



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

February 21, 2020

Via electronic mail

[REDACTED]

Ms. Mariah M. Wallace
Capps, Ancelet, Icenogle & Wallace
55 South Adams Street
P.O. Box 250
Carthage, Illinois 62321

RE: OMA Request for Review – 2019 PAC 60547

Dear [REDACTED] and Ms. Wallace:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2018)). For the reasons explained below, the Public Access Bureau concludes that the City of Colchester City Council (Council) did not violate OMA in connection with its October 23, 2019, special meeting.

BACKGROUND

In his Request for Review, [REDACTED] alleged four violations of OMA by the Council concerning: (1) discussion of topics at the October 23, 2019, special meeting that were not on the agenda; (2) public comment at the October 23, 2019, special meeting; (3) statements made to the media and other Council members by Acting Mayor Frances Welch after the adjournment of the October 23, 2019, special meeting; and (4) certain Council members' compliance with OMA's online training requirements.

On November 20, 2019, this office sent a copy of the Request for Review to the Council and requested that it provide a written response to the allegations that the Council discussed topics that were not included on the October 23, 2019, special meeting agenda. This

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office asked the Council to provide copies of the October 23, 2019, special meeting agenda and all minutes from that meeting, whether from open or closed sessions. On December 2, 2019, this office received the Council's response. On December 5, 2019, this office forwarded the Council's written response to [REDACTED]; on December 10, 2019, he replied.

DETERMINATION

Special Meeting Agenda

[REDACTED] asserted that during the October 23, 2019, special meeting, the Council discussed two topics that were not on the October 23, 2019, special meeting agenda: (1) Acting Mayor Welch's resignation as First Ward Alderman; and (2) snow removal. This office construes [REDACTED] complaint as alleging violations of section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2018)). Section 2.02(a) provides that "[p]ublic notice of any special meeting * * * shall be given at least 48 hours before such meeting, which notice shall also include the agenda for the special * * * meeting, but the validity of any action taken by the public body which is germane to a subject on the agenda shall not be affected by other errors or omissions in the agenda." Section 2.02(a) of OMA further provides that "the requirement of a *regular* meeting agenda shall not preclude the consideration of items not specifically set forth in the agenda." (Emphasis added.) Although a public body may discuss items not included on the agenda during a regular meeting under the express language of section 2.02(a) of OMA, the General Assembly did not provide similar language concerning the agenda for a special meeting. *See People v. Smith*, 2016 IL 119659, ¶30, 76 N.E. 3d 1251, 1258 (2016) ("[W]here the legislature includes particular language in one section of a statute but omits it in another section of the same statute, courts will presume that the legislature acted intentionally in the exclusion or inclusion."); Ill. Att'y Gen. PAC Req. Rev. Ltr. 32604, issued April 9, 2015, at 3 (public body violated OMA by discussing a topic at a special meeting which was not listed on the posted agenda). This office has also concluded, however, that simple announcements at special meetings that are not accompanied by discussions among members of the public body do not rise to the level of "the consideration of items" under section 2.02(a) of OMA, and therefore are not required to be on the special meeting agenda. Ill. Att'y Gen. PAC Req. Rev. Ltr. 58725, issued September 12, 2019, at 2, 3 (concluding that individual public body members' statements on upcoming community events and the status of applications for board vacancies did not amount to deliberative discussions during a special meeting).

The Council contends that Acting Mayor Welch's resignation as Alderman of the First Ward was "simply an announcement,"¹ as "the decision to resign was an action taken solely

¹Letter from Mariah M. Wallace, Capps, Ancelet, Icenogle & Wallace, to Laura S. Harter, Deputy Bureau Chief, Public Access Bureau (November 27, 2019), at 2.

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by Mayor Welch pursuant to the authority granted to her by² section 3.1-10-50(d) of the Illinois Municipal Code (65 ILCS 5/3.1-10-50(d) (West 2018)).

According to section 3.1-10-50(d) of the Municipal Code, an acting mayor's decision to resign his or her original office does not require a vote or discussion by other members of the public body, but it does require that "the original office must be filled pursuant to the terms of this Section."³ Acting Mayor Welch's announcement that she was resigning did not require discussion or action by the Council, but triggered the requirement for the Council to fill her vacancy, which it did immediately after her announcement.⁴ The agenda for the October 23, 2019, special meeting listed the item "[a]pprove appointments of Aldermen to fill vacancies in the First Ward."⁵ Therefore the Council did not engage in discussion or action in violation of OMA because notice that alderman vacancies would be filled was provided on the agenda.

In his Request for Review, [REDACTED] also stated that "Mayor Welch proceeded to talk about snow removal, who would do it, and that there needed to be discussion on guidelines for when the snow removal crew is brought out[]"⁶ but that there was no mention of snow removal on the meeting agenda. In its response to this office, the Council stated that a part time city employee asked the mayor to inform the council that he would fill in for another employee

²Letter from Mariah M. Wallace, Capps, Ancelet, Icenogle & Wallace, to Laura S. Harter, Deputy Bureau Chief, Public Access Bureau (November 27, 2019), at 1.

³Section 3.1-10-50(d) of the Municipal Code provides, in relevant part,

The election of an acting mayor or acting president pursuant to subsection (f) or (g) does not create a vacancy in the original office of the person on the city council or as a trustee, as the case may be, unless the person resigns from the original office following election as acting mayor or acting president. If the person resigns from the original office following election as acting mayor or acting president, then the original office must be filled pursuant to the terms of this Section and the acting mayor or acting president shall exercise the powers of the mayor or president and shall vote and have veto power in the manner provided by law for a mayor or president.

⁴City of Colchester City Council, Special Meeting, October 23, 2019, Minutes 1.

⁵City of Colchester City Council, Special Council Meeting, Agenda Item 6, Approve appointments of Aldermen to fill vacancies in the First Ward (October 23, 2019).

⁶Letter from [REDACTED] to [Public Access Bureau, Office of the Attorney General] (November 11, 2019).

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during his vacation and would also be available for snow removal, thus the topic of snow removal was "merely an announcement only"⁷ by Acting Mayor Welch.

The nature of Acting Mayor Welch's statement on snow removal appears to have been an announcement, as opposed to deliberative discussion of the topic. Although the parties agree that the mayor stated that the topic of snow removal guidelines would need to be addressed by the Council in the future, [REDACTED] did not allege nor did the Council's response indicate that anyone other than the mayor talked about snow removal at the special meeting. Accordingly, this office concludes that the Council did not discuss snow removal at that meeting in violation of OMA.

[REDACTED] also appears to object to the Council's vote to appoint an individual to fill the Acting Mayor's First Ward vacancy. This office construes this contention as alleging a violation of section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2018)), which provides: "Any agenda required under this Section shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting." As noted above, the agenda for the special meeting stated: "[a]pprove appointments to fill vacancies in the First Ward."⁸ The minutes reflect that the Council voted to fill two vacancies in the First Ward during the October 23, 2019, special meeting.⁹ Accordingly, the Council's agenda sufficiently described the general subject matter of its final actions regarding First Ward vacancies.

Public Comment

Section 3.5(a) of OMA (5 ILCS 120/ 3.5(a) (West 2018)) provides that "[a] person who believes that a **violation of this Act by a public body has occurred** may file a request for review with the Public Access Counselor established in the Office of the Attorney General[.] * * * The request for review * * * must include a summary of the **facts supporting the allegation.**" (Emphasis added.)

In his Request for Review, [REDACTED] wrote: "Mayor/Alderman Welch asked if there was any public comment. One resident replied 'I didn't know we could speak tonight.' [REDACTED] said we can't, it's not on the agenda. I believe a special meeting must adhere to the

⁷Letter from Mariah M. Wallace, Capps, Ancelet, Icenogle & Wallace, to Laura S. Harter, Deputy Bureau Chief, Public Access Bureau (November 27, 2019), at 2.

⁸City of Colchester City Council, Special Council Meeting, Agenda Item 6, Approve appointments of Aldermen to fill vacancies in the First Ward (October 23, 2019).

⁹City of Colchester City Council, Special Meeting, October 23, 2019, Minutes 1.

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agenda and only the agenda. Mayor/Alderman Welch said 'well fine' while acting quite disgusted. I believe this is a violation."¹⁰

As noted above, section 2.02(c) of OMA requires a public body's meeting agenda to "set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting." This provision does not, however, require public bodies to designate a specific period for public comment. Nor is there such a requirement in section 2.06(g) of OMA, which merely states that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." The Public Access Bureau has previously determined that OMA does not require a public body to provide advance notice of the opportunity for public comment on its meeting agenda. Ill. Att'y Gen. PAC Req. Rev. Ltr. 37996, issued August 1, 2016, at 3.

Further, ██████████ submission does not include any information indicating that the Council prohibited any individual from exercising his or her statutory right to address the Council. This office has previously determined that to warrant further action by this office, a Request for Review concerning public comment must set forth facts indicating that a member of the public attempted to address public officials during an open meeting but was improperly restricted by the public body from doing so. *See, e.g.*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 42017, issued June 1, 2016, at 1-2 (determining that a Request for Review alleging that a board's public comment rules violated section 2.06(g) of OMA did not warrant further inquiry because the Request for Review did not allege that anyone attempted to address the board during an open meeting but was denied an opportunity to speak). ██████████ Request for Review did not allege that anyone was denied the opportunity to address the Council. Accordingly, this office concludes that ██████████ has not provided facts to support his allegation of a violation of either section 2.02(c) or 2.06(g).

Acting Mayor Welch's Comments after Adjournment

██████████ alleged:

After the meeting was adjourned, Mayor Welch made an announcement to the media and council members who were in the on [*sic*] that the Sheriff has spoke to her and told her that his department is not interested in providing police services to our town. I believe this to be a violation also as it was not on the agenda, and it was after an adjournment. There were 5 council

¹⁰Letter from ██████████ to [Public Access Bureau, Office of the Attorney General] (November 11, 2019).

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members and the city clerk still discussing city business.
Alderman Clark ha[d] left the room.^[1]

This office construes ██████████ contention as alleging that the Council held an improper meeting after the adjournment of the October 23, 2019, special meeting. The requirements of OMA apply to each "meeting" of a public body. 5 ILCS 120/1 (West 2018). Section 1.02 of OMA (5 ILCS 120/1.02 (West 2018)) 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 a majority of a quorum of the members of a public body held for the purpose of discussing public business[.]

The Council is comprised of six aldermen and a mayor. Thus, if three members of the Council engaged in deliberative discussions of public business after the October 23, 2019, special meeting, all of the procedural safeguards and requirements of OMA would apply. ██████████ has alleged that only Acting Mayor Welch made a statement concerning public business after the meeting. Accordingly, he has not provided facts sufficient to support a conclusion that a majority of a quorum of Council members discussed public business outside of an open meeting.

OMA Training

In his Request for Review, ██████████ explained that on October 23, 2019, he submitted a Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2018)) request to the City of Colchester (City) seeking copies of the OMA training certificates for five named aldermen. On October 29, 2019, he received the requested certificates, which he provided to this office with his Request for Review. He pointed out that three of the aldermen took the training only after the City received his FOIA request, which he alleged was a violation of OMA.

Section 1.05(b) of OMA provides the requirements for members of public bodies to complete the electronic training program developed by the Public Access Counselor:

Except as otherwise provided in this Section, each elected or appointed member of a public body subject to this Act who

¹Letter from ██████████ to ██████████ [Public Access Bureau, Office of the Attorney General] (November 11, 2019).

becomes such a member after the effective date of this amendatory Act of the 97th General Assembly shall successfully complete the electronic training curriculum developed and administered by the Public Access Counselor. For these members, the training must be completed not later than the 90th day after the date the member:

- (1) takes the oath of office, if the member is required to take an oath of office to assume the person's duties as a member of the public body; or
- (2) otherwise assumes responsibilities as a member of the public body, if the member is not required to take an oath of office to assume the person's duties as a member of the governmental body.

Each member successfully completing the electronic training curriculum shall file a copy of the certificate of completion with the public body.

* * *

The failure of one or more members of a public body to complete the training required by this Section does not affect the validity of an action taken by the public body.

An elected or appointed member of a public body subject to this Act who has successfully completed the training required under this subsection (b) and filed a copy of the certificate of completion with the public body is not required to subsequently complete the training required under this subsection (b).

The OMA electronic training certificates furnished to this office by [REDACTED] indicate that the five Council members identified in [REDACTED] FOIA request had completed the training required by section 1.05 of OMA by October 28, 2019. This office notes that under the plain language of section 1.05(b) of OMA, an elected or appointed member of a public body is required to complete the electronic training within 90 days of taking the oath of office or assuming the responsibilities of the office if an oath is not required. This office also notes that an elected or appointed member of a public body who has previously completed the OMA electronic training is not required to take the training again; only the members who are designated to take the training annually under section 1.05(a) of OMA (5 ILCS 120/1.05(a))

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(West 2018)) must take the training each year, although elected or appointed members may wish to voluntarily take the training more than once to obtain updates and information about changes in the law. To the extent that members did not complete the electronic training within the statutory time frame, the Council has violated OMA. OMA, however, provides no penalty for late completion of the electronic training curriculum. This office cautions the Council to ensure that in the future, any new members who have not previously completed the OMA electronic training curriculum as a member of any other public body complete the curriculum within 90 days after taking the oath of office or, if no oath is required, otherwise assuming the responsibilities of a member of the Council, and promptly file a copy of the certificate of completion with the Council.

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 the Springfield address on the first page of this letter, LHarter@atg.state.il.us, or (217) 524-7958. This letter serves to close this file.

Very truly yours,

[REDACTED]
LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

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