



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 1, 2017

Via electronic mail
Mr. John Kraft

[REDACTED]
john@illinoisleaks.com

Via electronic mail
Mr. Rick Bertinetti
Bertinetti & Cain, Attorneys at Law
227 East First South Street, P.O. Box 645
Carlinville, Illinois 62626
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RE: OMA Request for Review – 2016 PAC 49874

Dear Mr. Kraft and Mr. Bertinetti:

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 that follow, the Public Access Bureau concludes that the City of Carlinville City Council (City Council) violated OMA by holding a meeting on September 25, 2017, without adhering to the requirements of the Act.

On September 30, 2017, Mr. John Kraft submitted the above-captioned Request for Review alleging that on September 25, 2017, a majority of a quorum of the City Council (three of the nine members) deliberated about public business at a private water company in Jerseyville without providing advance notice or otherwise adhering to the requirements of OMA. He provided a link to a video recording of the gathering.¹

On October 4, 2017, this office forwarded a copy of the Request for Review to the City Council and asked it to provide copies of any meeting materials from the alleged meeting in Jerseyville on September 25, 2017, for this office's confidential review, together with a written response to the allegation that it held an unauthorized meeting in that instance. On October 9,

¹Matt Turley, *Proposed Carlinville / Fosterburg / Jersey County Water Organization Meeting 9/25/17*, YouTube (Sept. 26, 2017), https://www.youtube.com/watch?v=e72aH_yD6Tk&feature=youtu.be.

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2017, the City Council submitted a "save the date" e-mail, an agenda, meeting minutes, an attendance sheet, and a written response. On October 17, 2017, Mr. Kraft submitted a 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).

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 "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 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." 1974 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 City Council consists of nine members; five members constitute a quorum and three members a majority of a quorum. Therefore, if three members of the City Council engaged in deliberative discussions of public business during the September 25, 2017, gathering at the water company, that gathering would be subject to all of the requirements of OMA.

It is undisputed that the City Council did not provide advance notice or otherwise follow the requirements of OMA in connection with that meeting. In its response to his office, the City Council stated:

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The meeting on September 25, 2017, was not held or called by the City of Carlinville. It was a regional water meeting held for the purpose of eventually establishing a regional water entity that will provide water to its members. The ground floor members are the City of Carlinville, FWD (Fosterburg Water District) and JCRWC (Jersey County Rural Water Company).

Cindy Campbell, who is an alderman of the City of Carlinville, attended this September 25 meeting as the representative for the City. She had previously been approved and voted to be the City's representative by the Carlinville City Council at one of its regular meetings. Prior thereto at one of its regular meetings, the City Council voted to move forward with the regional water concept. Beth Toon, who is an alderman for the City of Carlinville, attended this September 25 meeting as an observer (a guest) and I believe did speak at the meeting by offering comments and/or propounding questions to the group conducting the meeting. The City of Carlinville's Mayor, Deanna Demuzio, was also present at the meeting as an observer and did not speak or in any other way participate in the meeting.^[2]

Mr. Kraft replied that the video of the meeting contradicts the claim that Mayor Demuzio never spoke; he noted six instances in which she participated in the meeting. Stating that "[t]he city has acknowledged that both Aldermen Beth Toon and Cindy Campbell were present and did speak about public business" at the gathering in Jerseyville, Mr. Kraft alleged that "[a] majority of a quorum of the City Council * * * were present AND were discussing the public business of the City of Carlinville." (Emphasis in original.)³

This office's review of the video of the gathering in Jerseyville on September 25, 2017, corroborated that Mayor Demuzio and the two other City Council members participated in the group's deliberations. Although the discussion may not have been called or held by the City Council, the discussion directly concerned the City Council's public business, as the City provides water service and the parties discussed forming a new entity to handle water service in the region. Because a majority of a quorum of the members of the City Council gathered to discuss public business on September 25, 2017, without providing advance notice and without following the other requirements of OMA, this office concludes that the City Council violated

²Letter from Rick Bertinetti, City Attorney, to Joshua M. Jones, Supervising Attorney, Public Access Bureau, Office of the Attorney General (October 9, 2017), at 1.

³E-mail from John Kraft to PAC (October 17, 2017).

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OMA on that date. To remedy this violation, this office requests that the City Council make the minutes of the meeting publicly available. This office also cautions the City Council to consider in advance whether gatherings at which three or more of its members may engage in discussions of public business require proper advance notice and adherence to the other requirements of OMA.

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 (312) 814-8413 or the Chicago address on the first page of this letter. This letter shall serve to close this matter.

Very truly yours,



JOSHUA M. JONES
Supervising Attorney
Public Access Bureau

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