



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

June 7, 2023

Via electronic mail

Via electronic mail

The Honorable Tiffany Henyard
Township Supervisor
Thornton Township
333 East 162nd Street
South Holland, Illinois 60473
thenyard@thorntontwp.com

RE: OMA Request for Review – 2022 PAC 74113

Dear [REDACTED] and Ms. Henyard:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2020)).

BACKGROUND

On October 27, 2022, [REDACTED] submitted a Request for Review to the Public Access Bureau alleging that the Board of Trustees (Board) of Thornton Township (Township) violated OMA's requirements by voting on four matters outside of an open meeting. [REDACTED] explained that the Board had scheduled meetings for October 11, 2022, and October 25, 2022, but the Board did not have a quorum to hold them. [REDACTED] provided this office with a copy of the October 25, 2022, meeting agenda, which stated under the agenda item for new business: "A. Ratify Four Phone Polls Conducted on October 14, 2022."¹ [REDACTED] contended that the Board improperly conducted four phone polls on matters of Township business in lieu of voting on those matters in an open meeting.

¹Thornton Township, Board of Trustees, Agenda, IX. New Business (October 25, 2022).

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On November 4, 2022, this office forwarded a copy of the Request for Review to the Board and asked it to provide a written response addressing whether the Board complied with section 2(e) of OMA,² which provides that "[n]o final action may be taken at a closed meeting." This office asked the Board, in relevant part, to explain when and how the four phone polls identified in the October 25, 2022, meeting agenda were conducted, including providing the names of the Board members who participated in them and descriptions of the polls and any issues discussed. Have received no response, this office sent additional correspondence to the Board on November 22, 2022. On January 9, 2023, this office received the requested response and additional documents describing the subject matters of four phone polls that were conducted on October 14, 2022, and two phone polls on October 26, 2022. On January 10, 2023, this office forwarded a copy of the response to [REDACTED]; she did not submit a reply.

DETERMINATION

It is "the public policy of this State that its citizens shall be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 2020). "The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business and that the intent of the Act is to assure that **agency actions be taken openly and that their deliberations be conducted openly.**" (Emphasis added.) *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

In its response to this office, the Board acknowledged that its members participated in phone polls outside of an open meeting, but it denied that any of those polls constituted a "meeting" subject to OMA.³ The Board asserted that "each poll was limited to one Trustee, rather than a contemporaneous interactive communication between a quorum of the public body."⁴ The Board further explained:

²5 ILCS 120/2(e) (West 2021 Supp.), as amended by Public Act 102-813, effective May 13, 2022.

³OMA defines "meeting" as:

any gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business or, for a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public business. 5 ILCS 120/1.02 (West 2020).

⁴Letter from Terrence Casey, Del Galdo Law Group, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (January 9, 2023), at [2].

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On October 14, 2022, and October 26, 2022, the Township's Deputy Clerk, Kierra Lewis, telephonically called each Trustee separately and asked if he or she approves or rejects certain public business items. The only individuals present on the phone polls were the Deputy Clerk and an individual Trustee. The Deputy Clerk made five (5) phone calls on October 14th and five (5) phone calls on October 26th to gather each Trustee's vote on a particular item.^[5]

Additionally, the Board asserted that it ratified the phone polls at a later meeting it held on November 9, 2022, which was open to the public. The Board provided this office with copies of its November 9, 2022, meeting agenda and minutes. The agenda stated, in pertinent part:

A. Ratify Three Phone Polls Conducted on October 14, 2022.

- 1) Approve Resolution 22-R-016 a Resolution Authorizing the Borrowing of An Amount Not to Exceed \$5,000,000
- 2) Approve Ordinance 22-004 an Ordinance Regarding Public Comments and Conduct at Public Meetings of Thornton Township, Cook County, Illinois
- 3) Approval of October 11, 2022, General Fund, General Assistance Fund, Road and Bridge Fund Bills.

B. Ratify Two Phone Polls Conducted on October 26, 2022

- 1) Approval of October 25, 2022, General Fund, General Assistance Fund, Road and Bridge Fund Bills
- 2) Approve Hiring of Full-Time Director of At-Risk Youth Program^[6]

⁵Letter from Terrence Casey, Del Galdo Law Group, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (January 9, 2023), at [1].

⁶Thornton Township, Agenda Item IX, New Business (November 9, 2022).

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The meeting minutes reflect that the Board approved by roll call vote the above matters.⁷

On February 1, 2023, this office asked the Board whether it took actions on the items that were the subject of the six phone polls after the polls were conducted. In particular, this office asked the Board whether it made any payments related to the bills for the General Assistance Fund and took any steps to borrow funds. This office also asked when the Township had changed the employment status of the part-time clerk to full time and filled the director position or began the hiring search for that position. In an April 19, 2023, reply, counsel for the Board stated that the Township made bill payments and changed the employment status of the part-time clerk the day after the phone poll. The reply also stated that the Township started the hiring search for the director position on October 1, 2022, and began conducting research on borrowing funds in September 2022 because of a delay in tax revenue coming in.

The phone poll documents and other information provided to this office indicate that Board members manifested a collective decision to approve or reject the actions proposed in the phone polls. As noted above, section 2(e) of OMA provides that "[n]o 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." The term "final action" generally does not encompass intermediate steps taken by a public body in the process of resolving a matter. *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 176 (5th Dist. 1989) (concluding that a board of education's closed session decision to pursue mediation as an alternative to its ongoing negotiations with the secretaries' union was part of the process of reaching a final action rather than final action itself). However, reaching a consensus and implementing a decision outside of an open meeting is final action rather than an intermediate step. *See Howe v. Retirement Board of the Firemen's Annuity & Benefit Fund*, 2013 IL App (1st) 122446, ¶29, 996 N.E.2d 664, 670 (2013) (vacating the board's decision to deny disability benefits because the board had circulated the decision for signatures privately rather than voting on it in open session); Ill. Att'y Gen. PAC Req. Rev. Ltrs. 58555, 58614, 58615, issued August 20, 2019, at 3 (public body took final action by reaching a consensus to prohibit camping at a park and implementing that decision by posting "no camping" signs before voting on the matter at a subsequent meeting).

In this matter, the Township reached a consensus and implemented at least some of the actions in the phone polls prior to the ratification at the Board's November 9, 2022, meeting. The Township, for instance, made payments on its bills related to the General Assistance Fund and changed the employment status of an employee the day after the Board members conveyed their approval of those particular actions in the phone polls. Such actions constituted final actions for purposes of OMA, and the Board reached consensus to take those

⁷Thorntown Township Board of Trustees, Meeting, November 9, 2022, Minutes.

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actions outside of an open meeting. Moreover, the votes to ratify five out of the six phone polls at the November 9, 2022, meeting merely reiterated decisions that already had been made and effectuated. This office understands that the Board lacked a quorum to hold meetings prior to November 9, 2022, and certain matters, such as the payment of bills, appear to have required timely attention, but OMA does not contain an exception to the requirement that final actions be taken in an open meeting. Accordingly, this office concludes that the Board improperly took final action outside of an open meeting in connection with the October 14, 2022, and October 26, 2022, phone polls in violation of section 2(e) of OMA.

Because the Board ratified only five out of the six items that were the subject of the October 14, 2022, and October 26, 2022, phone polls at its November 9, 2022, meeting, this office requests that the Board ratify the remaining phone poll (changing the status of a part-time clerk to full-time) at an open meeting that meets all of OMA's requirements. This office reminds the Board that while preliminary votes on matters of public business may be taken in closed session, it cannot take any final actions on those matters outside of an open meeting. Any final actions must be taken in an open meeting that fully complies with the requirements 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,

[REDACTED]

TERESA LIM
Supervising Attorney
Public Access Bureau

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cc: *Via electronic mail*
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