



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

June 21, 2024

Via electronic mail



Via electronic mail

Mr. Roland R. Cross
Attorney
Brown, Hay & Stephens, LLP
205 South Fifth Street, Suite 1000
Springfield, Illinois 62795
Rcross@bhslaw.com

RE: OMA Request for Review – 2024 PAC 80554

Dear [REDACTED] and Mr. Cross:

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 that follow, the Public Access Bureau concludes that the City of Leland Grove (City) City Council (Council) violated OMA by holding a meeting on February 8, 2024, without adhering to the requirements of the Act.

On March 12, 2024, [REDACTED] submitted the above-referenced Request for Review alleging that on February 8, 2024, the City's mayor, two Council members, and two residents of the City gathered in private to discuss the Oxford House, which is a property located in the City. On March 18, 2024, this office forwarded a copy of the Request for Review to the Council and asked it to provide a written response to the allegation that it violated OMA by holding a private meeting to discuss public business on February 8, 2024. Specifically, this office asked the Council to confirm the City's form of government and explain whether a majority of a quorum of the members of the Council gathered to discuss public business on February 8, 2024. This office also asked the Council to provide copies of any notes, minutes, or recordings of that gathering for this office's confidential review. On March 29, 2024, the

500 South 2nd Street
Springfield, Illinois 62701
(217) 782-1090 • Fax: (217) 782-7046

115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-3000 • Fax: (312) 814-3806

1745 Innovation Drive, Suite C
Carbondale, Illinois 62903
(618) 529-6400 • Fax: (618) 529-6416

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Council provided an answer with exhibits. On the same date, this office forwarded a copy of the Council's response to ██████████. On April 9, 2024, ██████████ submitted a written 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 (1989).

Section 2(a) of OMA (5 ILCS 120/2(a) (West 2022), as amended by Public Act 103-311, effective July 28, 2023) 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 "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.)

The Council consists of six members and the mayor. A quorum of both a six-member and seven-member public body is four, and a majority of a quorum is three. Therefore, if the mayor does not count toward a quorum, a gathering of two trustees and the mayor does not consist of a majority of a quorum and thus is not subject to OMA. If the mayor does count towards a quorum, a gathering in which two trustees and the mayor discuss public business is a meeting subject to all of the requirements of OMA because it involves a majority of a quorum of the Council.

It is undisputed that the Council did not follow the requirements of OMA in connection with the gathering that occurred on February 8, 2024. It is also undisputed that the matter discussed on February 8, 2024, pertained to public business. However, the Council argues that a "meeting" did not occur because the mayor "traditionally" has not been considered part of a quorum and thus a majority of a quorum did not gather on February 8, 2024.¹ The Council relies upon an ordinance it passed in 1950 which stated that Robert's Rules of Order

¹Letter from Roland R. Cross, Brown Hay + Stephens, to Matt Goodman, Assistant Attorney General, Public Access Bureau (March 29, 2024), at 2.

(Robert's Rules) shall govern the deliberations of the Council.² The Council claimed that Robert's Rules provide that the mayor is not considered a "member" of the Council and thus should not be counted toward a quorum:

According to *Robert's Rules*, "[a] member of an assembly...is a person entitled to full participation in its proceedings.... [Robert's Rules], 11th ed, p.3. Thus, a "quorum refers to the number of *members* present...." *Id.* at 345. Therefore, because the Mayor is not "entitled to full participation in the proceedings" and has no right to vote except under limited circumstances, she cannot be deemed to be a "member" of the body and/or part of any quorum. (Emphasis in original.)^[3]

This argument overlooks that State law defines what constitutes a quorum for the City. As a non-home-rule unit of local government, the City "may exercise only those powers granted to it by law and the Illinois Constitution." *Quad Cities Open, Inc. v. City of Silvis*, 208 Ill. 2d 498, 505-06 (2004). For cities, "quorum" is established and defined under section 3.1-40-20 of the Illinois Municipal Code (Municipal Code) (65 ILCS 5/3.1-40-20 (West 2022)). That provision states:

A majority of the *corporate authorities* shall constitute a quorum to do business. A smaller number, however, may adjourn from time-to-time and may compel the attendance of absentees under penalties including a fine for failure to attend, prescribed by the Council by ordinance. (Emphasis added.)

The definition of "corporate authorities" is found in section 1-1-2(2) of the Municipal Code (65 ILCS 5/1-1-2(2) (West 2022)). Section 1-1-2(2) states: "'Corporate authorities' means (a) *the Mayor and Aldermen or similar body when the reference is to cities.*" (Emphasis added.) Plainly, neither section 3.1-40-20 nor section 1-1-2(2) of the Municipal Code empowers a non-home-rule unit to exclude its mayor from counting toward a quorum. Because the Council is typically composed of six alderpersons and the mayor,⁴ four constitutes a quorum and three constitutes a majority of quorum. Those three individuals may be composed of two alderpersons

²City of Leland Grove Ordinance No. 3 § 4 (approved June 30, 1950).

³Letter from Roland R. Cross, Brown Hay + Stephens, to Matt Goodman, Assistant Attorney General, Public Access Bureau (March 29, 2024), at 2.

⁴It appears that the City may have a vacant alderperson seat, but that does not alter the math that three constitutes a majority of a quorum of six.

and the mayor. To the extent the ordinance on which the Council relies purports to place the mayor outside of the quorum calculation, it is ineffectual on this issue.⁵

Although the Council cites *McLean v. East St. Louis*, 222 Ill. 510, 517 (1906) for its language that a mayor "cannot be counted as a member to make a quorum[,]" *McLean* predates the passage of the Municipal Code, and the relevant statutory language at the time was materially different in providing: "A majority of the *aldermen elect* shall constitute a quorum to do business, but a smaller number may adjourn from time to time, and may compel the attendance of absentees under such penalties as may be prescribed by ordinance." (Emphasis added.) Starr & Cur. Stat. chap. 24, par. 37. The statutory change from "[a] majority of the aldermen elect shall constitute a quorum to do business" to "[a] majority of the corporate authorities shall constitute a quorum to do business[,]" coupled with the definition of "corporate authorities" as including "the Mayor and Aldermen," evinces clear legislative intent to change the law as it existed at the time of *McLean* to include a city's mayor within a quorum.

The Council also asserts that the mayor "traditionally" has not been considered part of a quorum when conducting business. In support of its assertion, the Council attached the affidavits of Saul Morse, prior General Counsel for the City, and Diana Hetherington, prior City Clerk. Both affidavits represented that the mayor has never been considered when determining whether a quorum exists for a meeting of the City Council or otherwise. Although this may have been the practice of the Council, it is irrelevant to whether gatherings of its members constitute meetings subject to OMA. As explained above, the Municipal Code instead governs this matter.

Because a majority of a quorum of the members of the Council discussed public business during the February 8, 2024, gathering without providing advance notice and without following the other requirements of OMA, this office concludes that the Council violated OMA on that date. To remedy this violation, this office requests that the Council compile and make publicly available minutes of the February 8, 2024, meeting, as the City's attorney agreed to do in the event this office determined that the Council violated OMA. This office also cautions the Council to consider in advance whether any gatherings could involve the mayor and two or more alderpersons engaging in deliberative discussions of public business, which would be "meetings" requiring advance notice and adherence to the other requirements of OMA.

⁵Robert's Rules of Order authorize the chair to vote when their vote is needed to break a tie. This office makes no determination as to whether the chair's ability to cast decisive votes, but not votes in certain other circumstances, renders the chair a non-member for quorum purposes under Robert's Rules of Order.

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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 matthew.goodman@ilag.gov.

Very truly yours,

[REDACTED]

MATT GOODMAN
Assistant Attorney General
Public Access Bureau

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