



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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October 22, 2024

Via electronic mail



Via electronic mail

Ms. Liliana Escarpita
Secretary of the Board
Cook County Board of Review
liliana.escarpita@cookcountyil.gov

RE: OMA Request for Review – 2023 PAC 77643

Dear [REDACTED] and Ms. Escarpita:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2023 Supp.)). For the reasons explained below, the Public Access Bureau concludes that the Cook County Board of Review (Board) did not violate OMA in connection with interviews of candidates for the position of General Counsel and Chief Ethics Officer (general counsel). This office further concludes, however, that the Board violated OMA by approving and effectuating the hiring of a specific candidate for general counsel outside of a properly noticed open meeting.

BACKGROUND

On August 8, 2023, this office received [REDACTED] Request for Review alleging that the Board took final action by hiring a new general counsel without doing so at a meeting held in accordance with the requirements of OMA. He argued that hiring a general counsel required an affirmative vote by a majority of a quorum of the Board. In support of the allegation, [REDACTED] provided a copy of an invitation for the general counsel to individually meet with each commissioner on June 5, 2023, and the first page of a letter on Board letterhead dated June 21, 2023, extending a job offer for the position. This office

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construed the Request for Review as alleging a violation of section 2(e) of OMA (5 ILCS 120/2(e) (West 2022)), which 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."

On August 25, 2023, this office sent a copy of the Request for Review to the Board and asked it to respond to the allegation in writing. This office also asked the Board to describe how the general counsel was selected for the position and to clarify whether the Board approved the hiring of the general counsel in the open session of a meeting held in accordance with OMA.

On September 26, 2023, this office received the Board's response, which described the process that took place leading to the hiring of the new general counsel. According to the response, on June 1, 2023, a panel that did not include the Commissioners, but consisted of the First Assistant Commissioners (First Assistants), the Chief Clerk, and the Secretary of the Board, conducted interviews of five candidates for the position of general counsel. The response stated that the panel recommended two candidates who went on to sit for interviews with each Commissioner individually, on June 5, 2023. The response then stated, "[t]he week of June 12th, after considerable deliberation through their First Assistants to the Secretary, a majority of Commissioners determined that Cristin Duffy was the most qualified and suitable candidate for the Board of Review."¹

On October 4, 2023, this office forwarded a copy of the Board's response to [REDACTED]. On the same day, [REDACTED] replied. His reply included the additional allegation that by having the First Assistants meet to interview candidates, the Board likely violated OMA because the First Assistants were acting as proxies for the Commissioners. He also reiterated his allegation that the ultimate decision by a majority of the Commissioners to hire one of the candidates was a vote that should have taken place at an open public meeting.

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 2022). "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." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (1989).

¹E-mail from Liliana Escarpita, Secretary of the Board, Cook County Board of Review, to Steven Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General (September 26, 2023).

Whether Interviews by First Assistant Commissioners Constituted a "Meeting"

The requirements of OMA apply to any gathering of members of a public body that constitutes a "meeting" as defined by section 1.02 of OMA (5 ILCS 120/1.02 (West 2022)):

"Meeting" means 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. (Emphasis added.)

Accordingly, for a 5-member public body, 3 members of the body constitute a quorum and the affirmative vote of 3 members is necessary to adopt any motion, resolution, or ordinance, unless a greater number is otherwise required.

Pursuant to section 5-5(c) of the Property Tax Code (35 ILCS 200/5-5(c) (West 2022)),² the Board consists of three elected Commissioners. The Commissioners, not the First Assistants, are the members who must be present for a gathering to constitute a meeting of the Board subject to the requirements of OMA. According to the Board's response, no Commissioners were present during the first round of interviews on June 1, 2023, which were conducted by the First Assistants, the Chief Clerk, and the Secretary of the Board. Although [REDACTED] argued that the First Assistants were acting as proxies for the actual Commissioners, the plain language of the definition of "meeting" requires "members of the public body" to participate in a gathering. No provision of OMA provides that when members of a public body delegate responsibilities such as interviewing candidates, those subordinates stand in the shoes of the members of the public body themselves and are subject to the requirements of OMA. Accordingly, there is no basis for this office to conclude that the Board held an improper meeting.

Whether the Board's Decision to Hire a Specific Candidate Constituted Final Action

Section 2(e) of OMA 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."

²That provision provides: "In each county with 3,000,000 or more inhabitants, there is created a board of review. The board of review shall consist of 3 commissioners[.]"

When a public body reaches a consensus and implements a decision outside of an open meeting, that constitutes final action in violation of OMA. *See Howe v. Retirement Board of the Firemen's Annuity & Benefit Fund*, 2013 IL App (1st) 122446, ¶29 (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); *Lawrence v. Williams*, 2013 IL App (1st) 130757, ¶21 (2013) (signing of written decisions by two out of three board members outside of an open meeting constituted final action in violation of OMA); Ill. Att'y Gen. PAC Req. Rev. Ltr. 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 its response to this office, the Board explained that the two candidates recommended by the panel of First Commissioners met individually with each Commissioner on June 5, 2023, before a candidate was selected the following week. The Board emphasized that Commissioners did not directly deliberate or hold contemporaneous or interactive communications with each other, but acknowledged that they held "considerable deliberation through their First Assistants Commissioners to the Secretary[] before "a majority of Commissioners determined that Cristin Duffy was the most qualified and suitable candidate for the Board of Review."³ Although it is not clear from the Board's response precisely how a majority of Commissioners reached a consensus, the Board acknowledged that "the decision to hire the General Counsel and Chief Ethics Officer did not take place at an open or closed meeting so no responsive agenda or minutes exists."⁴ Because the Board reached a consensus during the week of June 12, 2023, and implemented the decision by offering the position on June 21, 2023, it took final action outside of an open meeting in violation of section 2(e) of OMA. This office requests that the Board remedy that violation by holding a public vote ratifying the appointment.

³E-mail from Liliana Escarpita, Secretary of the Board, Cook County Board of Review, to Steven Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General (September 26, 2023).

⁴ E-mail from Liliana Escarpita, Secretary of the Board, Cook County Board of Review, to Steven Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General (September 26, 2023).

[REDACTED]
Ms. Liliana Escarpita
October 22, 2024
Page 5

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, please contact me at michael.knight@ilag.gov.

Very truly yours,

[REDACTED]
MICHAEL J. KNIGHT
Assistant Attorney General
Public Access Bureau

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