



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

June 8, 2020

*Via electronic mail*  
Ms. Emily Coleman  
Reporter, *Lake County News-Sun*  
emcoleman@tribpub.com

*Via electronic mail*  
Mr. Thomas A. Morris, Jr.  
General Counsel  
Community Unit School District No. 60  
1201 North Sheridan Road  
Waukegan, Illinois 60085  
tmorris@wps60.org

RE: OMA Request for Review – 2019 PAC 59963

Dear Ms. Coleman and Mr. Morris:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2018)). For the reasons that follow, the Public Access Bureau concludes that Board of Education (Board) of the Waukegan Public Schools, Community Unit School District No. 60 (District), did not violate OMA during four closed session meetings in 2019 when it discussed matters related to the potential purchase of property.

On October 1, 2019, Ms. Emily Coleman, on behalf of the *Lake County News-Sun*, submitted the above-captioned Request for Review alleging that the Board held improper closed session discussions in advance of the Board's approval of the District's purchase of a parcel of property. Ms. Coleman stated that the Board approved the purchase on September 10, 2019, and held closed session discussions earlier that day, as well as on June 4, 2019, and during meetings in August. On October 10, 2019, this office forwarded a copy of the Request for Review to the Board and asked it to provide copies of the verbatim recordings from the Board's closed session meetings held on June 4, 2019, September 10, 2019, and any other meetings at which the Board discussed matters relating to the specified property. This office also requested copies of the agendas, and open and closed session minutes from those meetings.

Ms. Emily Coleman  
Mr. Thomas A. Morris, Jr.  
June 8, 2020  
Page 2

On October 25, 2019, the Board provided this office with those materials and a written response, in which it acknowledged that it discussed the possible purchase of the parcel at four meetings in 2019, but argued that each of those discussions fell within the scope of section 2(c)(5) of OMA (5 ILCS 120/2(c)(5) (West 2018), as amended by Public Acts 101-031, effective June 28, 2019; 101-459, effective August 23, 2019). The Board also furnished this office with a redacted version of its written response to the Request for Review suitable for disclosure to Ms. Coleman.<sup>1</sup> On November 1, 2019, this office sent a copy of the Board's response to Ms. Coleman; she did not reply.

## DETERMINATION

### Time Limits for Requests for Review

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2018)) provides, in pertinent part:

A person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General **not later 60 days after the alleged OMA violation. If facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, by a person utilizing reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation.** The request for review must be in writing, must be signed by the requester, and must include a summary of the facts supporting the allegation. (Emphasis added.)

In her Request for Review, submitted October 1, 2019, Ms. Coleman asks that this office review the discussions held at several closed session meetings during which the Board entered closed session pursuant to section 2(c)(5) of OMA, including the June 4, 2019, meeting. The Board's June 4, 2019, meeting was held more than 60 days before Ms. Coleman submitted her Request for Review and she does not expressly state that, despite using reasonable diligence,

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<sup>1</sup>5 ILCS 120/3.5(c) (West 2018) ("[T]he public body may also furnish the Public Access Counselor with a redacted copy of the answer excluding specific references to any matters at issue. The Public Access Counselor shall forward a copy of the answer or redacted answer, if furnished, to the person submitting the request for review.").

Ms. Emily Coleman  
Mr. Thomas A. Morris, Jr.  
June 8, 2020  
Page 3

she could not have learned material facts concerning the alleged violations at the time that they occurred. However, Ms. Coleman does assert that the Board approved the property purchase at its September 10, 2019, meeting, and there is no indication the Board publicly discussed the potential purchase before that meeting. Because the alleged violations occurred during closed session, it does not appear that Ms. Coleman could have learned material facts concerning the alleged violations at the time of the June 4, 2019, meeting. Ms. Coleman submitted this Request for Review to this office within 60 days after the discovery of facts concerning the alleged violations on September 10, 2019. Accordingly, this Request for Review was filed within the time limits set out in section 3.5(a) of OMA, and this office has authority to review Ms. Coleman's allegations concerning the June 4, 2019, meeting.

#### **Closed Session Discussions**

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 2018). Section 2(a) of OMA (5 ILCS 120/2(a) (West 2018), as amended by Public Acts 101-031, effective June 28, 2019; 101-459, effective August 23, 2019) provides that all meetings of a public body shall be open to the public unless the subject of the meeting falls within one of the exceptions set out in section 2(c) of OMA. The section 2(c) exceptions are to be "strictly construed, extending only to subjects clearly within their scope." 5 ILCS 120/2(b) (West 2018), as amended by Public Acts 101-031, effective June 28, 2019; 101-459, effective August 23, 2019.

The Board's response to this office explains that it discussed the District's potential purchase of the former First Midwest Bank building in downtown Waukegan at four closed session meetings. Those meetings occurred on June 4, 2019, June 25, 2019, August 13, 2019, and September 10, 2019, and the Board entered closed session pursuant to section 2(c)(5) of OMA at each of those sessions. Section 2(c)(5) of OMA permits closed session discussion of:

- (5) The purchase or lease of real property for the use of the public body, including meetings held for the purpose of discussing whether a particular parcel should be acquired.

In *Galena Gazette Publications Inc., v. County of Jo Daviess*, 375 Ill. App. 3d 338 (2d Dist. 2007), the Illinois Appellate Court considered a closed session meeting held to discuss the possibility of leasing a specific property for its use. There, the plaintiff conceded that the public body could permissibly discuss the material terms of the lease in closed session, but argued that the scope of section 2(c)(5) did not extend to "peripheral matters" that were raised, such as how the public body would utilize the leased space. *Galena Gazette*, 375 Ill. App. 3d at 344. The court disagreed, finding that nothing in the language of section 2(c)(5) distinguishes "material" matters from peripheral ones. *Galena Gazette*, 375 Ill. App. 3d at 344. Specifically,

Ms. Emily Coleman  
Mr. Thomas A. Morris, Jr.  
June 8, 2020  
Page 4

the court noted that one of the topics the public body discussed was the racking of promotional brochures within the leased property, and concluded:

Even when participants discussed the racking of promotional brochures at the Old Train Depot—past, present, or future—they did so only 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 arrangement\* \* \*. To abstract any such discussions from the larger context would ignore the participants' purposes in raising the issue of the display of promotional materials. *Galena Gazette*, 375 Ill. App. 3d at 344.

The court added that it would be impractical for the public body to have a meaningful discussion of the lease terms if it was precluded from discussing related details needed to put the terms in context. *Galena Gazette*, 375 Ill. App. 3d at 345. Because the public body's closed session discussion centered on considerations involving the potential lease, and because its consideration of the proposed lease was affected by related details that the Board also discussed, the court held that the entire closed session discussion was proper under section 2(c)(5). *Galena Gazette*, 375 Ill. App. 3d at 346. *See also* Ill. Att'y Gen. PAC Req. Rev. Ltr. 24866, issued February 10, 2020, at 3 (determining that the public body's entire discussion fell within the scope of section 2(c)(5) of OMA, because any "peripheral matters" discussed "were necessary considerations in the context of deliberating on the potential property acquisition"); Ill. Att'y Gen. PAC Req. Rev. Ltr. 35947, issued August 28, 2015, at 3 (finding that a city council's closed session was proper because all matters discussed were "clearly integral to the Council's consideration of whether to proceed with the purchase proposal").

In her Request for Review, Ms. Coleman argues that discussion of "possible renovation costs associated with the building's purchase, the educational and administrative rationale for purchasing the building and what would happen with the building that currently offices the district's administrative offices" go beyond a discussion of "the actual purchase of the building."<sup>2</sup> The Board rejects this interpretation of section 2(c)(5) as "overly restrictive," arguing:

[D]iscussion by the Board concerning the subject of whether the parcel should be acquired at all, i.e., need for the property, fairly

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<sup>2</sup>E-mail from Emily Coleman to Public Access [Bureau, Office of Illinois Attorney General] (October 1, 2019).

Ms. Emily Coleman  
Mr. Thomas A. Morris, Jr.  
June 8, 2020  
Page 5

fall within the exception. Certainly, need is pertinent to a decision on the amount of any offer. A parcel that is essential to the public body has more value than a parcel that has little or marginal utility. Likewise, a property with systemic flaws or inefficiencies probably requiring immediate outlays would command a lower offering price than a property in pristine condition.

\* \* \*

The Board submits that its closed session discussions about whether it was appropriate to acquire the [First Midwest Bank] building were reasonably related to the issues of pricing, worth and need[.]<sup>3]</sup>

The appellate court's decision in *Galena Gazette* makes clear that a discussion of "whether a parcel should be acquired" can include discussion of whether and how a parcel would be useful to a public body. Similarly, a discussion of the potential purchase of a parcel commonly includes discussion of purchase price, and the anticipated costs of renovating a particular parcel are intertwined with consideration of the appropriate purchase price for the parcel. Therefore, a public body's discussion of whether it needs a parcel, how it would use a parcel, and whether purchasing a parcel would saddle a public body with necessary renovation expenses fall within the scope of a discussion of "whether a parcel should be acquired."

Based on this office's confidential review of the closed session recordings of each of the four meetings, the Board primarily discussed whether to purchase the First Midwest Bank building, including the basic terms of the transaction and the benefits to the District of acquiring the property. The District also discussed other details that were integral to its deliberations on the potential property acquisition. Because the verbatim recordings of the meetings, as well as the Board's argument concerning these specific topics, were provided to this office confidentially for purposes of this review, this office is not permitted to further describe the topics discussed or to comment on whether the Request for Review accurately describes the matters discussed at the closed session meetings. This office has thoroughly reviewed the verbatim recordings, and has determined that the Board's discussions did not exceed the scope of section 2(c)(5) of OMA.

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<sup>3</sup>Letter from Thomas A. Morris, Jr., General Counsel, Community Unit School District No. 60, to Leah Bartelt, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, at 2 (October 25, 2019).

Ms. Emily Coleman  
Mr. Thomas A. Morris, Jr.  
June 8, 2020  
Page 6

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.

Very truly yours,

A solid black rectangular redaction box covering the signature of Leah Bartelt.

LEAH BARTELT  
Deputy Public Access Counselor  
Public Access Bureau

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