



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

November 12, 2020

Via electronic mail

Via electronic mail

The Honorable Meg Sima
President, Board of Education
Lisle Community Unit School District No. 202
5211 Center Avenue
Lisle, Illinois 60532
board@lisle202.org

RE: OMA Request for Review – 2020 PAC 63270

Dear [REDACTED] and Ms. Sima:

This determination 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 the closed session discussions of the Board of Education (Board) of Lisle Community Unit School No. 202 (School District) during its April 27, 2020, and May 18, 2020, meetings did not violate OMA.

BACKGROUND

On June 4, 2020, [REDACTED] submitted a Request for Review to the Public Access Bureau alleging that the Board improperly discussed the School District's Tate Woods School property in closed session at its April 27, 2020, and May 18, 2020, meetings. He stated that at each of the meetings, the Board entered closed session under the exception for discussions concerning the setting of a price for the sale or lease of property owned by a public body. He contended, however, that a price for the property in question had already been set via a public sale sealed bid process. [REDACTED] asserted:

In June 2018, Lisle CUSD 202 entered into a contract to sell the public property to the highest bidder. The contract is still in effect, had not been breached by either party, nor has the contract been terminated. The price of this public property has been firmly set. Any modification to the price set by the public bid process would require the District to again notice a public sale via sealed bid or would require a new public listing of the property for sale with a broker.¹¹

On June 10, 2020, this office forwarded a copy of the Request for Review to the Board and asked it to provide this office with copies of its April 27, 2020, and May 18, 2020, meeting agendas, open and closed session minutes, and closed session verbatim recordings for this office's confidential review, together with a written response to ██████████ allegation. On June 19, 2020, this office received the requested materials. On June 23, 2020, this office forwarded a copy of the Board's response to ██████████; he did not reply.


DETERMINATION

OMA requires that all meetings of a public body remain open to the public unless the public body properly invokes an exception in section 2(c) of OMA. 5 ILCS 120/2(a), (c) (West 2018), as amended by Public Acts 101-031, effective June 28, 2019; 101-459, effective August 23, 2019. 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.

Section 2(c)(6) of OMA (5 ILCS 120/2(c)(6) (West 2018), as amended by Public Acts 101-031, effective June 28, 2019; 101-459, effective August 23, 2019) permits a public body to enter closed session to discuss the limited subject of "[t]he setting of a price for sale or lease of property owned by the public body." In its response to this office, the Board contended that section 2(c)(6) authorized its closed session discussions pertaining to the property at issue because "the Board deliberated adjusting the price for sale of property owned by the school district due to unforeseen financial impacts on the buyer imposed by the Village of Lisle, which substantially increased the buyer's net cost to acquire the property."² The Board further asserted

¹E-mail from ██████████ to Public Access [Bureau, Office of the Attorney General] (June 4, 2020).

²Letter from Keith Filipiak, Superintendent, Lisle Community Unit School District 202, to Teresa Lim, Assistant Attorney General, Public Access Bureau (June 18, 2020).



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that it discussed "ways to maintain the set price for the buyer in order to allow completion of the sale of the property to the buyer."³

This office has reviewed the Board's closed session minutes and portions of the verbatim recordings of the April 27, 2020, and May 18, 2020, meetings pertaining to the Tate Woods School property. This office's review confirmed that the Board discussed the price of the property and options for maintaining or adjusting the property's price. The minutes and verbatim recordings reflect that the sale of the property had not been finalized, and that the Board was still in negotiations with the buyer.⁴ The Board's discussions pertained to the setting of the price of the property in light of financial circumstances involving the Village of Lisle. The Board's discussions concerning the village are intertwined with the property's price and related directly to the Board's consideration of ways to keep the set price for the buyer. *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 175-76 (5th Dist. 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). It appears from the context of the Board's discussion that the circumstances involving the village could not have been considered in isolation because they directly bore upon the setting of the price for sale of the property. Accordingly, this office concludes that those discussions fell within the scope of section 2(c)(6) 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,


TERESA LIM
Assistant Attorney General
Public Access Bureau

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³Letter from Keith Filipiak, Superintendent, Lisle Community Unit School District 202, to Teresa Lim, Assistant Attorney General, Public Access Bureau (June 18, 2020).

⁴The 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 2018)). *See* 15 ILCS 205/7(c)(3) (West 2018). OMA concerns the transparency with which public bodies meet and conduct business in relation to the public; it does not govern the bidding processes for the sale of public properties. Accordingly, this office is unable to review claims concerning whether another sealed bid process would be required for the sale of public property where the property price may be adjusted.


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cc: *Via electronic mail*
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