



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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ATTORNEY GENERAL

November 19, 2024

Via electronic mail



Via electronic mail

The Honorable Steven Frost
President, Board of Education
Adlai E. Stevenson High School District 125
2 Stevenson Drive
Lincolnshire, Illinois 60069
sfrost@d125.org

RE: OMA Request for Review – 2023 PAC 75965

Dear [REDACTED] and Mr. Frost:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2022)).

In his Request for Review, submitted March 22, 2023, [REDACTED] alleged that the Board of Education (Board) of Stevenson High School District 125 (School District) held an improper private meeting on March 16, 2023, via Zoom. [REDACTED] stated that this meeting was advertised as a Town Hall and that the invitation described it as an opportunity for the public to "meet Steveson (sic) School Board members to discuss/ask your kids priority programs at Stevenson."¹ [REDACTED] also stated the meeting included five members of the Board and provided a copy of the Zoom meeting access information and screenshots of the five Board members in attendance.

On April 6, 2023, this office forwarded a copy of the Request for Review to the Board and asked that it provide this office with copies of any notices, agendas, minutes, and

¹E-mail from [REDACTED] to Public Access (March 22, 2023).

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recordings from its March 16, 2023, gathering for this office's confidential review. This office also asked the Board to respond in writing to the allegation that the gathering constituted an improper private meeting, explaining the extent to which the Board discussed the transaction of public business. On April 12, 2023, the Board submitted a written response and advised that it does not possess an agenda, notes, or any recordings from this gathering. On April 18, 2023, this office forwarded a copy of the Board's response to [REDACTED]; he replied on April 24, 2023.

DETERMINATION

"It is the public policy of this State that public bodies exist to aid in the conduct of the people's business and that the people have a right to be informed as to the conduct of their business." 5 ILCS 120/1 (West 2022). "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 (1989).

For the requirements of OMA to apply, a gathering must constitute a "meeting" as defined by section 1.02 of OMA (5 ILCS 120/1.02 (West 2022)):

"Meeting" means any 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).

The mere presence of a majority of a quorum of a public body's members at a gathering does not trigger the requirements of OMA. See *University Professionals of Illinois v. Stukel*, 344 Ill. App. 3d 856, 868 (2003) (acknowledging that OMA is not "triggered every time public officials meet and converse"). The Illinois Supreme Court has advised that OMA "is not intended to prohibit bona fide social gatherings of public officials, or truly political meetings at which party business is discussed. Rather, the Act is designed to prohibit secret deliberation and action on business which properly should be discussed in a public forum due to its potential impact on the public." *People ex rel. Difanis v. Barr*, 83 Ill. 2d 191, 202 (1980). 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, [and] no exchange of facts preliminary to a decision[.]" *Nabhani v. Coglianese*, 552 F. Supp. 657, 661 (N.D. Ill. 1982). Accordingly, the Public Access Bureau has determined that private social and political gatherings of the members of a public

body do not violate the openness requirements of OMA, as long as the members of the public body do not deliberate about public business. *See, e.g.*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 13792, issued July 6, 2011, at 2 (attendance of school board members at campaign-related social gathering was not a meeting subject to OMA).

On the other hand, the requirements of OMA do apply to "meetings designed to discuss or reach an accord with regard to public business which properly should be deliberated or acted upon in an open forum." *Difanis*, 83 Ill. 2d at 210 (1980). Additionally, a public body may hold a meeting by discussing and exchanging facts as a preliminary step to formulating action. *See Nabhani*, 552 F. Supp. at 660–61. In a binding opinion, the Attorney General concluded that a gathering in which a majority of a quorum of a library board held a "Meet and Greet" where "staff members presented questions and concerns about substantive library issues" met the definition of a meeting under OMA. Ill. Att'y Gen. Pub. Acc. Op. No. 23-003, issued March 14, 2023, at 6-7. Notably, the library board president repeatedly stated that a video recording of the gathering would be shared with all library board members so that the staff's questions and concerns could be addressed by the Board as a whole, which demonstrated that the library board members who attended had engaged in the collective inquiry phase of deliberations by gathering and exchanging information on issues of library business. Ill. Att'y Gen. Pub. Acc. Op. No. 23-003, at 7.

According to the School District's website, the full Board consists of seven members: the president, vice-president, secretary, and four trustees.² Four Board members constitute a quorum, and three members constitute a majority of a quorum. Therefore, if three members of the Board engaged in deliberative discussions of public business on March 16, 2023, that gathering would be subject to all the requirements of OMA. Those requirements include proper posting of notice and an agenda (5 ILCS 120/2.02 (West 2022)), holding the meeting at a specified time and place that is convenient and open to the public (5 ILCS 120/2.01 (West 2022)), keeping minutes (5 ILCS 120/2.06(a) (West 2022)), and allowing public comment (5 ILCS 120/2.06(g) (West 2022)).

In its response to this office, the Board acknowledged that five Board members attended the March 16, 2023, gathering, but it denied that the gathering constituted a "meeting" under OMA. The Board argued the March 16, 2023, gathering was a campaign event organized by Board President Steven Frost and the President of the Lake County Indians Association to introduce the Indian American community to four incumbent candidates who were up for reelection in the April 4, 2023, election. The Board asserted that the event was hosted by Mr. Frost using his personal, paid subscription to Zoom and that following the event, the Lake County Indians Association endorsed the four candidates. Mr. Frost described the contents of the Zoom call as following:

²Board of Education, Stevenson High School District 125, <https://www.dl25.org/about/board-of-education> (last visited June 6, 2023).

The call began with each of the four candidates introducing themselves, explaining their backgrounds, and telling the participants why they were each running for the District 125 Board. I then explained that I was President of the Board and that I supported all four incumbents for re-election. I emphasized that we work together well and the importance of our collaboration in having an effective school board.

At that point, we opened the event for questions from community participants. I recall questions regarding three broad topics: 1) safety measures in the school, 2) a building referendum for District 102 and District 125 finances, and 3) the special education needs of one specific family's child.

In response to several questions from community participants, the candidates explained various aspects of current school safety measures. One of the candidates explained that a school safety committee in the school meets frequently. Another candidate explained how the school coordinates with the Village of Lincolnshire police department. Other candidates explained how the school has two school resource officers that are actual uniformed police officers * * * Another discussed how the school's wellness initiative is critical to safety.^[3]

The Board distinguished this gathering from the circumstances set forth in Binding Opinion 23-003 by contending that its members were not gathering input for purposes of informing future Board actions and that their responses were directed to the attendee asking the question rather than each other. While the four trustees answered questions and responded to concerns raised by members of the public about school issues, the Board argued that the trustees did not "engage in discussions amongst themselves" or "solicit information or exchange facts preliminary to future" School District decisions.⁴

In his reply, [REDACTED] disputed the Board's depiction of the March 16, 2023, gathering as a campaign event. [REDACTED] argued that this gathering met the plain text requirements for a meeting under OMA because a majority of the quorum of Board members came together, and the members discussed matters of public business, such as the District's

³Letter from Steve Frost to Christina Lucente-McCullough, Assistant Attorney General, Public Access Bureau, Illinois Attorney General's Office (April 12, 2023), at 2.

⁴Letter from Steve Frost to Christina Lucente-McCullough, Assistant Attorney General, Public Access Bureau, Illinois Attorney General's Office (April 12, 2023), at 3.

budget. [REDACTED] analogized this gathering to the meet-and-greet event at issue in Binding Opinion 23-003 and argued:

Mr. Frost did not attend the meeting as a candidate, nor as part of a "slate." Mr. Frost and Ms. Ben-Yoseph did not offer tours of the school facility as candidates, as this could only be offered in their official capacity as Board Members. Mr. Frost and others did not discuss the budget (past, present, and future) and taxes as members of a "slate" or as candidates, these questions were addressed as "We" the school board.^[5]

It is undisputed that at least four members of the Board attended and participated in the March 16, 2023, Zoom call. According to the Board's own description of the Zoom call, all four trustees addressed substantive topics, including current school safety measures, a building referendum, and school district finances.⁶ There is no indication, however, that the discussion involved Board members deliberating amongst themselves for the purpose of reaching a consensus or gathering information as a preliminary step in a decision-making process. Unlike the circumstances in Binding Opinion 23-003, where the meet-and-greet was designed to gather information about staff members' concerns so they could be addressed by the public body in the future, a flier for the Zoom call that [REDACTED] submitted with his Request for Review advertised the event as a meet-and-greet for constituents with four Board members who had been endorsed for re-election by the *Daily Herald*. The available information indicates that four members of the Board participated in the Zoom call to campaign for re-election as a unified bloc with the support of the Board president. The fact that the Board members were incumbents did not preclude them from attending in a political capacity. In this context, the Board members appear to have communicated their views to the public to promote their candidacies rather than to conduct deliberations of public business as a Board. The endorsement by the Lake County Indians Association that followed the Zoom call further reflects the political character of the gathering. Because such a campaign event does not constitute a "meeting" of a public body, this office is unable to conclude that the March 16, 2023, Zoom call violated OMA.

Despite that conclusion, this office notes that gatherings of at least a majority of a quorum of a public body outside of a meeting held in compliance with OMA may create a perception of impropriety when topics of public business are discussed. There also is the potential for a campaign event to develop into a "meeting" if deliberative discussions unexpectedly break out in the process of candidates presenting their existing views. Therefore,

⁵Letter from [REDACTED] to [Christina] Lucente-McCullough (undated), at [2].

⁶Letter from Steve Frost to Christina Lucente-McCullough, Assistant Attorney General, Public Access Bureau, Illinois Attorney General's Office (April 12, 2023), at 3.

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this office recommends that the Board exercise caution and be mindful of the requirements and spirit of OMA before considering whether to hold similar campaign events 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 shall serve to close this matter. If you have any questions, please contact me at c.lucentemccullough@ilag.gov.

Very truly yours,

[REDACTED]
CHRISTINA LUCENTE-MCCULLOUGH
Assistant Attorney General
Public Access Bureau

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