



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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ATTORNEY GENERAL

May 10, 2024

Via electronic mail

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Mr. R. John Anderson
Acting General Counsel
Metra
547 West Jackson Boulevard, 15th Floor
Chicago, Illinois 60661
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RE: OMA Request for Review – 2023 PAC 77651

Dear [REDACTED] and Mr. Anderson:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2022)). For the reasons explained below, the Public Access Bureau concludes that the Metra Board of Directors (Board) did not violate OMA on May 17, 2023.

On August 9, 2023, [REDACTED] submitted a Request for Review to the Public Access Bureau alleging that the Board violated OMA on May 17, 2023, by holding a non-public meeting while traveling from Chicago to Will County. Citing a *Chicago Tribune* news article about the "educational train trip,"¹ [REDACTED] alleged that the Board improperly held a meeting at a train station in Chicago, during the train ride, and during the shuttle bus ride to the Will County Office Building without adhering to the requirements of OMA. [REDACTED] did not dispute that the

¹Sarah Freishtat, *Metra took its board members on a train ride to a monthly meeting. It cost the agency more than \$10,000.*, *Chicago Tribune* (August 8, 2023, 5:00 a.m.), <https://www.chicagotribune.com/2023/08/08/metra-took-its-board-members-on-a-train-ride-to-a-monthly-meeting-it-cost-the-agency-more-than-10000/>.

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Board held a properly-noticed open meeting once it arrived at the Will County Office Building, but alleged that the Board improperly discussed public business during the journey. He quoted the following passage from the *Tribune* article:

During the roughly 40-mile trip, board members saw work at a crossing between Metra and freight rail tracks. They learned of ideas for upgrades, including adding a third track along part of the route and the potential repair and use of a section of old track that crosses the Dan Ryan Expressway.

Board members passed the site of a planned train yard expansion, and the site of planned work to unsnarl Metra and freight train traffic that is also intended to create a connection between Metra's SouthWest Service and Rock Island lines. They passed the future site of the new Auburn Park station and saw construction at Metra's Blue Island-Vermont St. station.^[2]

██████████ also noted that a Board member was quoted as saying that "[t]he trip allowed members to see firsthand how some of the projects can reduce delays between the freight and commuter railroads and otherwise benefit Metra[.]"³

On August 14, 2023, the Public Access Bureau sent a copy of the Request for Review to the Board together with a letter asking the Board to respond in writing to the allegation that it held an improper private meeting on May 17, 2023.⁴ On August 31, 2023, ██████████ e-mailed this office copies of the PowerPoint presentation and handouts for the Board during the trip, which he had obtained pursuant to the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2022)). On September 7, 2023, this office received Metra's written answer from Metra's Acting General Counsel, R. John Anderson. On September 12, 2023, ██████████ submitted a reply.

²Sarah Freishtat, *Metra took its board members on a train ride to a monthly meeting. It cost the agency more than \$10,000.*, Chicago Tribune (August 8, 2023, 5:00 a.m.), <https://www.chicagotribune.com/2023/08/08/metra-took-its-board-members-on-a-train-ride-to-a-monthly-meeting-it-cost-the-agency-more-than-10000/>.

³Sarah Freishtat, *Metra took its board members on a train ride to a monthly meeting. It cost the agency more than \$10,000.*, Chicago Tribune (August 8, 2023, 5:00 a.m.), <https://www.chicagotribune.com/2023/08/08/metra-took-its-board-members-on-a-train-ride-to-a-monthly-meeting-it-cost-the-agency-more-than-10000/>.

⁴This office has jurisdiction in this matter under section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2022)) because although ██████████ submitted this Request for Review more than 60 days after the alleged violation, it appears that a person using reasonable diligence would not have known about the "educational train trip" until the *Tribune* article was published the day before he submitted this Request for Review.

DISCUSSION

"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).

Section 2(a) of OMA (5 ILCS 120/2(a) (West 2022)) 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 2022)) 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 (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. "[T]he 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). "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" among themselves. Ill. Att'y Gen. Op. No. 95-004, issued July 14, 1995, at 10-11. In that opinion, the Attorney General concluded that the "mere fact that a majority of a quorum of the members of a public body attend and participate in a bona fide presentation on new legislative developments in an area of public concern" did not make the presentation subject to OMA, but the extensive discussions of public business by 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. Coglianesi*, 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.").

Metra's Board is comprised of 11 members. A quorum of the Board is six, and a majority of a quorum is four. Accordingly, deliberative discussions about public business among four or more members of the Board are generally subject to the restrictions of OMA.

In its answer to this office, Metra asserted that "[o]n May 17, 2023, no meeting was held, no deliberative discussions occurred, and no votes were taken on the train to Joliet or on the shuttle vans from the train station to the Will County Office Building where the Metra Board meeting was held."⁵ Metra explained the nature of the trip as informational:

The purpose of the train trip to Will County via the Rock Island Line was to show Metra Board members areas of the line that are generally inaccessible from the vantage point of the rail and to provide a greater understanding of the system. Learning the system firsthand and in person is an invaluable and common learning experience for Board members on other railroads. Trips like these provide information that cannot be satisfactorily conveyed by mere maps and pictures.^[6]

Metra then described the measures it took to avoid violating OMA:

Metra Board members and staff are well aware of, and trained in, the OMA. Metra took a series of precautions prior to the trip to prevent any such violations. For example, prior to the train trip, staff prepared a PowerPoint presentation and script to be read to the Board members on the ride to Will County while the train passed, and sometimes stopped, at various sites along the way. The script and PowerPoint were reviewed by Metra's Law Department. * * * Before the train departed Chicago's LaSalle Street Station, the requirements and prohibitions of the OMA were reviewed with everyone on board. At least three members of the Law Department were present with the Board members in the observation car and monitored the trip for OMA compliance. Similarly, members of Metra's Law Department were present in the shuttles. There were no more than 3 Board members on any one shuttle. Again, there were no business discussions, deliberations, or votes taken on the train or shuttles.

⁵Letter from R. John Anderson, Acting General Counsel, Metra, to Grace Angelos, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (August 24, 2023), at [1].

⁶Letter from R. John Anderson, Acting General Counsel, Metra, to Grace Angelos, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (August 24, 2023), at [1-2].

Additional precautions were taken with the seating arrangements on the train car and shuttle. The car had three sections, a tiered section (single seats in two rows along each side of the car), a middle section, and a dining section. There were no more than three Board members in any one area of the long train car.^[7]

Metra went on to explain that eight of its 11 members participated in the train trip, and described how those Board members, nine Metra staff members, and two members of the press were interspersed throughout the train and two shuttles. Metra argued that "[i]t makes no sense to believe that of Metra wished to conduct a secret meeting in violation of the OMA that they would invite the press to observe and report the violation."⁸ Metra noted that the press reported no such violation, and contended that the *Tribune* article reflects the educational nature and value of the trip to both the Board and the public.

In reply, ██████████ referred this office to the presentation materials he obtained pursuant to FOIA, claiming that they all suggest that the Board discussed public business during the trip. This office's review of the materials found that they present information on the Rock Island Corridor and various contemplated and planned projects and initiatives.

Whenever a majority of a quorum of the members of a public body gather outside of the context of an open meeting, there is the potential for an OMA violation. The Board's activities as depicted in the Request for Review—that the Board gathered at a train station, took a train ride that had the purpose of informing members about matters of public business, and then took shuttle buses together—suggested circumstances ripe for an improper private meeting, as the purpose of the trip plainly concerned public business (rather than private affairs) and a quorum of the Board was present. Metra's detailed explanation about the safeguards it put in place to avoid an OMA violation by the Board, however, demonstrates that the Board did not hold an illegal meeting. The oversight by Metra's legal staff, the controlled nature of Metra staff's presentations, the reinforcement of OMA's requirements on board before the trip departed, and the presence of the press all served to keep the Board in compliance with the statute. Most importantly, Metra explained that on both the train and the shuttles, no more than three Board members were grouped together. Thus, Metra asserted that at no time during the trip was a majority of a quorum of the Board in a position to deliberate about public business together. This series of precautions taken by Metra appears to have allowed the educational trip to take

⁷Letter from R. John Anderson, Acting General Counsel, Metra, to Grace Angelos, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (August 24, 2023), at [2].

⁸Letter from R. John Anderson, Acting General Counsel, Metra, to Grace Angelos, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (August 24, 2023), at [2].

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place and provide insight to Board members while refraining from conducting a non-public meeting. Moreover, it is undisputed that the Board held a properly-noticed open meeting once it arrived in Will County, rather than alighting from the trip without an ensuing meeting in a manner amenable to private conversations. Because the information this office has received in this matter does not indicate that a majority of a quorum of the Board deliberated about public business on May 17, 2023, prior to the open meeting in Will County, this office concludes that the Board did not hold a non-public meeting in violation of OMA on that date.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, please contact me at joshua.jones@ilag.gov.

Very truly yours,

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JOSHUA M. JONES
Deputy Bureau Chief
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