



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

July 29, 2020

Via electronic mail

[REDACTED]

Via electronic mail

Mr. Rick Verticchio
Verticchio & Verticchio
100 East Chestnut
P.O. Box 87
Gillespie, Illinois 62033
gillespie@verticchiolaw.com

RE: OMA Request for Review – 2020 PAC 63048

Dear [REDACTED] and Mr. Verticchio:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2018)).

On May 19, 2020, this office received a Request for Review in which [REDACTED] [REDACTED] alleged that the City of Benld City Council approved the sale of police equipment to the City of Gillespie at its May 18, 2020, meeting without including advance notice of that action on the meeting agenda.

On May 22, 2020, this office sent a copy of the Request for Review to the City Council and asked it to respond to [REDACTED] allegation and to identify the agenda item that contained the general subject matter of the action concerning sale of the equipment. We also asked the City Council to provide copies of the agenda, minutes, and recordings of the open session portion of the May 18, 2020, meeting. In a letter dated June 3, 2020, counsel for the City Council responded to the allegations and in subsequent correspondence furnished the requested materials and supplemental information. [REDACTED] did not reply.

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DETERMINATION

"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).

Section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2018)) provides, in pertinent part: "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 City Council's response to this office did not dispute that the agenda for the May 18, 2020, meeting contained no item concerning the sale of police equipment; instead, it asserted that the City Council did not take final action to sell the equipment at that meeting. In particular, the City Council asserted that it had "authorized Mayor Kelly to negotiate with the City of Gillespie as to the sale of various police equipment that is no longer necessary for the City of Benld and to obtain assistance from the Chief of Police as to the fair market value of the equipment."¹ The City Council stated that although the minutes of the May 18, 2020, meeting had initially indicated that a sale of police property had been authorized, those minutes were corrected by the City Council at its June 15, 2020, meeting to reflect that the vote at the May 18, 2020, meeting was not final action on a sale. The draft minutes of the June 15, 2020, meeting provided by the City Council for this office's review reflect that change. Those draft minutes also indicate that at the June 15, 2020, meeting, the City Council approved a motion to sell police property to the City of Gillespie for \$7,100.00.

"Final action" under OMA is interpreted as the public vote on a resolution or ordinance. "Under the plain language of section 2(e) of the Open Meetings Act, the public vote is not merely a ratification of a final action * * * it is the final action. Without the public vote, no final action has occurred." *Board of Education of Springfield School District No. 186 v. Attorney General*, 2017 IL 120343, ¶74, 77 N.E.3d 625, 637 (2017).

This office's review of the recording of the May 18, 2020, meeting confirmed that the City Council took final action on a resolution at that meeting. Specifically, a member of the City Council stated that he was "considering making a resolution for the police committee that the City be authorized to sell excess police equipment at its fair market value to the City of

¹Letter from Rick Verticchio, Verticchio & Verticchio, to Matt Hartman, Assistant Attorney General, Public Access Bureau (June 3, 2020), at 1.

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Gillespie who is providing us police services."² Another member made that motion and it was seconded. The clerk then restated the motion as: "Resolution to sell police equipment to Gillespie"³ and conducted a roll call vote, which resulted in the resolution being unanimously adopted. Although the vote taken by the City Council was to authorize the City to sell equipment at fair market value rather than to complete the sale, it was nonetheless final action on a resolution proposed at the meeting. We understand the City Council's point that the May 18, 2020, vote was to authorize the process of selling the equipment, rather than finalizing the sale; however, the City Council chose to propose a resolution to that effect and take a public vote, thus taking a "final action." It is undisputed that the meeting agenda does not reference this resolution in any manner. Accordingly, this office concludes that the City Council violated section 2.02(c) by approving a resolution authorizing a sale of police equipment at fair market value without providing advance notice of the general subject matter of that final action on the May 18, 2020, meeting agenda. Because the City Council subsequently took final action to sell the equipment at a fixed price after providing advance notice of that action on the June 15, 2020, meeting agenda, this office concludes that no further action is necessary to remedy this violation.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have questions, please contact me at (217) 782-9054.

Very truly yours,

[REDACTED]

MATT HARTMAN
Assistant Attorney General
Public Access Bureau

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²Benld City Council, Open Session Meeting, City Council, May 18, 2020, Audio File, Part 2 (on file with author), at 11:07-11:27.

³Benld City Council, Open Session Meeting, City Council, May 18, 2020, Audio File, Part 2 (on file with author), at 11:39-11:42.