

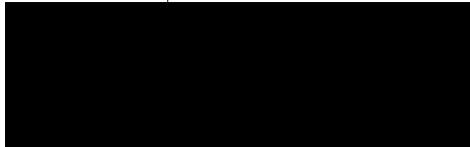


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

December 6, 2019

Via electronic mail



Via electronic mail

The Honorable Stacey Carl
Village President, Village of Greenup
115 East Cumberland Street
P.O. Box 246
Greenup, Illinois 62428
c/o clerk@villageofgreenup.com

RE: OMA Request for Review – 2017 PAC 48812

Dear [REDACTED] and President Carl:

This determination letter 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 that follow, the Public Access Bureau concludes that the Greenup Village Board (Board) violated the requirements of OMA in connection with the May 30, 2017, meeting of the Board's Committee for Economic Development (Committee).

On July 20, 2017, [REDACTED] submitted this Request for Review alleging, in pertinent part,¹ that the Committee's May 30, 2017, meeting turned out to be an illegal Board meeting when all but one of the Board members participated in the discussion concerning the economic incentive agreements he was seeking. On July 31, 2017, this office sent a copy of the Request for Review to the Board and asked it to provide a detailed written response to [REDACTED]

¹In a January 11, 2018, telephone conversation with an Assistant Attorney General in the Public Access Bureau, [REDACTED] confirmed that he is contesting only the circumstances surrounding the May 30, 2017, Committee meeting.

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[REDACTED] allegations, together with copies of the notice, agenda, and minutes of the May 30, 2017, meeting.

On August 3, 2017, Village President Stacey Carl, on behalf of the Board, provided a copy of the notice for the Committee meeting, a "Committee Meeting Attendance & Reporting of Meeting" document, and a written response. Village President Carl explained that, in addition to the three Committee members, he and two other Board members attended the open meeting, but he did not clarify the extent to which the non-Committee members participated in any discussion or deliberation. Rather, Village President Carl stated:

Discussion was made as to the properties for which an economic incentive agreement was requested primary focusing on the Old Amoco filling station property. There was also a discussion of the terminology of the statute in which economic incentive agreements could be provided and the meaning of the terms "vacant" and "under utilized[.]"²

On August 9, 2017 [REDACTED] submitted a reply, again alleging that the May 30, 2017, meeting was improper because of the attendance of and deliberation by a majority of a quorum of Board members. [REDACTED] also alleged that the May 30, 2017, meeting minutes were vague and inadequate.

On August 10, 2017, Village President Carl responded to [REDACTED] reply, asserting that the non-Committee members attended the meeting as Village citizens, not in their official capacities as Board members, but that the Board was "not aware of a prohibition against other Board members attending a committee meeting."³ Village President Carl also asserted that all discussions fell within the agenda topic of requested economic incentives but did not further elaborate which Board or Committee members engaged in discussions. On August 21, 2017, [REDACTED] replied and enclosed a letter from [REDACTED], who attended the meeting with him. Both [REDACTED] and [REDACTED] acknowledged that Board member Mike Oakley did not participate in the deliberations during the meeting. [REDACTED] and [REDACTED] also both alleged that they were excluded from the latter half of the meeting, and [REDACTED] contested Village President Carl's assertion that the discussion during the meeting adhered to the item on the agenda.

²Letter from Stacey Carl, Village President, to Christopher R. Boggs, Assistant Attorney General, Public Access Bureau, Office of Attorney General (August 3, 2017), at 2.

³Letter from Stacey Carl, Village President, to Christopher R. Boggs, Assistant Attorney General, Public Access Bureau, Office of Attorney General (August 10, 2017), at 1.

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On August 23, 2017, Village President Carl provided a final response, again asserting that no members of the public were excluded from any part of the May 30, 2017, meeting. Village President Carl also stated that "[t]he purpose of the meeting was twofold. First, it was primarily to discuss incentive agreements requested by [REDACTED]. A second purpose of the meeting was to discuss formation of a Tax Increment Financing district after an inquiry had been made. Discussion had concluded insofar as Mr. Schrock's incentive agreements."⁴

In an August 25, 2017, e-mail to an Assistant Attorney General in the Public Access Bureau, [REDACTED] stated that he had no further reply.

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).

As an initial matter, section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides, in pertinent part:

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 not later than 60 days after the alleged violation. If facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, by a person utilizing reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation. The request for review must be in writing, must be signed by the requester, and must include a summary of the facts supporting the allegation.

Under the plain language of this provision, a Request for Review must be submitted within 60 days after an alleged violation unless facts concerning the violation were not discovered during that time period. In this instance, more than 60 days had elapsed after the May 30, 2017, meeting before [REDACTED] alleged, in his August 21, 2017, reply to the Board's supplemental response, that the discussion during the meeting exceeded the scope of the item on the agenda

⁴Letter from Stacey Carl, Village President, to Mr. Christopher R. Boggs, Assistant Attorney General, Public Access Bureau, Office of Attorney General (August 23, 2017), at 1.

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and that a portion of the meeting was improperly closed to the public. There is no indication, however, that [REDACTED] was unaware of the relevant facts pertaining to these allegations at the time of the meeting, as he was in attendance. Therefore, [REDACTED] allegations concerning discussion outside of agenda items and exclusion of the public from part of the meeting were raised outside of FOIA's time limitations and are not subject to review by this office.

Additionally, this office notes that the Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2018)). *See* 15 ILCS 205/7(c)(3) (West 2018). Accordingly, this determination is limited to reviewing whether the Board violated OMA in connection with the Committee's May 30, 2017, meeting.

Section 2(a) of OMA

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 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 requirements of OMA are not automatically triggered when a majority of a quorum or a quorum of a public body attends a gathering. *See University Professionals of Illinois v. Stukel*, 344 Ill. App. 3d 856, 868 (1st Dist. 2003) (OMA is not "triggered every time public officials meet and converse"). Rather, 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. 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." *Nabhani v. Coglianese*, 552 F. Supp. 657, 661 (N.D. Ill. 1982).

The Board is comprised of six members, including Village President Carl; a majority of the members—four members—comprise a quorum, and three members comprise a majority of a quorum. Therefore, when at least three Board members engage in

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contemporaneous, interactive communications concerning Board business, those discussions may constitute Board meetings subject to the procedural safeguards and requirements of OMA.

There is no dispute that that the Committee provided proper notice of its meeting to discuss various requests for economic incentives. [REDACTED], however, contended that the attendance of the Village President and two non-Committee Board members converted the otherwise properly-noticed Committee meeting into a full Board meeting, for which notice was not provided. Although there is no prohibition on non-Committee Board members simply attending the Committee meeting, here non-members participated in the meeting discussion. [REDACTED] and [REDACTED] conceded that Mr. Oakley did not take part in deliberations during the meeting, and it is not entirely clear the extent to which the Village President and the non-Committee Board members did participate in the discussion. The available information indicates, however, that five of six Board members deliberated about public business at the May 30, 2017, meeting, turning the meeting into one of the full Board, rather than just a committee meeting. This conclusion is supported by the fact that on June 5, 2017, the Board took action on the item discussed at the May 30, 2017, meeting. Given the short time span, it appears likely that information exchanged at the May 30, 2017, meeting informed the action on the economic incentive agreements at the Board's June 5, 2017, meeting. The requirements of OMA apply to gatherings in which members of a public body obtain information in anticipation of taking action at a subsequent meeting. Ill. Att'y Gen. PAC Req. Rev. Ltr. 49828, issued June 20, 2018, at 5 (public body violated OMA by gathering in private to review bills upon which action was taken at ensuing meeting). Based on the available information, this office concludes that the Board violated the requirements of OMA in connection with the May 30, 2017, Committee meeting by engaging in deliberations among five of six Board members without having notified the public that a Board meeting would occur.

Because it has not been alleged that final action was taken during the meeting in question, no remedy is available at this time. The Board should be mindful that the participation of non-committee Board members at committee meetings creates the possibility of transforming the gathering into a Board meeting in violation of OMA, if the meeting has not also been noticed as a Board meeting.

Finally, although [REDACTED] did not expressly request review of the sufficiency of the May 30, 2017, meeting minutes, the Public Access Bureau has previously concluded that one-sentence general statements in minutes merely noting the topic(s) of discussion are insufficient to satisfy the requirements of section 2.06(a)(3) of OMA (5 ILCS 120/2.06(a)(3) (West 2016)).⁵ See Ill. Att'y Gen. PAC Req. Rev. Ltr. 18824, issued February 6, 2013, at 2; Ill.

⁵Section 2.06(a)(3) of OMA (5 ILCS 120/2.06(a)(3) (West 2016)) requires, in pertinent part, that minutes include "a **summary of discussion** on all matters proposed, deliberated, or decided, and a record of any votes taken." (Emphasis added.)

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Att'y Gen. PAC Req. Rev. Ltr. 18307, issued July 2, 2012, at 4. In this office's capacity of providing advice and education to both the public and public officials,⁶ this office urges the Board to summarize in its minutes the arguments and points made concerning any proposals deliberated during meetings, as well as any outcomes.

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 file. If you have any questions, please contact me at (217) 785-7438 or at the Springfield address on the bottom of the first page of this letter.

Very truly yours,

[REDACTED]
CHRISTOPHER R. BOGGS
Supervising Attorney
Public Access Bureau

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⁶See 15 ILCS 205/7(a), (b), (c) (West 2018).