



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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ATTORNEY GENERAL

March 28, 2018

Via electronic mail

Mr. Jeremy Douglas Stroud
Deputy Clerk
Saline County
jstroud@salinecounty.illinois.gov

Via electronic mail

The Honorable Joe Jackson
Chairman, Special Audit Committee
Saline County Board
10 East Poplar Street, Suite 26
Harrisburg, Illinois 62946
countyboard02@salinecounty.illinois.gov

RE: OMA Request for Review – 2018 PAC 51417

Dear Mr. Stroud and Chairman Jackson:

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 that follow, the Public Access Bureau concludes that the Special Audit Committee (Committee) of the Saline County Board (Board) violated OMA by holding a special meeting on a legal holiday.

On January 25, 2018, Mr. Jeremy Douglas Stroud filed this Request for Review alleging that the Committee held a meeting on a holiday at the Saline County courthouse, and that because the courthouse was "locked" and closed for the holiday, citizens were not allowed to attend the meeting. Mr. Stroud attached a copy of an agenda to his Request for Review which described a meeting of the Committee scheduled for 10:00 a.m. on January 15, **2017**, at the County Board Office. During a telephone conversation with an Assistant Attorney General in the Public Access Bureau, Ms. Kim Buchanan, Saline County Clerk, stated that she had worked with Mr. Stroud to submit the Request for Review, and that the meeting described in the Request for Review was actually held on January 15, 2018, not the previous year.

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On January 30, 2018, this office sent the Committee a copy of the Request for Review and requested that it provide a detailed written response. On February 9, 2018, the Committee submitted a written response to this office. On February 13, 2018, this office forwarded a copy of the Committee's response to Mr. Stroud; he did not respond.

DETERMINATION

Section 2.01 of OMA (5 ILCS 120/2.01 (West 2016), as amended by Public Act 100-477, effective September 8, 2017) provides, in pertinent part:

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.

OMA does not define the term "legal holiday." However, section 17(a) of the Promissory Note and Bank Holiday Act (Bank Holiday Act) (205 ILCS 630/17(a) (West 2016)) designates thirteen specific days as "legal holidays in the State of Illinois[.]" The third Monday in January, which is the observance of Dr. Martin Luther King, Jr.'s birthday, is listed as a legal holiday. 205 ILCS 630/17(a) (West 2016). January 15, 2018, was the third Monday in January.

The Illinois Appellate Court has interpreted section 2.01 of OMA to mean that "no meeting (regular, special, rescheduled or reconvened meeting) could be held on a holiday unless the legal holiday was the same day as the regular meeting day and the regular meeting was not held on that day." *Argo High School Council of Local 571 v. Argo Community High School District 217*, 163 Ill. App. 3d 578, 580 (1st Dist. 1987). The court held that a school board did not violate OMA by holding a special meeting on Veterans' Day because it fell on the same date as the date of the board's regular meeting, which had been rescheduled. *Argo High School*, 163 Ill. App. 3d at 581. In accordance with the statutory language of section 2.01 of OMA and the court's decision in *Argo High School*, this office has previously determined that public bodies violated OMA when they held special meetings on a legal holiday on which their regular meetings had not been scheduled. See Ill. Att'y Gen. PAC Req. Rev. Ltr. 46019, issued April 4, 2017, at 3; Ill. Att'y Gen. PAC Req. Rev. Ltr. 32330, issued November 30, 2015, at 3; Ill. Att'y Gen. PAC Req. Rev. Ltr. 28047, issued May 19, 2014, at 5.

The Committee confirmed that it held a special meeting on January 15, 2018, and did not assert that the meeting occurred on its regular meeting day. Instead, the Committee stated that the sole purpose of the special meeting was to hold a closed meeting pursuant to section 2(c)(29) of OMA (5 ILCS 120/2(c)(29) (West 2016), as amended by Public Acts 100-

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201, effective August 18, 2017; 100-465, effective August 31, 2017), which is one of the enumerated exceptions to the general requirement that public bodies conduct public business openly.¹ The Committee therefore argued that it did not violate section 2.01 of OMA by holding its special meeting on January 15, 2018, because section 2.01 of OMA applies only to "meeting[s] required by this Act to be public[.]"

The Committee also disputed the allegation that the courthouse was not open to the public on that date. The Committee asserted that although the other offices inside the courthouse were closed for the holiday, the Board's office was open, and further stated:

A few members of the public and members of the press appeared and asked to come inside the building just before the Special Audit Committee meeting. Everyone who asked to enter the building was allowed inside. No one besides those authorized to attend the closed meeting of the Special Audit Committee were allowed in the County Board office during the closed meeting, but no one who appeared and requested entry into the Saline County Courthouse was denied entry. Members of the public and the press were allowed inside the county board office before and after the closed meeting. Thus, the Saline County Courthouse was effectively a place open to the public for County Board purposes on January 15, 2018.^{2]}

Section 2(a) of OMA permits a public body to close its meeting pursuant to one or more of the exceptions listed, but also states that any such meeting must be "closed in accordance with Section 2a." Section 2a of OMA (5 ILCS 120/2a (West 2016)) correspondingly provides, in pertinent part, that "[a] public body may hold a meeting closed to the public, or close a portion of a meeting to the public, **upon a majority vote of a quorum present, taken at a meeting open to the public** for which notice has been given as required by this Act." (Emphasis added.) In practice, section 2a requires a public body to convene an open session meeting and, during that open session, vote to enter closed session. Consequently, even when a public body convenes a meeting for the purpose of having a discussion that OMA authorizes it to have in

¹Section 2(c)(29) of OMA permits a public body to close a meeting for the purpose of "[m]eetings between internal or external auditors and governmental audit committees, finance committees, and their equivalent, when the discussion involves internal control weaknesses, identification of potential fraud risk areas, known or suspected frauds, and fraud interviews conducted in accordance with general accepted auditing standards of the United States of America."

²Letter from Joe Jackson, Chairman, Saline County Board Special Audit Committee, Saline County Board, to Office of the Illinois Attorney General, Public Access Bureau, Leah Bartelt, Assistant Attorney General (February 8, 2018).

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closed session, a portion of that meeting is "required by [OMA] to be public," specifically, the public vote to enter into closed session. Further, under the plain language of section 2.01, the only exception to the prohibition against holding meetings on legal holidays is when the public body's regular meeting day falls on the holiday—the prohibition applies regardless of the purpose of the meeting. For those reasons, this office concludes that the Committee violated section 2.01 of OMA by holding a special meeting on a legal holiday on Monday, January 15, 2018.³

Because there is no indication that the Committee took final action on January 15, 2018, there are no means for the Committee to remedy its technical violation of section 2.01 in this instance. This office cautions the Committee to adhere to the requirements of section 2.01 with respect to the scheduling of future meetings, as well as section 2a with respect to the formalities associated with properly convening a closed session meeting.

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 (312) 814-6437.

Very truly yours,



LEAH BARTELT
Assistant Attorney General
Public Access Bureau

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³The Request for Review also alleged that the meeting was not held in a place open to the public because the courthouse was closed for the holiday. The Committee specifically disputed that allegation by stating that members of the public and the media were allowed into the courthouse and the County Board office "before and after the closed meeting." However, as discussed above, the January 15, 2018, meeting should have begun in open session for a public vote on the motion to hold a closed session meeting. If the public was excluded from the County Board office for the entirety of the Committee meeting, including the vote to enter into closed session, the meeting was not held at a place "open to the public."