

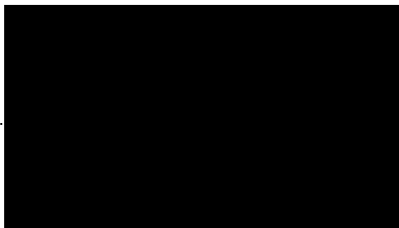


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 9, 2018

Via electronic mail



Via electronic mail
Ms. Terry L. Hodges
Hodges, Loizzi, Eisenhammer,
Rodick & Kohn LLP
3030 Salt Creek Lane
Suite 202
Arlington Heights, Illinois 60005
thodges@hlerk.com

RE: OMA Request for Review – 2012 PAC 21622

Dear [REDACTED] and Ms. Hodges:

This determination letter 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 Westmont Community Unit School District No. 201 (District) Board of Education (Board) held an improper closed session discussion during its August 21, 2012, meeting.

On September 27, 2012, this office received [REDACTED] Request for Review alleging that the Board improperly discussed matters concerning a retiree and strategy related to staffing a position. On October 10, 2012, this office sent the Board a copy of [REDACTED] Request for Review and asked it to respond to the allegations that the Board violated OMA. On October 24, 2012, counsel for the Board provided this office with a written answer and copies of the open and closed session minutes of the August 21, 2012, meeting. On October 26, 2012, this office sent [REDACTED] a copy of the Board's answer; he did not reply.

OMA is intended "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2010). Section 2(a) of OMA (5 ILCS 120/2(a) (West 2010)) provides that all meetings of a public body shall be open to the public unless the subject of the discussion falls within one of the exceptions set out in section 2(c) of OMA (5 ILCS 120/2(c) (West 2010)). The section 2(c)(1) exception permits a public body to discuss in closed session "[t]he appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee of the public body or against legal counsel for the public body to determine its validity." Section 2(b) of OMA (5 ILCS 120/2(b) (West 2010)) states that "[t]he exceptions contained in subsection (c) are in derogation of the requirement that public bodies meet in the open, and therefore, the exceptions are to be strictly construed, extending only to subjects clearly within their scope."

In construing section 2(c)(1) of OMA, the Attorney General has concluded that "the General Assembly did not intend to permit public bodies to hold general discussions concerning categories of employees in closed session pursuant to section 2(c)(1)." Ill. Att'y Gen. Pub. Acc. Op. No. 16-013, issued December 23, 2016, at 4; *see also* Ill. Att'y Gen. PAC Req. Rev. Ltr. 43077, issued November 3, 2016 (section 2(c)(1) does not authorize general discussions of employment positions). Rather, "section 2(c)(1) of OMA 'is intended to permit public bodies to candidly discuss the relative merits of individual employees, or the conduct of individual employees.'" Ill. Att'y Gen. Pub. Acc. Op. No. 16-013, at 5 (quoting Ill. Att'y Gen. Pub. Acc. Op. No. 12-011, issued July 11, 2012, at 3).

In its response to this office, the Board stated that it went into closed session under section 2(c)(1) of OMA to discuss health insurance benefits for a retiree, the retirement of a particular employee in the business office, and the resulting vacancy. The Board asserted that the discussion of the retiree was permitted because the definition of "employee" in section 2(d) of OMA (5 ILCS 120/2(d) (West 2010)) is not limited to current employees. The Board's response to this office explained that the closed session discussion "concerned a dispute with a former employee over health insurance benefits to be paid under an employment agreement."¹ Because the Board's discussion of the former employee concerned the compensation of the employee pursuant to an employment agreement that originated in an employer-employee relationship, this office concludes that the Board's discussion on that topic was within the scope of the section 2(c)(1) exception cited by the Board.

¹Letter from Terry L. Hodges, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Matthew Sebek, Assistant Attorney General, Public Access Bureau (October 24, 2012), at 1.

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With respect to the discussion of matters concerning the employee in the business office, the Board asserted its discussion was proper under section 2(c)(1) of OMA because it concerned the retiring employee's performance and "the appointment and compensation of the employee's replacement."² Based on this office's review of the Board's answer, the closed session minutes, and the affidavit of the District's business manager, it appears that the Board deviated in its discussions of the particular retiring employee to the position in general and the compensation for the position. Although discussions concerning the specific retiring employee were authorized by section 2(c)(1), discussion of related budgetary matters and staffing of the employment position in general, as opposed to an individual candidate for the position, are not within the scope of the exception. Accordingly, this office concludes that the Board violated section 2(a) of OMA. Because counsel for the Board stated that she had discussed the narrow scope of the section 2(c)(1) exception with the Board at its September 11, 2012, training, no further remedial action is needed. This office reminds the Board to confine its closed session discussions to topics authorized by the exceptions pursuant to which it enters closed session, and to construe those exceptions narrowly.

The Public Access Counselor has determined that the resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, you may contact me at (217) 782-9054, mhartman@atg.state.il.us, or at the Springfield address on the bottom of the first page of this letter.

Very truly yours,

[REDACTED]
MATT HARTMAN
Assistant Attorney General
Public Access Bureau

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²Letter from Terry L. Hodges, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Matthew Sebek, Assistant Attorney General, Public Access Bureau (October 24, 2012), at 1.