



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

July 20, 2023

Via electronic mail



Via electronic mail

Mr. Brian P. Crowley
Franczek P.C.
300 South Wacker Drive, Suite 3400
Chicago, Illinois 60606
bpc@franczek.com

RE: OMA Request for Review – 2023 PAC 76232

Dear [REDACTED] and Mr. Crowley:

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 discussed below, this office concludes that the Board of Education (School Board) of Township High School District 211 (District 211) did not violate OMA at its April 13, 2023, meeting when it discussed in closed session a property tax appeal pending with the Cook County Board of Review (Board of Review).

BACKGROUND

On April 13, 2023, [REDACTED] a member of the School Board, submitted a Request for Review to the Public Access Bureau alleging that the School Board violated OMA during its April 13, 2023, meeting by improperly discussing in closed session a property tax appeal pending with the Board of Review. [REDACTED] stated the School Board discussed that appeal under the exception in section 2(c)(11) of OMA (5 ILCS 120/2(c)(11) (West 2022)) that permits public bodies to enter closed session to discuss "[l]itigation, when an action against, affecting or on behalf of the particular public body has been filed and is pending before a court or administrative tribunal, or when the public body finds that

████████████████████
Mr. Brian P. Crowley

July 20, 2023

Page 2

an action is probable or imminent, in which case the basis for the finding shall be recorded and entered into the minutes of the closed meeting." He asked this office to review (1) whether the Board of Review is an administrative tribunal; (2) whether the discussion was appropriate when District 211 is not the particular body whose action is pending with the Board of Review; and (3) whether the Board was permitted to enter closed session in the absence of probable or imminent litigation.

On May 11, 2023, the Public Access Bureau forwarded a copy of the Request for Review to Ms. Anna Klimkowicz, as President of the School Board. The Public Access Bureau also sent President Klimkowicz a letter asking the School Board to provide a written response to the allegations in ██████████ Request for Review, along with copies of the agenda, open and closed session minutes, and a verbatim recording of the closed session portion of the School Board's April 13, 2023, meeting, for this office's confidential review. On May 26, 2023, counsel for the School Board provided the Public Access Bureau with the requested agenda and minutes and a written response to the Request for Review; he subsequently provided the verbatim recording of the closed session. On June 7, 2023, the Public Access Bureau forwarded the School Board's written response to ██████████. On June 12, 2023, ██████████ submitted his reply. On June 15, 2023, the School Board provided the Public Access Bureau a supplement to its response, which this office forwarded to ██████████ on June 16, 2023.¹ He did not submit an additional reply.

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 2022). 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." Such 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 2022).

As discussed above, section 2(c)(11) of OMA permits a public body to enter into closed session to discuss: "Litigation, when an action against, **affecting** or on behalf of the particular public body has been filed and is **pending before a court or administrative tribunal**, or when the public body finds that an action is probable or imminent, in which case the basis for the finding shall be recorded and entered into the minutes of the closed meeting." (Emphasis added.)

¹Letter from Letter from Edie Steinberg, Senior Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to ██████████ (June 16, 2023).

Mr. Brian P. Crowley

July 20, 2023

Page 3

In its response to this office, the School Board provided the following background:

The property tax matter currently pending with the Board of Review involves a dispute between a taxpayer, Churchill Downs, Inc., through its subsidiary Arlington Park Racecourse, LLC ("CDI"), and three local school districts—District 211, Community Consolidated School District 15 ("CCSD 15"), and Township High School District 214 ("District 214") (together, the "Districts")—regarding the 2022 tax year assessment by the Cook County Assessor's Office of a 309-acre property located in Arlington Heights. This property ("Subject Property"), commonly known as the Arlington Park Racecourse, is located at 2200 W. Euclid Ave., Arlington Heights, and identified by Property Index Numbers ("PINs") 02-23-403-003, 02-24-303-007, 02-25-100-005, 02-25-202-008, and 02-26-201-010, which fall within the boundaries of all three Districts.

For the 2022 tax year, the Cook County Assessor's Office increased the assessment on the Subject Property from \$8,370,955 to \$49,250,001. This increase in assessed value corresponds to an increase in the market value of the property from \$33,483,820 in 2021 to \$197,000,004 in 2022. CDI notified the Districts through this law firm, Franczek P.C., that it would be taking advantage of the provisions in the Illinois Property Tax Code that allow a taxpayer who is dissatisfied with an assessment to appeal the Cook County Assessor's decision to the Board of Review. 35 ILCS 200/16-115. * * *

The assessment of the Subject Property for the 2022 tax year that is certified by the Board of Review will be used by the Cook County Clerk and Treasurer to calculate the tax rates of the Districts and the tax bills for the five PINs. The projected increase in CDI's property tax bill from just the three Districts resulting from the assessment increase by the Assessor's Office would be \$8.1 million. The distribution of the tax burden on the Districts' other taxpayers would be correspondingly reduced. Projected property tax refunds from the Districts in the event CDI successfully appealed its assessment to PTAB or Circuit Court

after payment of its taxes are \$208,000 for District 211, \$3 million for District 214, and \$4.7 million for CCSD 15.

On November 11, 2022, this law firm notified the three Districts of the taxpayer's intent to appeal the assessment to the Board of Review. Shortly thereafter, the three Districts agreed to move forward collectively as a unified group with a single strategy. The Districts agreed to equally divide the cost of an independent appraisal of the Subject Property, and on January 10, 2023, representatives from all three Districts toured the property with their appraiser.

By the March 9, 2023, deadline, both CDI and CCSD 15 filed complaints appealing the 2022 tax assessment. Board of Review complaints are filed based on PINs. A single complaint by CCSD 15 was filed because three of the PINs pertaining to the Districts' appeal are located in District 211; two of the PINs are located in District 214; and all five PINs are located in CCSD 15.
* * *

Rather than filing three distinct complaints to be consolidated under a single docket number, which would have caused unnecessary complication, a single complaint covering all the PINs was filed naming CCSD 15 for administrative convenience only. All three Districts, however, will experience the same results from the assessment appeal, regardless of the outcome. All three Districts' interests are aligned, and the Board of Review decision will affect each one. The complaint is currently pending before the Board of Review.

By the March 23, 2023, deadline, both CDI and the Districts filed evidence and legal briefs in support of their complaints. CDI submitted an appraisal by Urban Real Estate Research, Inc. concluding a market value for the Subject Property of \$37,230,000 as of January 1, 2022. * * * The Districts submitted an appraisal by MaRous & Company concluding a market value for the Subject Property of \$150 million as of January 1, 2022. A hearing at which the expert appraisal witnesses will be presented and the legal arguments addressed by counsel for

████████████████████
Mr. Brian P. Crowley

July 20, 2023

Page 5

CDI and the Districts is currently anticipated to take place during the first week of June 2023.

The three Districts agreed to equally divide the attorney's fees for the Board of Review appeal. All attorney-client communications regarding the Board of Review appeal are sent to all three Districts simultaneously. Franczek P.C., as the attorney for the Districts, sends a single email to all three Districts with legal advice; all telephone conferences between the Districts and their attorneys include representatives of all three Districts; and all three Districts receive the same information in all communications. The three Districts agreed that all three Districts must approve any settlement with the taxpayer, and that the Districts must unanimously approve any decision regarding legal strategy.^[2]

████████████████████'s reply to the School Board's response did not dispute these facts. However, he contended, for the first time, that the School Board executed an "agreement for intervention and attorney engagement" during the April 13, 2023, closed session. He also appears to assert that the attorney offered to represent the School Board in a closed session and proceeded to undertake representation without the School Board taking action on the representation in open session. Although those allegations are beyond the scope of what ██████████ ██████████ asked this office to review in his April 13, 2023, submission, there is no indication from the Public Access Bureau's review of the closed session recording and minutes that such an offer was made or that such an agreement was executed. As explained in the School Board's response to this office, the complaint by Community Consolidated School District 15 relating to the Arlington International Racecourse assessment matter in front of the Board of Review had already been filed, and evidence and legal briefs had been submitted to the Board of Review well before the School Board's April 13, 2023, meeting.³

²Letter from Brian P. Crowley, Franczek P.C., to Edie Steinberg, Senior Assistant Attorney General, Public Access Bureau, [Office of the Attorney General] (May 26, 2023), at 2-3.

³In addition, the School Board has informed this office that prior to the time of the April 13, 2023, meeting, District 211's Superintendent authorized the Franczek law firm to serve District 211's interests in the matter, through joint representation of District 211, District 214, and District 15, pursuant to District 211's board policy, which provides, in pertinent part, that "[a]n attorney(s) shall be selected annually by the Board of Education to serve as the legal advisor(s) to the Board of Education and the Superintendent. The attorney(s) shall perform only such services as requested by the Superintendent or designee, or the Board of Education, through the Board President or designee, and not at the bequest of any individual Board member." District 211 Board Policy, Section B: School Board Governance and Operations, Title: School District Legal Counsel (adopted July 18, 2002). E-mail from Brian P. Crowley to Edie Steinberg, [Senior Assistant Attorney General, Public Access Bureau, Office of the Attorney General] (July 11, 2023).

Mr. Brian P. Crowley

July 20, 2023

Page 6

Administrative Tribunal

First, in his Request for Review, ██████████ asked this office to review whether the Board of Review is an "administrative tribunal" for purposes of section 2(c)(11) of OMA. 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). OMA does not define "administrative tribunal." Accordingly, the term is defined in accordance with its ordinary and commonly understood meaning, and must be given its full meaning, not the narrowest meaning of which it is susceptible. *Lake County Board of Review v. Property Tax Appeal Board. of State of Ill.*, 119 Ill. 2d 419, 423, (1988).

Black's Law Dictionary defines an "administrative tribunal" as "[a] court-like decision-making authority that resolves disputes, * * *; an administrative agency exercising a quasi-judiciary function." Black's Law Dictionary, 1814 (11th ed. 2019). In turn Black's Law Dictionary defines "quasi-judicial" as "[o]f, relating to, or involving an executive or administrative official's adjudicative act. Quasi-judicial acts * * * are subject to review by courts." Black's Law Dictionary 1501 (11th ed. 2019). Similarly, section 2(d) of OMA (5 ILCS 120/2(d) (West 2022)) defines "Quasi-adjudicative body" as "an administrative body charged by law or ordinance with the responsibility to conduct hearings, receive evidence or testimony and make determinations based thereon." Taken together, it is clear that an administrative tribunal consists of an administrative body before which a matter or dispute may be heard or tried, as distinguished from a judicial forum.

According to the United States Census Bureau, in 2020 Cook County had a population of 5,275,541.⁴ A board of review in counties with 3,000,000 or more inhabitants "shall, on written complaint of any taxpayer or any taxing district that has an interest in the assessment that any property is overassessed, underassessed, or exempt, review the assessment and confirm, revise, correct, alter, or modify the assessment, as appears to be just[.]" 35 ILCS 200/16-95(1) (West 2022). If a taxpayer or taxing district submits a complaint to a board of review, notice procedures must be complied with, and the board of review holds hearings, and issues orders pertaining to assessments, which are appealable. 35 ILCS 200/16-115, 125, 160 (West 2022). Consistent with these statutory provisions, the Board of Review describes itself as

⁴United States Census Bureau, Illinois 2020 Census, <https://www.census.gov/library/stories/state-by-state/illinois-population-change-between-census-decade.html> (last visited July 8, 2023).

Mr. Brian P. Crowley

July 20, 2023

Page 7

a "quasi-judicial body, consisting of three co-equal elected commissioners, which 'sits as an appellate tribunal', inferior to the circuit [courts]. It has the power to review and correct valuations made by the Cook County Assessor."⁵ Courts have described the Board of Review in a similar manner. *See e.g., Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 295 (2010) ("the general rule is that a taxpayer is limited to first exhausting administrative remedies provided by statute beginning with the Board of Review—the remedy at law for an incorrect assessment—before seeking relief in the circuit court.").

In his reply to the School Board's response, [REDACTED] appears to assert that the Board of Review should not be considered an "administrative tribunal" because that term is undefined in OMA and the terms that the Board of Review uses to describe itself—"quasi-judicial body" and "appellate tribunal"—also are undefined by the Act.⁶ He further asserts that "[u]tilizing Black's Law Dictionary departs from the strict construction framed in the Open Meetings Act language."⁷ To the contrary, "it is entirely appropriate to employ a dictionary to ascertain the plain and ordinary meaning of" terms that a statute does not define. *People v. Davison*, 233 Ill. 2d 30, 40 (2009). The features of the Board of Review set forth above are consistent with the definition of "administrative tribunal" as "an administrative agency exercising a quasi-judiciary function." Black's Law Dictionary 1814 (11th ed. 2019). Accordingly, this office concludes that the Board of Review constitutes an administrative tribunal for purposes of section 2(c)(11) of OMA.

Affecting the District

Section 2(c)(11) of OMA permits a public body to enter into closed session to discuss "an action against, **affecting** or on behalf of the particular public body" that has been filed and is pending before a court or an administrative tribunal. (Emphasis added.) In its response to this office, the School Board asserted that the matter pending before the Board of Review and discussed by the School Board at the April 13, 2023, meeting directly impacts and affects District 211. The School Board explained that "[t]he assessment of property within each District, as determined by the Board of Review, will affect the District's property tax rate and revenue. * * * As a result, all three Districts are aggressively pursuing this action as the outcome

⁵Cook County Illinois Board of Review, Legal Background, <https://www.cookcountyboardofreview.com/legal-background> (last visited July 8, 2023).

⁶E-mail from [REDACTED] to Edie Steinberg, [Senior Assistant Attorney General, Public Access Bureau, Office of the Attorney General] (June 12, 2023).

⁷E-mail from [REDACTED] to Edie Steinberg, [Senior Assistant Attorney General, Public Access Bureau, Office of the Attorney General] (June 12, 2023).

████████████████████
Mr. Brian P. Crowley

July 20, 2023

Page 8

of the litigation will directly affect the Districts' primary revenue source: property tax dollars."⁸ ██████████ has not provided any information that the matter pending at the Board of Review would not affect District 211. Rather, ██████████ appears to assert in his reply that the School Board's closed session discussion was improper because District 211 is not the particular body whose action is pending with the Board of Review. He then asserts that the School Board did not take action in open session to hire an attorney to represent its interests in the Board of Review proceeding, which is not relevant to whether that matter is an action "affecting" the Board under section 2(c)(11) of OMA.

Legislative intent is best evidenced by the language used in a statute, and if the statutory language is clear and unambiguous, it must be given effect as written. *Blum v. Koster*, 235 Ill. 2d. 21, 29 (2009). A reviewing body may not read into the unambiguous language of a statute exceptions, limitations or conditions that the General Assembly did not express. *Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189 (1990).

The clear and unambiguous language of section 2(c)(11) of OMA does not require the public body to be the party whose action is pending with an administrative tribunal in order to discuss a pending matter in closed session. Rather, section 2(c)(11) of OMA plainly permits a public body to enter closed session to discuss litigation when an action "affecting" the public body has been filed and is pending before an "administrative tribunal," as well as when a pending action is against or on behalf of the public body. "Affect" is defined as "[t]o produce an effect on[.]" Black's Law Dictionary 70 (11th ed. 2019). Because the outcome of the matter pending before the Board of Review will substantially impact the amount of property tax revenue District 211 receives, that pending litigation is an action "affecting" the School Board within the scope of section 2(c)(11) of OMA.

Probable or Imminent

████████████████████ also asked this office to review the Board entering closed session to discuss the property tax appeal currently pending with the Board of Review in the absence of probable or imminent litigation. The plain language of section 2(c)(11) of OMA permits a public body to enter closed session to discuss litigation under two separate circumstances: (1) "when an action against, affecting or on behalf of the particular public body has been filed and is pending before a court or administrative tribunal," or (2) "when the public body finds that an action is probable or imminent[.]" Accordingly, a public body is not limited to discussing probable or imminent litigation under section 2(c)(11). The exception also

⁸Letter from Brian P. Crowley, Franczek, to Edie Steinberg, Senior Assistant Attorney General, Public Access Bureau, [Office of the Attorney General] (May 26, 2023), at 5.

████████████████████
Mr. Brian P. Crowley

July 20, 2023

Page 9

authorizes closed session discussions of litigation that has been filed and is pending before a court or an administrative tribunal.

Because the Arlington International Racecourse assessment appeal directly affects District 211 and had been filed and was pending before the Board of Review, an administrative tribunal, at the time of the April 13, 2023, meeting, it squarely fell within the first part of section 2(c)(11). The School Board did not rely on the second clause of the exception, pertaining to a public body finding an action probable or imminent, to discuss the pending litigation in closed session. Accordingly, there is no basis for this office to conclude that the School Board violated OMA because Board of Review litigation was pending rather than probable or imminent when the School Board discussed that matter in closed session.

Although ██████████ did not allege that the School Board's discussion regarding the pending litigation was not appropriately limited in scope, this office notes that "once the litigation exception is properly invoked, the only matters which may lawfully be discussed at the closed meeting are the strategies, posture, theories, and consequences of the litigation itself." Ill. Att'y Gen. Op. No. 83-026, issued December 23, 1983, at 14.⁹ See also *City of Bloomington v. Raoul*, 2021 IL App (4th) 190539, ¶¶ 35-37, 184 N.E.3d 366, 372 (2021) (concluding that a city council's closed meeting, which had no discussion of legal theories, defenses, claims, or possible approaches to litigation, was not within the scope of the litigation exception).

This office's confidential review of the closed session minutes and the pertinent portion of the closed session verbatim recording confirmed that the School Board's attorney made a presentation to the School Board regarding the pending action before the Board of Review, including the background of the action, litigation strategies and postures, and applicable case law; the attorney also took questions about the litigation from members of the School Board. Thus, the School Board's discussion was within the scope of the section 2(c)(11) exception.

⁹At the time of the issuance of opinion No. 83-026, an earlier but substantively identical version of section 2(c)(11) of OMA excepted from the open meeting requirements:

meetings held to discuss litigation when an action against or on behalf of the particular public body has been filed and is pending in a court or administrative tribunal, or when the public body finds that such an action is probable or imminent, in which case the basis for such a finding shall be recorded and entered into the minutes of the closed meeting in accordance with Section 2.06. Ill Rev. Stat. 1981, ch. 102, par. 42(h).

[REDACTED]
Mr. Brian P. Crowley

July 20, 2023

Page 10

For the reasons stated above, this office concludes that section 2(c)(11) of OMA authorized the School Board's closed session discussion on April 13, 2023, and, therefore, the School Board did not violate section 2(a) of OMA.

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, you may contact me at (312) 814-5201 or at the Chicago address on the bottom of the first page of this letter.

Very truly yours,

[REDACTED]
EDIE STEINBERG
Senior Assistant Attorney General
Public Access Bureau

76232 o 2a proper 2c11 proper sd