



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

July 21, 2022

Via electronic mail




Via electronic mail


Ms. Tiffany Nelson-Jaworski
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RE: OMA Request for Review – 2022 PAC 71167

Dear  and Ms. Nelson-Jaworski:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2020)). For the reasons explained below, the Public Access Bureau concludes that the agendas for the March 8, 2022, and March 22, 2022, meetings of the Thornton Township Board (Board) did not provide adequate notice of the Board's personnel actions during those meetings.

In her Request for Review, received April 10, 2022,  alleged that at the Board's March 8, 2022, and March 22, 2022, meetings, the Board improperly took final action on matters that were not listed on the meeting agendas. In particular, she alleged that the Board voted to make three hires that were not listed on the agenda at the former meeting, and voted to approve two firings at the latter meeting that similarly were not listed on that agenda.

On April 12, 2022, this office sent a copy of the Request for Review to the Board and asked it to provide copies of any notices, agendas, open session minutes, and open session audio or video recordings from its March 8, 2022, and March 22, 2022, meetings. This office also asked the Board to respond in writing to  OMA allegations, addressing whether it took final action on matters not listed on the agenda at each meeting. On May 5,

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2022, the Board's attorney furnished a written response. On May 25, 2022, [REDACTED] submitted a reply. On June 1, 2022, the Board's new attorney furnished this office with copies of the requested meeting minutes.

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 2020)) provides that "[a]ny 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." OMA does not define the term "general subject matter." However, 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 they 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 Public Access Bureau has previously determined that overly-generic agenda items are too vague and imprecise to satisfy the requirement in section 2.02(c) of OMA that a public body's agenda "set forth the general subject matter" of an item that will be the subject of final action at the meeting. For instance, the agenda item "Personnel, Employments, Resignations, Leaves, Retirements" did not set forth the general subject matter of the various hirings, resignations, and retirements that a school board approved during a meeting, where no personnel report was posted with the agenda nor any other notice given of the positions at issue. Ill. Att'y Gen. PAC Req. Rev. Ltr. 53265, issued August 28, 2018, at 4-5 ("[T]o comply with section 2.02(c), an agenda item for personnel actions must at least reference the category or categories of employees at issue, such as teachers, bus drivers, social workers, etc."); *see also* Ill. Att'y Gen. PAC Req. Rev. Ltr. 48630, issued August 31, 2017, at 3-4 (agenda items "Action Regarding Executive Session Issues" and "Personnel-Section 2(c)(1)" did not provide general

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subject matter of vote to appoint village administrator); Ill. Att'y Gen. PAC Req. Rev. Ltr. 62955, issued October 29, 2020, at 8 (agenda reference to "personnel matters and/or litigation" did not provide general subject matter of vote to approve separation agreements).

However, a public body need not include specific details concerning its items intended for final action, so long as it sufficiently describes the general subject matter of the action in the context of the particular meeting. For example, the agenda item "Discussion and Possible Action to Review Employee Contract/Renewal" gave sufficient notice of a city council's vote to terminate the city manager, where the meeting was a special meeting with only that action item on the agenda and the public comments made prior to the consideration of that item reflect that the public was aware that the city manager's contract was at stake. Ill. Att'y Gen. PAC Req. Rev. Ltr. 54626, issued August 28, 2018, at 2.

In its response to this office, the Board argued:

Thornton Township complied with the Open Meetings Act because the March 8 and March 22 agendas plainly listed the hiring and termination of employees as agenda items. This was sufficient notice under the Open Meetings Act because it stated the "general subject matter" of each meeting without naming which employees would be hired or terminated.^[1]

The Board also argued that section 2.02(c) does not apply to the hires and firings because they were not undertaken via "resolution or ordinance" per the language of section 2.02(c). Further, the Board's attorney claimed that a member of the Public Access Bureau had pre-approved the agenda items, despite this office having no pre-approval authority or process, but the Board's law firm was unable to provide any information concerning the alleged pre-approval.

In reply, [REDACTED] contended:

I do believe that there should have been a job title listed on the agenda. To continue to fire people under a general statement with no guide for the public as to what the board meeting will entail seems sneaky.

I understand not putting names on there for privacy reasons but a position for action should be listed. How does the public know what the board meetings are about if the details aren't listed

¹Letter from James M. Vasselli, Thornton Township Attorney, to Joshua Jones, Deputy Bureau Chief (May 5, 2022), at 2.

on the agenda. Isn't the point of action items so the public know what actions are being taken?^[2]

The agendas for the Board's March 8, 2022, and March 22, 2022, included nearly identical "Personnel" sections, in addition to various other kinds of items. The agenda for the former meeting stated:

- XI. Personnel
 - A. Resignation / Retirement / Termination/
 - B. Transfer / Promotion / Status Change
 - C. Appointment / New Hire –
 - 1. Approve appointment of full-time Counsel, Attorney James Vasselli, of Del Galdo Law Group, LLC.^[3]

Under that section of the agenda, the minutes document that the Board voted to approve the hiring of Mr. Vasselli, and then voted to approve the hiring of named individuals for three positions: Communications and Media Advisor, Inter-Governmental Liaison, and Senior Advisor.⁴ The minutes state that there were no resignations/retirements/terminations, nor any transfers/promotions/status changes.⁵

The March 22, 2022, agenda stated:

- XI. Personnel
 - A. Resignation / Retirement / Termination
 - B. Transfer / Promotion / Status Change

²E-mail from [REDACTED] to Joshua Jones (May 25, 2022).

³Thornton Township Board of Trustees, Agenda Item XI, Personnel (March 8, 2022).

⁴Thornton Township Board of Trustees, Meeting, March 8, 2022, Minutes 3.

⁵Thornton Township Board of Trustees, Meeting, March 8, 2022, Minutes 3.

C. Appointment / New Hire – ^[6]


The minutes reflect that under this section, the Board voted to terminate the HR Assistant Manager and Ms. Wiedeman, the Executive Assistant to the Supervisor.⁷

In this matter, the Board's March 8, 2022, agenda gave ample notice that the Board would vote to appoint Mr. Vasselli as the Township's attorney. The agenda indicated that this would be a new hire, and gave Mr. Vasselli's name and position. That agenda item, however, materially contrasts with the other personnel agenda items from the Board's March 8, 2022, and March 22, 2022, meeting. For one thing, the inclusion of the line on the agenda for Mr. Vasselli's hiring suggested that this was the one new hire to be approved at that meeting. The use of the singular rather than plural in "Appointment / New Hire" likewise implied that just that one new hire would be made, rather than the three additional new hires the Board approved during the March 8, 2022, meeting. The same goes for the singular "Resignation / Retirement / Termination" on the latter meeting's agenda. Moreover, the Board did not include in the agendas the job titles or general employee categories for the three new hires on March 8, 2022, or the two firings on March 22, 2022. A member of the public reading the agendas would not have had sufficient notice of the general type of employees that the Board would hire at the former meeting and fire at the latter meeting. Although the agendas listed the types of personnel actions the Board took in mentioning hiring and termination, the boilerplate nature of the personnel sections does not provide adequate advance notice of the Board's final actions concerning those employees. Repeating the same broad and generalized personnel section on the agenda for each meeting regardless of the extent to which the public body is considering each type of personnel action listed does not comport with the purpose of giving notice under OMA: to inform the public of the matters the public body might be acting upon at that meeting, rather than all items the public body could conceivably act upon. 5 ILCS 120/1 (West 2020).

The Board's claim that it could not have given insufficient notice for the personnel action items because the personnel actions were not accomplished via resolution or ordinance is unavailing. Black's Law Dictionary defines "resolution," in pertinent part, as: "Formal action by a corporate board of directors or other corporate body authorizing a particular act, transaction, or appointment." Black's Law Dictionary (10th ed. 2014), *available at* Westlaw BLACKS. Even if the Board did not label the proposed hiring and firing actions as a "resolution," it voted to authorize those transactions therefore took final action on a "resolution" under the plain meaning of that word. Accordingly, this office concludes that the Board provided insufficient notice for three hires approved during its March 8, 2022, meeting, and two firings approved during its March 22, 2022, meeting.

⁶Thornton Township Board of Trustees, Agenda Item XI, Personnel (March 22, 2022).


⁷Thornton Township Board of Trustees, Meeting, March 22, 2022, Minutes 3-4.


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Under the circumstances at issue here, this office does not ask the Board to revote on those matters, but to include more applicable and more descriptive items on future agendas to ensure the requirements of section 2.02(c) are satisfied.

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 questions, please contact me at joshua.jones@ilag.gov.

Very truly yours,


JOSHUA JONES
Deputy Bureau Chief
Public Access Bureau

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