



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

July 16, 2024

*Via electronic mail*



*Via electronic mail*

The Honorable James Budzinski  
Chairman, Board of Trustees  
Joliet Junior College  
1215 Houbolt Road  
Joliet, Illinois 60431  
c/o Karyn.Reczek@jjc.edu

RE: OMA Request for Review – 2024 PAC 81010

Dear [REDACTED] and Mr. Budzinski:

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

**BACKGROUND**

On April 12, 2024, [REDACTED] submitted a Request for Review to the Public Access Bureau alleging that the Board of Trustees (Board) of Joliet Junior College (College) violated OMA at its February 14, 2024, meeting by discussing a matter in closed session that did not fall within the scope of section 2(c)(1) of OMA,<sup>1</sup> one of the exceptions cited as the basis for the closed session. Specifically, she contended that the Board discussed issues related to her conduct in her capacity as an elected trustee. [REDACTED] also asserted that

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<sup>1</sup>5 ILCS 120/2(c)(1) (West 2022), as amended by Public Act 103-311, effective July 28, 2023.

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trustees improperly took notes in closed session, which were then "used to draft motions of 13 censures voted on by the Board following. In addition, the President of JJC brought the discussed items out of the closed session on his laptop and the Board illegally voted on them."<sup>2</sup>

On April 19, 2024, this office forwarded a copy of the Request for Review to the Board and asked it to provide this office with copies of its February 14, 2024, meeting agenda, open and closed session minutes, and closed session verbatim recording for this office's confidential review, together with a written response to the allegation that the Board improperly discussed issues related to [REDACTED] in closed session. On April 30, 2024, this office received the requested materials, including a complete response for this office's confidential review and a redacted version for this office to forward to [REDACTED]<sup>3</sup> On May 1, 2024, this office forwarded a copy of the Board's response to [REDACTED]; she replied on May 20, 2024.

As an initial matter, the Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2022)). *See* 15 ILCS 205/7(c)(3) (West 2022). OMA concerns the transparency with which public bodies meet and conduct business. It does not address whether members of a public body may take notes in closed session or whether those notes may be disseminated or used outside of the closed session. Accordingly, this office took no further action on the allegation that Board members improperly prepared and disseminated notes outside of a closed session.

However, based on this office's review of the meeting minutes, this office requested a supplemental response from the Board on June 25, 2024, addressing whether it complied with the agenda requirements in section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2022)) related to its votes in open session on the censures. On July 12, 2024, the Board responded.

### **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).

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<sup>2</sup>E-mail from [REDACTED] JJC Trustee, to Public Access (April 12, 2024).

<sup>3</sup>*See* 5 ILCS 120/3.5(c) (West 2022) ("The Public Access Counselor shall forward a copy of the answer or redacted answer, if furnished, to the person submitting the request for review.").

### **Closed Session Discussion**

Section 2(a) of OMA<sup>4</sup> provides that all meetings of a public body must be open to the public unless the discussion falls within the scope of one of the exceptions set out in section 2(c) of OMA.<sup>5</sup> Section 2(c)(1) of OMA permits a public body to hold closed session to discuss, in pertinent part:

The appointment, employment, compensation, discipline, performance, or dismissal of specific employees, specific individuals who serve as independent contractors in a park, recreational, or educational setting, or specific volunteers of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee, a specific individual who serves as an independent contractor in a park, recreational, or educational setting, or a volunteer of the public body or against legal counsel for the public body to determine its validity.

The "purpose of the [2(c)(1)] exception is to protect the identity and reputation of a person[.]" 1974 Ill. Att'y Gen. Op. No. S-726, issued March 22, 1974, at 128. In construing this exception, 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. 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). The Public Access Bureau has previously determined that "[t]he use of the term 'specific employees' in section 2(c)(1) significantly limits the scope of the exception" to "the hiring merits, performance, conduct or terms of employment of individual employees." Ill. Att'y Gen. PAC Req. Rev. Ltr. 12658, issued July 7, 2011, at 4.

In its response to this office, the Board asserted it properly entered closed session to discuss an employee matter pursuant to section 2(c)(1). Specifically, the Board stated it entered closed session to discuss the employment contract of College President Clyne Namuo. The Board asserted that during the closed session, President Namuo presented "his concerns and

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<sup>4</sup>5 ILCS 120/2(a) (West 2022), as amended by Public Act 103-311, effective July 28, 2023.

<sup>5</sup>5 ILCS 120/2(c) (West 2022), as amended by Public Act 103-311, effective July 28, 2023.

issues" related to his employment, and the Board then discussed those matters.<sup>6</sup> The Board stated that the trustees "offered their views on the situation and their concerns" about the matters raised by President Namuo.<sup>7</sup> In the confidential portions of its response, the Board addressed its claim that the discussion related to President Namuo's employment contract and described in further detail its discussion. Additionally, the Board argued that its trustees are "volunteers" because they are not compensated for their service and thus that any closed session discussions concerning particular trustees still fell within the scope of section 2(c)(1). In reply to that answer, [REDACTED] disputed the Board's claim that she was a volunteer, reiterating that she is an elected official rather than a volunteer of the board.

Having reviewed the verbatim recording of the disputed closed session discussion, it is apparent that the discussion focused on the employment of a specific employee, President Namuo. Because the Board addressed its arguments concerning the 2(c)(1) exception in the confidential portions of its response, this office cannot address them other than to confirm that the Board discussed certain issues raised by President Namuo. These issues directly pertained to the working conditions surrounding his employment and reputation as president of the College. Although the issues also related to [REDACTED], the discussion of her conduct was intertwined with and directly relevant to the Board's consideration of ways to address President Namuo's employment. Because the discussion of [REDACTED] conduct provided context that was needed to fully consider the terms of Dr. Namuo's employment and how to resolve his concerns regarding his continued employment at the College, they did not exceed the scope of section 2(c)(1). *See Gosnell v. Hogan*, 179 Ill. App. 3d 161, 175-76 (1989) (school board did not improperly discuss employee's goals in closed session under exception for discussions of employee's performance because goals and performance are inextricably intertwined); *Galena Gazette Publications, Inc. v. County of Jo Daviess*, 375 Ill. App. 3d 338, 344 (2007) (discussion of the racking of promotional brochures at property that was the subject of a proposed subleasing agreement was permissible under the exception that permits public bodies to discuss "[t]he purchase or lease of real property for the use of the public body[ ]"<sup>8</sup> in closed session "because it was pertinent to the terms, effects, or desirability of the proposed subleasing arrangement. The participants did not discuss the racking of promotional literature separately from their consideration of the proposed subleasing \* \* \*. To abstract any such discussions from the larger context would ignore the participants' purposes in raising the issue[.]"). Accordingly, this office concludes that the Board's closed session discussion did not violate OMA.

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<sup>6</sup>Letter from Bryan W. Kopman, KGG, LLC, to Teresa Lim, Supervising Attorney, Public Access Bureau, Office of the Attorney General, State of Illinois (April 30, 2024), at 2.

<sup>7</sup>Letter from Bryan W. Kopman, KGG, LLC, to Teresa Lim, Supervising Attorney, Public Access Bureau, Office of the Attorney General, State of Illinois (April 30, 2024), at 2.

<sup>8</sup>5 ILCS 120/2(c-5) (West 2004).

Despite that finding, this office would be remiss if it did not also conclude, for future reference, that Board members plainly are not "specific volunteers of the public body" whose "appointment, employment, compensation, discipline, performance, or dismissal" may be discussed in closed session pursuant to section 2(c)(1) of OMA. A "volunteer" is defined as "[a] voluntary actor or agent in a transaction; esp; a person who, without an employer's assent and without any justification from legitimate personal interest, helps \* \* \* in the performance of the employer's business." Black's Law Dictionary 1887 (11th ed. 2019). The Board's response to this office emphasized that Board members are not paid for their services and noted that a "volunteer" is also defined as "[a] person who gives his services without any express or implied promise of remuneration." Black's Law Dictionary 1413 (5th ed. 1979). OMA, however, expressly identifies members of public bodies as "public officials[.]" See 5 ILCS 120/2.06(g) (West 2022) ("Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body.") A "public official" is "[s]omeone who holds or is invested with a public office; a person elected or appointed to carry out some portion of a government's sovereign powers." Black's Law Dictionary 1309 (11th ed. 2019). In Ill. Att'y Gen. Pub. Acc. Op. No. 17-013, issued November 21, 2017, at 4, the Attorney General concluded that "elected members of a Village Board are occupants of a public office, not 'employees' of public bodies that may be discussed in closed session under section 2(c)(1)." Likewise, elected officials are not "volunteers" for purposes of section 2(c)(1). The exception that permits closed session discussions of members of public bodies is found in section 2(c)(3) of OMA,<sup>9</sup> but it is applicable only to particular topics and public bodies with certain powers. Specifically, section 2(c)(3) of OMA applies to:

The selection of a person to fill a public office, as defined in this Act, including a vacancy in a public office, when the public body is given power to appoint under law or ordinance, or the discipline, performance or removal of the occupant of a public office, when the public body is given power to remove the occupant under law or ordinance.

The Board should be mindful of the limited scope of sections 2(c)(1) and 2(c)(3) before determining whether to hold any future closed session discussions that pertain to the conduct of its members.

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<sup>9</sup>5 ILCS 120/2(c)(3) (West 2022), as amended by Public Act 103-311, effective July 28, 2023.

### Sufficiency of Meeting Agenda

Section 1 of OMA (5 ILCS 120/1 (West 2022)) "declares it to be the public policy of this State that its citizens shall be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." To that end, section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2022)) provides that "[a]ny agenda required under this Section shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting."

In its supplemental response to this office, the Board did not deny that it voted on certain motions to censure [REDACTED] in her role as a trustee. The Board explained that "[t]he purpose of the censures was to allow the Board of Trustees to govern itself and its members in the conduct of its business."<sup>10</sup> The Board argued, however, that those censure motions were not required to be included in the agenda:

A reprimand is neither an ordinance nor a resolution that binds the public body to some future conduct or policy. It does not require any action to be taken on behalf of the public body, such as enforcement of a regulation, execution of an agreement, performance of an action pursuant to a contract or other obligation, etc. Nor is the reprimand a public statement of a policy or proclamation of the College. Each censure was simply a reprimand (and, in this case, each was not a written reprimand, merely an oral reprimand) by the Board – not the College – of one of its members.<sup>[11]</sup>

In support of its contention that the censure motions were not binding or substantive actions, the Board highlighted that under Robert's Rules of Order, a public body may adopt a motion of censure without requiring any formal disciplinary proceeding. The Board also contended that "the censure motions, which were simply oral reprimands, do not rise to the same level of involvement and obligation of the public body or its resources"<sup>12</sup> as the actions that this office

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<sup>10</sup>Letter from Bryan W. Kopman, KGG, LLC, to Teresa Lim, Supervising Attorney, Public Access Bureau, Office of the Attorney General, State of Illinois (July 12, 2024), at 4.

<sup>11</sup>Letter from Bryan W. Kopman, KGG, LLC, to Teresa Lim, Supervising Attorney, Public Access Bureau, Office of the Attorney General, State of Illinois (July 12, 2024), at 2.

<sup>12</sup>Letter from Bryan W. Kopman, KGG, LLC, to Teresa Lim, Supervising Attorney, Public Access Bureau, Office of the Attorney General, State of Illinois (July 12, 2024), at 3.

has found in binding opinions<sup>13</sup> to violate the agenda requirements of section 2.02(c). Additionally, the Board argued that "requir[ing] the Board of Trustees to put on the agenda items that require immediate response in order to effectively provide for the administration of its business on behalf of the College would be overly restrictive."<sup>14</sup>

The primary objective when construing the meaning of a statute is to ascertain and give effect to the intent of the General Assembly. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). The most reliable indicator of legislative intent is the statutory language, given its plain and ordinary meaning." *Gaffney v. Board of Trustees of Orland Fire Protection District*, 2012 IL 110012, ¶ 56. Black's Law Dictionary defines "resolution," in relevant part, as: "**Formal action** by a corporate board of directors or other corporate body **authorizing a particular act**, transaction, or appointment." (Emphasis added.) Black's Law Dictionary 1568 (11th ed. 2019).

The Board's February 14, 2024, meeting minutes<sup>15</sup> reflect that during the "New Business" portion of the meeting, the Board discussed and voted on thirteen motions to censure [REDACTED] in her capacity as a trustee for violations of the Board's Code of Conduct. The agenda provides no mention of or reference to a possible censure of a trustee under "New Business" or any other section of the agenda.

Having reviewed the meeting materials and Board's supplemental response, the Board took final action by voting on motions to censure a trustee without providing advance notice of the general subject matter of that action in the meeting agenda. As the Board noted, a "reprimand" is defined as "[a] public and formal censure or severe reproof, administered to a person in fault by his superior officer or by a body to which he belongs."<sup>16</sup> Although the Board did not label the censures as a "resolution," it is clear that the Board went beyond merely discussing issues concerning [REDACTED] and expressing opinions about her conduct. The Board took the matter a step further by voting to authorize thirteen formal censures or

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<sup>13</sup>Ill. Att'y Gen. Pub. Acc. Op. No. 15-005, issued August 4, 2015 (agenda did not provide advance notice to public that board might take final action to approve a contract for police services); Ill. Att'y Gen. Pub. Acc. Op. No. 16-015, issued December 30, 2016 (agenda did not provide general subject matter of vote to amend and approve a settlement agreement); Ill. Att'y Gen. Pub. Acc. Op. No. 22-006, issued May 6, 2022 (board improperly took final action when it made a decision to amend school district's masking guidelines without providing advance notice of that possible action in the agenda).

<sup>14</sup>Letter from Bryan W. Kopman, KGG, LLC, to Teresa Lim, Supervising Attorney, Public Access Bureau, Office of the Attorney General, State of Illinois (July 12, 2024), at 4.

<sup>15</sup>Illinois Community College District 525, Joliet Junior College Board of Trustees, Meeting, February 14, 2024, Minutes 4-8.

<sup>16</sup>Letter from Bryan W. Kopman, KGG, LLC, to Teresa Lim, Supervising Attorney, Public Access Bureau, Office of the Attorney General, State of Illinois (July 12, 2024), at 2 (citing Black's Law Dictionary, 2nd Edition).

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reprimands of [REDACTED] and therefore took final action on a "resolution" under the plain meaning of that word. This type of substantive action is distinguishable from procedural matters, such as motions to adjourn and motions to enter closed session, that do not constitute final action and therefore are not required to appear on meeting agendas.

The Board downplays its reprimands by asserting that the reprimands did not involve any formal disciplinary proceeding and were not a public statement of policy or proclamation of the College. As the College's governing body, the Board of Trustees represents the interests of the College and, therefore, any public statements from the Board reflect on the College. Even if the censures were not binding on any future policy, the censures were an official action by the Board aimed at changing or improving the conduct of a trustee. Board members may have believed the underlying situation was a pressing matter that required a timely response, but OMA did not authorize the Board to act without providing advance notice to the public. Accordingly, this office concludes that the Board violated section 2.02(c) of OMA by voting on thirteen censure motions without providing the general subject matter of those censures in the February 14, 2024, meeting agenda.

This office cautions the Board to ensure that its future agendas provide sufficient advance notice of final actions in accordance with section 2.02(c) of OMA.

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 the Chicago address listed on the first page of this letter.

Very truly yours,

[REDACTED]

TERESA LIM  
Supervising Attorney  
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cc: *Via electronic mail*  
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