

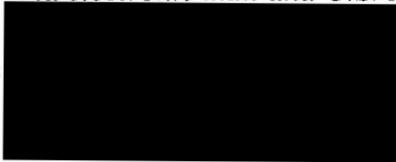


OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Kwame Raoul  
ATTORNEY GENERAL

May 6, 2019

*Via electronic mail and U.S. Mail*



*Via electronic mail*

Ms. Katy Pope  
Clerk  
Village of Lisbon  
104 North Canal Street  
Newark, Illinois 60541  
v-lisbon@att.net

RE: OMA Request for Review – 2018 PAC 56288

Dear [REDACTED] and Ms. Pope:

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, during its November 19, 2018 meeting, the Board of Trustees (Board) of the Village of Lisbon did not follow proper procedure for entering closed session and improperly discussed one matter that was outside the scope of the exceptions to the general requirement that public bodies conduct business openly. However, the Public Access Bureau also concludes that the other discussion held during closed session was authorized by a closed session exception, and that the Board did not take final action in closed session.

**BACKGROUND**

On December 31, 2018, this office received a Request for Review from [REDACTED] [REDACTED] alleging that he "did not believe the rules pertaining to executive session [were] met" with respect to the Board's November 19, 2018, closed session. "From agenda to going into

[REDACTED]  
Ms. Katy Pope  
May 6, 2019  
Page 2

executive session. I do not believe the reason for executive session is valid."<sup>1</sup> In a telephone conversation with an Assistant Attorney General in the Public Access Bureau on January 10, 2019, [REDACTED] further explained that he received information indicating that the Board had held a closed session discussion concerning whether to install a sign honoring the athletic achievement of a local student athlete, and clarified that he did not believe the Board was allowed to discuss that matter in closed session. [REDACTED] also alleged that the Board decided during that closed session not to install the sign but never took a vote in open session on the matter.

On January 10, 2019, this office forwarded a copy of the Request for Review to the Board and asked it to provide this office with copies of the closed session minutes and closed session verbatim recording of the November 19, 2018, meeting for this office's review, together with a written response to [REDACTED] allegations that the Board held an unauthorized closed session discussion and took final action during that closed session. The Board furnished the requested information and its written response on January 31, 2019. [REDACTED] replied on February 12, 2019.

### DETERMINATION

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 2016).

#### Closed Session Procedure

Section 2(a) of OMA (5 ILCS 120/2(a) (West 2017 Supp.), as amended by Public Act 100-646, effective July 27, 2018) 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 2a of OMA (5 ILCS 120/2a (West 2016)) provides, in pertinent part:

A public body may hold a meeting closed to the public, or close a portion of a meeting to the public, upon a majority vote of a quorum present, taken at a meeting open to the public for which notice has been given as required by this Act. \* \* \* The vote of each member on the question of holding a meeting closed to the public and a citation to the specific exception contained in Section 2 of this Act which authorizes the closing of the meeting to the public shall be publicly disclosed at the time of the vote and

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<sup>1</sup>OMA – Request for Review by Public Access Counselor (PAC) from [REDACTED] (December 22, 2018).

**shall be recorded and entered into the minutes of the meeting.**  
(Emphasis added.)

The open session minutes from the November 19, 2018, meeting indicate that the Board voted to close the meeting, but do not identify the specific exceptions contained in section 2 of OMA (5 ILCS 120/2 (West 2017 Supp.), as amended by Public Act 100-646, effective July 27, 2018) that the Board publicly recited when taking that vote. Instead, the minutes record the vote of the members on the motion to go into executive session, and state: "The executive session covered a few Personnel topics."<sup>2</sup>

In its response to this office, the Board acknowledged that it discussed a request for a sign honoring a local student, and asserted that section 2(c)(10) of OMA (5 ILCS 120/2(c)(10) (West 2017 Supp.), as amended by Public Act 100-646, effective July 27, 2018) permitted the Board to discuss that matter in a closed meeting. The Board further asserted that the section 2(c)(1) exception (5 ILCS 120/2(c)(1) (West 2017 Supp.), as amended by Public Act 100-646, effective July 27, 2018) authorized the remainder of its closed session discussion.

Before reaching the question of whether either of the section 2(c) exceptions identified by the Board in its response to the Request for Review authorized the discussions held in closed session, we must address the Board's failure to comply with the procedural requirements outlined in section 2a of OMA. The minutes from the open session do not include a reference to section 2(c)(10) of OMA—either by reference to the statutory section number or the language of the exception—as a basis for closing a portion of its meeting to the public. Furthermore, the statement in the minutes that the Board discussed "a few Personnel topics," does not adequately identify any exception that authorizes a public body to enter closed session. Ill. Att'y Gen. Pub. Acc. Op. No. 15-005, issued August 5, 2015, at 5; Ill. Att'y Gen. Pub. Acc. Op. No. 15-007, issued September 16, 2015, at 4-5. Section 2(c)(1), which the Board identified in its response to the Request for Review, does not contain the word "personnel," although that word is used in two other closed session exceptions that the Board did not cite in its response to this office.

Accordingly, the minutes from the November 19, 2018, do not comply with section 2a of OMA as they contain no reference to either section 2(c)(1) or 2(c)(10) as a basis for closing a portion of the meeting. This office cautions the Board to fully adhere to the procedures set forth in section 2a for entering closed session and to document the relevant exception(s) in its meeting minutes. More specifically, if the Board wishes to close a portion of a meeting to discuss specific employees in the future, it must in open session either announce that it intends to

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<sup>2</sup>Village of Lisbon Board of Trustees, Meeting, November 19, 2018, Minutes 4.

Ms. Katy Pope  
May 6, 2019  
Page 4

close the meeting pursuant to "section 2(c)(1)" or recite language from section 2(c)(1) instead of the word "personnel" in order to sufficiently identify that exception.

### Section 2(c)(10) of OMA

Section 2(c)(10) of OMA permits a public body to hold closed session discussions concerning the "placement of individual students in special education programs and **other matters related to individual students.**" (Emphasis added.) The Board argues that it believed its discussion about the request for a sign recognizing a student from a local school fell under section 2(c)(10) because "a discussion regarding one specific student's achievements were being recognized."<sup>3</sup> Based on our review of the minutes and verbatim recording of the November 19, 2018, closed session meeting, the Board's response accurately describes a portion of the closed discussion that directly concerned an individual student. [REDACTED] reply argues that this discussion is not "executive session material" but does not explain why a discussion concerning the Board's potential recognition of a specific student's achievements is not a matter "related to individual students."

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, 969 N.E.2d 359, 372 (2012). Where the language of a statute is clear and unambiguous, a reviewing body "may not depart from the plain language by reading into the statute exceptions, limitations, or conditions that the legislature did not express." *Hayashi v. Illinois Department of Financial and Professional Regulation*, 2014 IL 116023, ¶16, 25 N.E.3d 570, 576 (2013).

The plain language of section 2(c)(10) permits public bodies to hold closed session discussions that relate to individual students, such as whether to recognize a particular student's achievements. Although this exception is likely to be most applicable to closed session discussions by school boards and other public bodies that govern educational institutions, the plain language of section 2(c)(10) does not exclude from its scope closed session discussions by municipal public bodies. Accordingly, the Public Access Bureau determines that section 2(c)(10) of OMA authorized the Board's closed session discussion of a request for a sign recognizing an individual student.

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<sup>3</sup>Letter from Katy Pope, Clerk, Village of Lisbon, to Leah Bartelt, [Assistant Attorney General, Public Access Bureau] (undated).

### Section 2(c)(1) of OMA

The Board explained that its other closed session topic concerned the nomination of a member of the Board for an award, and argued that this discussion was authorized by section 2(c)(1) of OMA. That 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." The section 2(c) exceptions "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." 5 ILCS 120/2(b) (West 2017 Supp.), as amended by Public Act 100-646, effective July 27, 2018). The "use of the term 'specific employees' in section 2(c)(1) significantly limits the scope of the exception. That exception allows public bodies to discuss in closed session 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.

Our review of the closed session minutes and verbatim recording indicate that the Board's response to this office accurately describes the closed session discussion held from minute 17:24 through minute 20:35 as involving the nomination of a trustee for an award. That discussion exceeds the scope of section 2(c)(1). The Attorney General has issued a binding opinion concluding that elected officials are not considered employees for the purposes of the section 2(c)(1) exception. Ill. Att'y Gen. Pub. Acc. Op. No. 13-017, issued November 21, 2017, at 4 ("Because elected members of a Village Board are occupants of a public office, not 'employees' of public bodies, section 2(c)(1) would not have provided a basis for the Board to close a meeting to discuss the conduct of a Board member."). Accordingly, the Board violated section 2(a) of OMA by discussing in closed session the nomination of a member of the Board for an award.

To remedy this violation, this office asks that the Board vote to release to [REDACTED] and make publicly available the above-referenced portions of the closed session verbatim recording of its November 19, 2018, meeting. The remaining portions of the recording that discuss the individual student may remain confidential.

### Final Action During Closed Session

Section 2(e) of OMA (5 ILCS 120/2(e) (West 2017 Supp.), as amended by Public Act 100-646, effective July 27, 2018) provides, in pertinent part, that "[n]o **final action** may be taken at a closed meeting." (Emphasis added.) While a public body may take a preliminary vote in a closed session, a public body must take all final actions in an open meeting. *Board of*

[REDACTED]  
Ms. Katy Pope  
May 6, 2019  
Page 6

*Education of Springfield School District No. 186 v. Attorney General of Illinois*, 2017 IL 120343, ¶¶ 73-74, 77 N.E.3d 625, 637 (2017). "Under the plain language of section 2(e) of the Open Meetings Act, the public vote is not merely a ratification of a final action taken earlier in a closed session; it is the final action. Without the public vote, no final action has occurred." *School District No. 186*, 2017 IL 120343, ¶74, 77 N.E.3d at 637.


In its response to the Request for Review, the Board asserts that it did not take final action on the request for the sign for the student during its November closed meeting, and in fact, held additional discussions concerning that issue during the open session portion of its December 17, 2018, and January 21, 2019, meetings. In support of its assertion, the Board provided a copy of the approved minutes from its December 17, 2018, meeting, and a section of its draft minutes from its January 21, 2019. In reply, [REDACTED] notes that the issue about the sign was not listed on the agendas for the November, December, or January meetings.

Our review of the closed session recording from the November meeting indicates that the Board discussed the sign issue but did not take final action on the matter at that meeting. The minutes from the December meeting document an open session discussion, under the topic of "Community Comments," on this issue, and indicate that the Board decided to draft a letter to the family that made the request for the sign denying the request, and present that letter for the Board's consideration at the January meeting. The draft minutes from the January meeting document that the Board voted in open session on the request for a sign for the student.

Even assuming the Board reached a consensus on the sign issue during its November 19, 2018, closed session, the minutes from later meetings indicate that the Board voted against the sign during a meeting held on January 21, 2019.<sup>4</sup> Because final action occurred in open session on January 21, 2019, this office concludes that the Board did not violate section 2(e) of OMA by taking final action in closed session during its November 19, 2018, meeting.


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<sup>4</sup>The allegation in [REDACTED] reply that the Board failed to list its intended vote on the sign question on the agenda for its January 21, 2019, meeting is outside the scope of this Request for Review.

  
Ms. Katy Pope  
May 6, 2019  
Page 7

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. Please contact me at (312) 814-6437 or the Chicago address listed on the first page of this letter if you have questions. This correspondence serves to close this matter.

Very truly yours;

  
LEAH BARTELT  
Assistant Attorney General  
Public Access Bureau

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