



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

March 28, 2018

*Via electronic mail*

Mr. Phil Fastrum, President  
North Maine Local 2224-IAFF  
Des Plaines, Illinois 60016  
local2224@gmail.com

*Via electronic mail*

Mr. Joseph Miller, III  
Ottosen Britz Kelly Cooper Gilbert & DiNolfo, Ltd.  
1804 North Naper Boulevard, Suite 350  
Naperville, Illinois 60563  
jmillier@ottosenbritz.com

RE: OMA Request for Review – 2016 PAC 44882

Dear Mr. Fastrum and Mr. Miller:

This determination letter 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, based on the available information, the Board of Trustees (Board) of the North Maine Fire Protection District (District) held an improper closed meeting on November 1, 2016.

On November 3, 2016, Mr. Phil Fastrum submitted a Request for Review to the Public Access Bureau alleging that on November 1, 2016, two of the three members of the Board met with Fire Chief Richard Dobrowski without adhering to the requirements of OMA, "and reviewed and discussed insurance proposals related to the employees<sup>[1]</sup> 2017 insurance coverage and premiums."<sup>1</sup> Mr. Fastrum stated that the issue of the employees' insurance coverage was on the agenda for the Board's November 9, 2016, meeting. He alleged that "the meeting was held

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<sup>1</sup>E-mail from Phil Fastrum, President, North Maine Local 2224- IAFF, to Sarah Pratt (November 3, 2016).

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without all the trustees present to review and discuss the proposals [so] as to skew the results of the review of the documents in their scheduled regular open meeting."<sup>2</sup>

On November 8, 2016, this office sent a copy of the Request for Review to the Board and asked it to respond to Mr. Fastrum's allegations. Specifically, this office asked the Board to explain whether two of its three members met to discuss a matter of public business on November 1, 2016, without providing advance notice to the public or otherwise abiding by OMA, and, if so, whether it was necessary to conduct that meeting in accordance with OMA. On November 15, 2016, the Board responded by denying the allegations. On November 23, 2016, Mr. Fastrum submitted a reply. On December 7, 2016, the Board submitted an amended response. On December 15, 2016, Mr. Fastrum submitted a supplemental reply.

#### DETERMINATION

OMA is intended "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2016).

Section 2(a) of OMA (5 ILCS 120/2(a) (West 2016)) provides that "[a]ll meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." Section 1.02 of OMA (5 ILCS 120/1.02 (West 2016)) defines a "meeting" subject to the Act 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 or, for a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public business.

If a gathering of members of a public body meets this definition, then all of the requirements of OMA apply, including the proper posting of notice and an agenda (5 ILCS 120/2.02(a) (West 2016)), holding the meeting at a specified time and place that is convenient and open to the public (5 ILCS 102/2.01 (West 2016)), keeping minutes (5 ILCS 120/2.06(a) (West 2016)), and allowing public comment (5 ILCS 120/2.06(g) (West 2016)).

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<sup>2</sup>E-mail from Phil Fastrum, President, North Maine Local 2224- IAFF, to Sarah Pratt (November 3, 2016).

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The Office of the Attorney General has stated that "whether a gathering falls within the definition of meeting as used in the Act, would depend upon the peculiar facts in each situation." Ill. Att'y Gen. Op. No. S-726, issued March 22, 1974, at 126. "In theory, there is no absolute prohibition against the members of a public body attending an 'informational meeting' without triggering the application of" OMA, as long as the members do not make "[d]eliberational statements" or engage in "unrecorded discussions" concerning public business amongst themselves. Ill. Att'y Gen. Op. No. 95-004, issued July 14, 1995, at 10-11. In that opinion, the Attorney General concluded that "[t]he mere fact that a majority of a quorum of the members of a public body attend[ed] and participate[d] in a bona fide presentation on new legislative developments in an area of public concern within the scope of the public body's power to act" did not make the presentation subject to OMA, but that the extensive discussions of public business amongst members of two county boards during the presentation did trigger the requirements of OMA. (Emphasis in original.) Ill. Att'y Gen. Op. No. 95-004, at 10-11; *see also Nabhani v. Coglianese*, 552 F. Supp. 657, 661 (N.D. Ill. 1982) (a gathering does not constitute a meeting for purposes of OMA when there is "no examining or weighing of reasons for or against a course of action, no exchange of facts preliminary to a decision, [and] no attempt to reach accord on a specific matter of public business.").

In the Board's initial response to this office, the Board's attorney, Mr. Joseph Miller, explained that the District had solicited bids to administer employee health insurance, which were due to be received on November 1, 2016. He stated that the Board had designated Fire Chief Dobrowski to open the bids. Subsequently, according to Mr. Miller:

[T]wo of the trustees walked in separately after the bid opening to get a copy of the bid packets. The two trustees were only there to receive the packets which would then be discussed at the November 9, 2016 meeting. Although I am sure the two trustees exchanged common pleasantries, no actual District business occurred on November 1, 2016.<sup>3</sup>

Mr. Fastrum replied that the Board's description of the circumstances on November 1, 2016, was false. He explained:

Personally I was witness to the event. I saw the two Trustees in the office of the Fire Chief sitting at the table of approximately 1 hour. During that hour they had the binders that contained the bids that were solicited for third-party administrative

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<sup>3</sup>Letter from Joseph Miller, III, Ottosen Britz Kelly Cooper Gilbert & DiNolfo, Ltd., to Joshua Jones, Assistant Attorney General, Public Access [Bureau], Office of the Attorney General (November 15, 2016).

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services on the table and open. They were openly conversing within a distance to the open door that I could hear the conversation. They were discussing the bids. I was aware that no meeting was posted in accordance to the open meetings act and passed the office several times and consistently heard the conversation.<sup>[4]</sup>

In the Board's amended response, Mr. Miller corrected his previous statement about the Board designating Fire Chief Dobrowski to open the bids, stating that instead the Board had solicited proposals for health insurance and that the plan was for the trustees to pick up the submitted proposals individually. He explained:

Trustee McLaughlin arrived at the fire station to pick up copies of the proposals at about 3:45 p.m. At approximately 4:00 p.m., Trustee Rutzen arrived at the fire station to do the same. While it is true that the trustees opened one of the proposal's [sic], the nature of the conversation did not occur as portrayed in Mr. Faustrom's [sic] letter.

\* \* \* [It] is important to note that the trustees noticed that one of the packets was open and one was sealed. At that point, the trustees opened the other proposal packet and realized that they should schedule a special meeting to review the proposals. Trustees Rutzen and McLaughlin asked Chief Dobrowski to contact Trustee Neal to see if he would be able to attend a special meeting to discuss the proposals. In addition, Chief Dobrowski called the two vendors who submitted proposals to see if they could attend the special meeting. Trustees McLaughlin and Rutzen then left the fire station around 4:15-4:20 p.m.

In my opinion, a conversation to attempt to schedule a special meeting is not a violation of the Illinois Open Meetings Act. No business was conducted other than scheduling the meeting. Further, the trustees were not in the Chief's office for an hour as indicated by Mr. Faustrom [sic]. Trustee McLaughlin was

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<sup>4</sup>Letter from Phil Faustrum, President, North Maine Local 2224- IAFF, to Joshua Jones, Assistant Attorney General, Public Access [Bureau], Office of the Attorney General (November 23, 2016), at 1.

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there for approximately 30 minutes. Trustee Rutzen was in the Chief's office for 15 minutes.<sup>[5]</sup>

Under the plain language of the definition of "meeting" in OMA, a public body does not need to conduct business in the form of holding an official vote in order for a meeting to be held. Rather, a discussion of public business among a quorum of a three member board is sufficient to trigger the requirements of the Act. In this instance, it is undisputed that a quorum of the Board met on November 1, 2016, for at least 15 minutes and opened a proposal concerning a matter of public business. Mr. Fastrum provided firsthand information about what he saw and heard and that time: the two Board members discussing the proposals. Although the Board's attorney claimed that the Board merely attempted to schedule a special meeting during this gathering, he acknowledged that the Board opened the second proposal. In light of the detailed information provided by Mr. Fastrum, it appears that the Board members at least briefly discussed the proposals in some manner during the minimum of 15 minutes that they were gathered together. Accordingly, the available information indicates that the Board held an improper closed meeting on November 1, 2016.

Nonetheless, Mr. Fastrum did not allege, and the evidence received by this office does not indicate, that the Board took final action during that improper closed meeting. Therefore, no remedial action is available here. This office cautions the Board to refrain from discussions of public business outside of properly noticed open meetings in the future.

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, please contact me at (312) 814-8413.

Very truly yours,



JOSHUA M. JONES  
Deputy Bureau Chief  
Public Access Bureau

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<sup>5</sup>Letter from Joseph Miller, III, Ottosen Britz Kelly Cooper Gilbert & DiNolfo, Ltd., to Joshua Jones, Assistant Attorney General, Public Access [Bureau], Office of the Attorney General (December 7, 2016), at 1-2.