



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

February 25, 2020

Via electronic mail
The Honorable Linda Wohlfarth
[REDACTED]

Via electronic mail
The Honorable Conrad Lobinsky
Mayor
Village of Capron
250 West Main Street
Capron, Illinois 61012
mayor@villageofcapron.com

RE: OMA Request for Review – 2020 PAC 61343

Dear Ms. Wohlfarth and Mr. Lobinsky:

This determination 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 explained below, the Public Access Bureau concludes that Village of Capron Board of Trustees (Board) violated OMA by holding a meeting on January 13, 2020, without adhering to the requirements of the Act.

On January 14, 2020, Capron Village Trustee Linda Wohlfarth submitted the above-referenced Request for Review alleging that on January 13, 2020, the Village's mayor arranged a conference call with herself and other Village officials to discuss a comment Ms. Wohlfarth made online alleging an improper use of Village property. Ms. Wohlfarth alleged that she participated in this call and that four voting members of the Board, including herself, took part in a forty-minute discussion of public business. She asserted that the entire phone conversation was recorded. This office construed the Request for Review as alleging that the Board phone call constituted an improper meeting because the Board did not comply with the requirements of OMA.

On February 5, 2020, this office forwarded a copy of the Request for Review to the Board and asked it to provide a written response to the allegation that the Board violated

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OMA by holding a private meeting to discuss public business. In particular, this office asked the Board to identify the Board members who participated in the conference call and describe the discussion that took place, including the topics of discussion and any actions that were taken. This office also asked the Board to provide copies of notes or minutes, if any, taken during this conference call as well as any recording of the call for this office's confidential review. On February 11, 2020, counsel for the Board provided an answer and an audio recording of the conference call. On February 18, 2020, Ms. Wohlfarth replied to the Board's response and provided this office with copies of the text messages she received from Mayor Lobinsky before the conference call.

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 2018)) 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 2018)) 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** or, for a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public business (Emphasis added).

Under this statutory definition, a "meeting" may include conference calls or other communications by electronic means involving a quorum or majority of a quorum of a public body. 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. Coglianesi*, 552 F. Supp. 657, 661 (N.D. Ill. 1982).

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The Board consists of seven members; four members constitute a quorum and three members a majority of a quorum. Therefore, if three members of the Board engaged in deliberative discussions of public business during the January 13, 2020 conference call, that call would be subject to all of the requirements of OMA.

It is undisputed that the Board did not provide advance notice and an agenda or an opportunity for the public to attend, or otherwise follow the requirements of OMA in connection with that meeting. In its response to this office, counsel for the Board stated:

I would note that the conference call was conducted in a relatively informal manner with no agenda identified, and of course no motions were made, nor was any action taken by the members of the [Board] of the Village of Capron which were on the call. The discussion on the call was generally focused on creating a better understanding of the Public Works SOP [standard operating procedure] regarding taking a Village vehicle home, and the concept of Public Works employees being "on call" for Village emergencies * * * The Village acknowledges that this conference call could be interpreted as crossing the line regarding the OMA.¹¹

This office's review of the audio recording of the conference call corroborated that Mayor Lobinsky and the three other voting Board members, including Ms. Wohlfarth, participated in the January 13, 2020 discussion. Although the conference call was intended to informally clear up a misconception about the Public Works Department's standard operating procedure, the entire thirty-five minute discussion directly concerned various matters of Village business. Specifically, the four Board members discussed the use of the Village truck at issue, why a particular employee would have had Village property at his home after hours, how the Village advertises job postings, hiring of Village employees, and how much the Village spends on providing employees with health insurance coverage. Because a quorum of the members of the Board discussed public business during the January 13, 2020, conference call, without providing advance notice and without following the other requirements of OMA, this office concludes that the Board violated OMA on that date.

To remedy this violation, this office request that the Board compile and make publicly available minutes of the January 13, 2020, meeting. This office also cautions the Board to consider in advance whether any gatherings, in person or via conference call, could involve

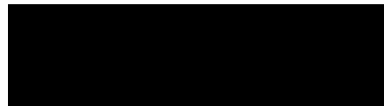
¹E-mail from Thomas A. Green, Barrick, Switzer, Long, Balsey & Van Evera, LLP., to Christina M. Lucente-McCullough, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (February 11, 2020).

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three or more of its members engaging in deliberative discussions of public business, which would be "meetings" requiring 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) 814-5383 or clucentemccullough@atg.state.il.us. This letter serves to close this file.

Very truly yours,



CHRISTINA M. LUCENTE-MCCULLOUGH
Assistant Attorney General
Public Access Bureau

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