



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

February 27, 2015

Via electronic mail

[REDACTED]

Via electronic mail

Mr. Thomas A. Morris, Jr.
General Counsel
Waukegan Public Schools
Community Unit School District Number 60
1201 North Sheridan Road
Waukegan, Illinois 60085
tmorris@wps60.org

RE: OMA Request for Review – 2014 PAC 32578

Dear [REDACTED] and Mr. Morris:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 140/3.5(e) (West 2012)). For the reasons that follow, the Public Access Bureau concludes that the Board of Waukegan Public Schools, Community Unit School District Number 60 (Board) violated OMA by meeting on October 7, 2014, without providing advance notice, an agenda, or otherwise abiding by OMA.

On December 5, 2014, [REDACTED] submitted a Request for Review to the Public Access Bureau alleging that on October 7, 2014, the Board held a meeting concerning a teachers' strike without providing advance notice or allowing the public to observe the opening of the meeting. [REDACTED] stated that he went to the location of the meeting, but was denied entry.

On December 18, 2014, this office forwarded a copy of [REDACTED] Request for Review to the Board and asked it to respond to his allegation and to explain whether the Board's October 7, 2014, meeting consisted of collective bargaining negotiations. On January 15, 2015, this office received the Board's response affirming that members of the Board, outside counsel, and a member of the Board's negotiating team met on October 7, 2014, "without 48

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hours' advance public notice, an agenda, public participation or tape recording of the meeting[.]"¹ The Board alleged that the meeting was convened under the authority of the Illinois Educational Labor Relations Act (115 ILCS 5/1 *et seq.* (West 2012)) and claimed that section 18 of that Act (115 ILCS 5/18 (West 2012)) makes OMA "inapplicable to unilateral labor negotiation discussions."² The Board also provided this office with minutes of the October 7, 2014, meeting indicating that it voted to enter closed session pursuant to the Illinois Educational Labor Relations Act and section 2(c)(2) of OMA (5 ILCS 120/2(c)(2) (West 2013 Supp.), as amended by Public Acts 98-756, effective July 16, 2014; 98-1039, effective August 25, 2014). [REDACTED] did not submit a written reply.

DETERMINATION

The intent of OMA is to "ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2012). To that end, section 2(a) of OMA (5 ILCS 120/2(a) (West 2013 Supp.), as amended by Public Acts 98-756, effective July 16, 2014; 98-1039, effective August 25, 2014) provides: "[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 2(c)(2) of OMA permits a public body to hold a closed meeting to discuss "[c]ollective negotiating matters between the public body and its employees or their representatives, or deliberations concerning salary schedules for one or more classes of employees." However, section 2a of OMA (5 ILCS 120/2a (West 2012)) only allows a public body to "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.*" (Emphasis added.) Additionally, section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2012)) provides: "[p]ublic notice of any special meeting except a meeting held in the event of a bonafide emergency, or of any rescheduled regular meeting, or of any reconvened meeting, shall be given at least 48 hours before such meeting, which notice shall also include the agenda[.]"

[REDACTED] Request for Review alleged that he went to the Board's meeting place on October 7, 2014, and was told by the Superintendent that the Board was having a closed meeting, despite not having provided advance notice to the public or otherwise abiding by OMA. In its response to this office, the Board acknowledged that it did not provide advance notice or post an agenda for its October 7, 2014, Board meeting, but claimed that the meeting was exempt from OMA under section 18 of the Illinois Educational Labor Relations Act, which provides: "[t]he provisions of the Open Meetings Act shall not apply to collective bargaining negotiations and grievance arbitrations conducted pursuant to this Act." In support of its position, the Board

¹Letter from Thomas A. Morris, Jr., General Counsel, Waukegan Public Schools, to Josh Jones, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (January 13, 2015).

²Letter from Hinshaw & Culbertson, LLP, by Anthony Ficarella, to Thomas A. Morris, Jr., General Counsel, Waukegan Community Unit School District 60 (January 8, 2015).

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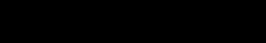
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cited the dissent in a 1987 Appellate Court case. *See Illinois Educational Labor Relations Board v. Homer Community Consolidated School District No. 208*, 160 Ill. App. 3d 730 (4th Dist. 1987) (McCullough, J., dissenting). The Board has not cited any binding authority supporting the position that section 18 of the Illinois Educational Labor Relations Act makes OMA inapplicable to the Board's unilateral labor negotiation discussions. Rather, the Board cited two judicial opinions and a formal Attorney General opinion which each acknowledge that discussions concerning collective bargaining are properly held in closed session during public meetings pursuant to OMA's collective bargaining exception. *See Illinois Educational Labor Relations Board v. Homer Community Consolidated School District No. 208*, 132 Ill. 2d 29, 36 (1989); *People v. Board of Education of District 170 of Lee and Ogle Counties*, 40 Ill. App. 3d 819, 821-23 (2nd Dist. 1976); Ill. Att'y Gen. Op. No. 80-024, issued August 12, 1980, at 9-11.

In construing statutory provisions such as section 18 of the Illinois Educational Labor Relations Act and section 2(c)(2) of OMA, the primary goal is to ascertain and effectuate the intent of the General Assembly. *See Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415, 844 N.E.2d 1, 14 (2006). The best indicator of legislative intent is the language of the statute, which must be given its plain and ordinary meaning. *See, e.g., Bettis v. Marsaglia*, 2014 IL 117050, ¶13, 23 N.E.3d 351, 356 (2014). When a statutory provision is ambiguous, a reviewing body turns "to aids of statutory construction, including legislative history and established rules of construction." *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶38, 6 N.E.3d 162, 170 (2014). "Under the doctrine of *in pari materia*, two legislative acts that address the same subject are considered with reference to one another, so that they may be given harmonious effect." (Emphasis in original.) *See, e.g., Citizens Opposing Pollution v. ExxonMobil Coal U.S.A.*, 2012 IL 111286, ¶24, 962 N.E.2d 956, 964 (2012). It is also a well-established principle of statutory construction that "each word, clause and sentence of a statute must be given a reasonable construction, if possible, and should not be rendered superfluous." *See, e.g., Home Star Bank and Financial Services v. Emergency Care and Health Organization, Ltd.*, 2014 IL 115526, ¶24, 6 N.E.3d 128, 135 (2014).

Under the plain language of section 18 of the Illinois Educational Labor Relations Act, "collective bargaining negotiations" are not subject to OMA. Negotiations are commonly understood to involve parties with differing interests each advocating for their own interests; Black's Law Dictionary defines negotiations as "[d]ealings conducted between two or more parties for the purpose of reaching an understanding." Black's Law Dictionary (9th ed. 2009), available at Westlaw BLACKS. Section 18 of the Illinois Educational Labor Relations Act does not refer to *discussions concerning* collective bargaining negotiations, but to the collective bargaining negotiations themselves. Accordingly, the plain language of section 18 of the Illinois Educational Labor Relations Act does not evince the intent to remove a public body's internal discussions concerning collective bargaining negotiations from the purview of OMA.

This interpretation is further supported by the fact that OMA contains its own provision excepting collective bargaining negotiations from discussion in an open meeting. As



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set forth above, section 2(c)(2) of OMA allows a public body to hold a closed session discussion of "[c]ollective negotiating matters between the public body and its employees or their representatives[.]" If, as the Board contends, section 18 of the Illinois Educational Labor Relations Act renders OMA inapplicable to discussions of collective bargaining matters by a school board, as opposed to applying only to negotiations or grievance arbitrations conducted under that Act where both educational employees and employers are present, then section 2(c)(2) of OMA is superfluous. The exception permitting a public body to discuss collective negotiation matters in closed session would be pointless if OMA does not apply to a public body's discussion of collective bargaining negotiations. On the other hand, section 18 of the Illinois Educational Labor Relations Act and section 2(c)(2) of OMA can be construed in a manner that gives effect to both provisions: section 18 of the Illinois Educational Labor Relations Act applies when a public body meets with the opposing party in a collective bargaining dispute to negotiate, whereas a public body's internal discussions about collective bargaining matters are subject to OMA. Thus, it comports with and effectuates both section 18 of the Illinois Educational Labor Relations Act and section 2(c)(2) of OMA to conclude that OMA applies when a board holds a meeting for the members to discuss collective negotiating matters among themselves.

Accordingly, the Board violated OMA by holding a meeting that was subject to OMA on October 7, 2014, without providing advance notice, an agenda, or otherwise abiding by OMA. We note that the conclusion that OMA applies to unilateral meetings to discuss collective bargaining does not mean that those discussions cannot be confidential; it simply means that a board that wishes to discuss collective negotiating matters confidentially must make a motion and vote to enter closed session during a properly-noticed open meeting to discuss those matters. Based on our review of the minutes and the Board's assertions, it appears that no final action was taken at the Board's October 7, 2014, meeting. We caution the Board to comply with all the requirements of OMA in the future.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at the Chicago address on the first page of this letter. This letter shall serve to close this matter.

Very truly yours,


JOSHUA M. JONES
Assistant Attorney General
Public Access Bureau