who are not physically present at a closed meeting of such a public body may participate in the meeting by means of a video or audio conference.


Public Act 94-1058 also added section 7 to OMA (5 ILCS 120/7 (West 2006)). Section 7 sets forth the rules governing remote meeting attendance by members who are unable to be physically present at the meeting location. Moreover, Public Act 94-1058 expanded the definition of "meeting" in section 1.02 of OMA (5 ILCS 120/1.02 (West 2006)) to include gatherings that occur "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[.]"

Accordingly, in the context of section 2.01 of OMA and the statute as a whole, the requirement that a quorum be physically present is tied to circumstances in which one or more members participate in the meeting despite not being physically present at the meeting location.

The legislative history behind Public Act 94-1058 provides further support for the conclusion that the language "[a] quorum of members of a public body must be physically present at the location of an open meeting[]" pertains to instances involving remote participation. During the House debate on Senate Bill No. 585, which added that language to OMA as part of Public Act 94-1058, House sponsor Robert F. Flider explained the legislation as follows:

What this legislation does is it updates [OMA] and specifies rules with regard to electronic communications. It expands the definition of a 'meeting' to include the presence whether by telephone calls, video or audio conference, or other electronic means. And it also specifies that a quorum of members of a public body must be physically present at an open meeting *in the case of electronic communications*. * * * The bottom line of this is that it updates the Open Meetings Act to deal with electronic communications. *It does not change whatsoever the quorum requirements of [OMA].*" (Emphasis added.) Remarks of Rep. Flider, May 1, 2006, House Debate on Senate Bill No. 585, at 9.

Therefore, Representative Flider clarified that the requirement that a quorum be "physically present" pertains only to instances involving electronic meeting participation.



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In this instance, the Requests for Review solely asserted that the Board violated section 2.01 of OMA by holding meetings without having a quorum physically present, and the Board has acknowledged that a majority of a quorum, not a full quorum, of Board members gathered to discuss public business on those dates. Because there is no indication that Board members participated in those meetings by audio or video conference, the requirement in section 2.01 of OMA that a quorum of the members of the public body be "physically present" is inapplicable here. In addition, the Board members complied with OMA's requirements for advance notice and the opportunity for the public to attend when a majority of a quorum of a public body gather to discuss public business. Accordingly, this office is unable to conclude that the Board violated OMA in connection with the three meetings in question.

This determination, however, cannot be construed as approval of the Board's meetings conducted without a quorum of members of the public body present, nor does it address the ability of just a majority of a quorum, as opposed to a full quorum, even to discuss issues. Rather, this office's determination is limited to interpreting the requirements of OMA. *See* 15 ILCS 205/7 *et seq.* (West 2016). The quorum requirements for the Board are set by its formal policies, the School Code, and rules of parliamentary procedure. Similarly, other public bodies may formulate requirements with respect to quorum requirements and meeting attendance. OMA is silent on quorum requirements except for the circumstances described above.

The Public Access Counselor had determined that resolution of these matters does not require the issuance of a binding opinion. If you have any questions, please contact me at the Springfield address on the first page of this letter. This letter serves to close these matters.

Very truly yours,


CHRISTOPHER R. BOGGS
Assistant Attorney General
Public Access Bureau

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