



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 31, 2018

Via electronic mail

[REDACTED]

Via electronic mail

Mr. C. Mart Watson
Law Offices of Watson and Murphy
1312 Jackson Street
P.O. Box 59
Eldorado, Illinois 62930
cmwatson1@myfrontiermail.com

RE: OMA Request for Review – 2018 PAC 52308

Dear [REDACTED] and Mr. Watson:

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 Village of Raleigh Board of Trustees (Board) did not violate the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2016)) during its March 19, 2018, meeting.

BACKGROUND

On March 20, 2018, this office received [REDACTED] Request for Review alleging that during the Board's March 19, 2018, meeting, it voted to close the Raleigh Police Department (Department), a matter that was not identified on the meeting agenda. On March 26, 2018, this office sent a copy of the Request for Review to the Board and requested that it provide a written response to [REDACTED] allegation. This office asked the Board to clarify whether it voted to close the Department and, if so, to address whether the agenda for the March 19, 2018, Board meeting set forth the general subject matter of that final action, as required by section 2.02(c) of OMA. On April 5, 2018, the Board provided a written answer to the Request for Review. On April 6, 2018, this office forwarded a copy of the Board's letter to [REDACTED]; he did not reply.

DETERMINATION

The intent of OMA is to "ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly" and to ensure that individuals are "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 2016); *see also Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989) ("the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly.").

To that end, section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016)) provides, in pertinent part, "[a]n agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting." In addition, section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2016)) 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." The Senate debate on House Bill No. 4687, which as Public Act 97-827, effective January 1, 2013, added section 2.02(c) of OMA, indicates that the General Assembly intended this provision to ensure that agendas provide sufficiently descriptive advance notice of the matters upon which a public body anticipates taking final action:

[T]here was just no real requirement as to how specific [public bodies] needed to be to the public of what they were going to discuss that would be final action. And this just says that you have to have a * * * general notice, if you're going to have and take final action, as to generally what's going to be discussed so that — that people who follow their units of local government know what they're going to be acting upon. Remarks of Sen. Dillard, May 16, 2012, Senate Debate on House Bill No. 4687, at 47.

The parties do not dispute the facts that (1) the dissolution of the Department was not on the agenda for the March 19, 2018, Board meeting or that (2) the Board voted in favor of a motion to dissolve the Department. The materials provided by the Board confirm these facts. The Board argues that its vote to dissolve the Department was not final action, however, because the dissolution was not effective. The Board contends that it must first pass an ordinance to dissolve the Department, which it did not do at the March 19, 2018, meeting.

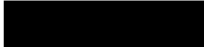
OMA does not define "final action," and no Illinois court has precisely defined that term. However, in *Gosnell v. Hogan*, 179 Ill. App. 3d 161 (5th Dist. 1989), the Illinois Appellate Court examined whether a board's decision in closed session to authorize a request for mediation as an alternative to the negotiations it had been conducting with the secretaries' union

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was a final action, and concluded that it was not; instead, the board's authorization of mediation was merely a step towards reaching final action on the union's contract. *See Gosnell*, 179 Ill. App. 3d at 176 ("Mediation, similar to negotiating, is not an end in itself, but rather, a means to an end. Negotiations and mediations are made up of many 'unilateral' decisions, such as what to offer or counteroffer, and to hold that each of the unilateral strategic decisions that make up the constituent parts of a negotiation is in and of itself a final action is unreasonable."). Accordingly, "final action" generally must resolve a matter. *Compare Davis v. Board of Education of Farmer City – Mansfield Community Unit School District No. 17*, 63 Ill. App. 3d 495, 499 (4th Dist. 1978) (adoption of resolution in closed session stating tentative intent to terminate superintendent's employment "did not dispose of the question of whether that employment should be terminated and, therefore, was not final action[,] where board subsequently took final action to terminate the superintendent's employment in open session); *with Kosoglad v. Porcelli*, 132 Ill. App. 3d 1081, 1092 (1st Dist. 1985) (vote to remove commissioner from police board in open session was final action);¹ *see also* Ill. Att'y Gen. PAC Req. Rev. Ltr. 32463, issued July 14, 2015, at 3 ("a component of a public body's process of reaching final action generally does not, itself, constitute final action.").

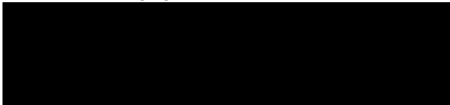
This office has confirmed that the March 19, 2018, meeting minutes reflect that immediately after the motion to dissolve the Department carried, the Board discussed the fact that an ordinance was required to dissolve the Department and that the ordinance would be addressed during the April 16, 2018, meeting. It is not clear whether the Board's vote was a necessary step towards taking final action on the Department dissolution, but the minutes indicate that it did not implement the dissolution. Thus, the Board's vote was a preliminary expression of intent that did not resolve the matter—final action on dissolving the Department via an ordinance was held for a future meeting. Accordingly, this office concludes that the Board did not violate section 2.02(c) of OMA by tentatively voting to dissolve the Department at its March 19, 2018, meeting.

¹For an analogous articulation of "final action" outside of the OMA context, *see U.S. Army Corps of Engineers v. Hawkes Co., Inc.*, 136 S. Ct. 1807, 1813 (2016) (final agency action "[f]irst * * * must mark the consummation of the agency's decisionmaking process—it must not be of a merely tentative or interlocutory nature. And second, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow." (quoting *Bennett v. Spear*, 520 U.S. 154, 177-78, 117 S.Ct. 1154, 1168 (1997))).


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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 (217) 524-7958 or LHarter@atg.state.il.us. This letter serves to close this file.

Very truly yours,


LAURA S. HARTER
Assistant Attorney General
Public Access Bureau

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cc: The Honorable Charles Maloney, Chairman
Village of Raleigh Board of Trustees
P.O. Box 216
Raleigh, Illinois 62977