



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 22, 2017

Via electronic mail



Via electronic mail

Mr. Jerry Warchol
Kurowski Shultz LLC
1405 North Green Mount Road, Suite 400
O'Fallon, Illinois 62269
jwarchol@ksflllc.com

RE: OMA Request for Review – 2017 PAC 48078

Dear [REDACTED] and Mr. Warchol:

This determination 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 the Board of Trustees of the Village of Swansea (Board) did not provide an adequate public recital of the business being conducted prior to voting to terminate [REDACTED] employment during its May 24, 2017, meeting, but that the Board has since taken the applicable remedial action by making a proper public recital before voting to terminate [REDACTED] employment during its June 5, 2017, meeting.

On May 28, 2017, [REDACTED] submitted a Request for Review to the Public Access Bureau alleging that during the Board's May 24, 2017, meeting, the Board took final action with respect to her employment without first informing the public what it would be voting on. This office construed [REDACTED] Request for Review as alleging a potential violation of section 2(e) of OMA (5 ILCS 120/2(e) (West 2016)), which provides: "No final action may be taken at a closed meeting. Final action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted."



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On May 31, 2017, this office forwarded a copy of the Request for Review to the Board and asked it to provide this office with copies of the May 24, 2017, meeting agenda, minutes, and closed session verbatim recording for this office's confidential review, together with a written response to the allegation that the Board did not adequately recite the nature of the matter being considered in open session before voting to terminate ██████████ employment. On June 7, 2017, the Board's outside counsel furnished this office with those materials. In its written response, the Board stated that it was "willing to accept ██████████ position that the motion made at the May 24, 2017 meeting, which purported to result in her termination, was inadequate under Section 2(e) of the Open Meetings Act."¹ Thus, "to ensure compliance with the Open Meetings Act,"² the Board listed an item on its June 5, 2017, meeting agenda for a "Motion regarding termination of employment of ██████████,"³ and then re-voted on terminating ██████████ employment during that meeting after reciting in open session that it was about to do so. On June 16, 2017, ██████████ replied, in pertinent part: "[I]t is still my stance that they violated the act on May 24, 2017 and have since rectified that on June 5, 2017. That does not take away from the fact that they violated the law previously."⁴

DETERMINATION

"[U]nder section 2(e) of the Open Meetings Act, a public recital must take place at the open meeting before the matter is voted upon; the recital must announce the nature of the matter under consideration, with sufficient detail to identify the particular transaction or issue, but need not provide an explanation of its terms or its significance." *Board of Education of Springfield School District No. 186 v. Attorney General of Illinois*, 2017 IL 120343, ¶64, ___ N.E.2d ___ (2017).

In her Request for Review, ██████████ alleged that during the Board's May 24, 2017, meeting: "The board went into executive session. Upon returning to the meeting, ██████████ made a motion to act on what was discussed in executive session. * * * They never said publicly * * * what they were voting on."⁵ The minutes of the Board's May 24, 2017,

¹Letter from Jerome S. Warchol, Jr., to Joshua Jones, Supervising Attorney, Public Access Bureau, Office of the Illinois Attorney General (June 7, 2017), at 2.

²Letter from Jerome S. Warchol, Jr., to Joshua Jones, Supervising Attorney, Public Access Bureau, Office of the Illinois Attorney General (June 7, 2017), at 2.

³Village of Swansea Board of Trustees, Agenda Item X(A), Motion regarding termination of employment of ██████████ (June 5, 2017).

⁴E-mail from ██████████ to Joshua Jones (June 16, 2017).

⁵E-mail from ██████████ to Public Access Counselor (May 28, 2017).

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meeting confirm that upon returning to open session, a "roll call of aye from all Trustees supported the Mayor proceeding as directed in executive session."⁶ As the Board has acknowledged, this public recital prior to the vote to terminate [REDACTED] employment was insufficient, because the Board merely referenced its confidential closed session discussion rather than announcing the nature of the matter under consideration. Accordingly, the Board's May 24, 2017, vote to terminate [REDACTED] employment did not meet the requirements of section 2(e) of OMA.

Nonetheless, a public body can ratify and cure an action taken with insufficient transparency by subsequently revisiting the matter in open session and holding a proper vote. *See Board of Education School District No. 67 v. Sikorski*, 214 Ill. App. 3d 945, 952 (1st Dist. 1991) (board violated OMA by holding a closed session that was not authorized by any of the Act's exceptions, but "ratified and cured" the decision made during the unauthorized closed session by subsequently discussing and voting on the matter in open session); *see also Lindsey v. Board of Education of City of Chicago*, 127 Ill. App. 3d 413, 422 (1st Dist. 1984) ("Any prior violation of the Open Meetings Act by defendants cannot prevent the Board from calling a subsequent meeting, noticed in full compliance with the requirements of the Act, and there taking identical action."). Accordingly, because the Board made a proper recital under section 2(e) of OMA prior to its vote to terminate [REDACTED] employment on June 5, 2017, no further remedial action is required.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves 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,

[REDACTED]
JOSHUA M. JONES
Supervising Attorney
Public Access Bureau

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⁶Village of Swansea Board of Trustees, Meeting, May 24, 2017, Minutes 1.