



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

December 13, 2021

Via electronic mail
Ms. Ellen Moriarty
el.n.moriarty@gmail.com

RE: OMA Requests for Review – 2021 PAC 68216
2021 PAC 68464
2021 PAC 68726

Dear Ms. Moriarty:

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2020)). For the reasons set forth below, the Public Access Bureau has determined that no further action is warranted in these matters.

On October 27, 2021, this office received your Request for Review alleging that the Homer Township (Township) Board (Board) violated the requirements of OMA in connection with its August 9, 2021, September 13, 2021, and October 18, 2021, meetings. Specifically, you asserted that the Board held these meetings in rooms that were not large enough to accommodate recommended social distancing and that the Board did not require attendees to wear face coverings. You allege that these practices create an unsafe environment, and therefore constitute a de facto denial of your right to participate in these meetings, in violation of OMA. On November 12, 2021, this office received your second Request for Review reasserting your allegations about the August, September, and October meetings, and alleging that the same violations occurred at the Board's November 8, 2021, meeting. On November 29, 2021, this office received your third Request for Review, in which you allege that video recordings of the Board's meetings are "an official record of the meetings," and that they contain harassing and degrading language and do not comply with the federal Americans with Disabilities Act (42 U.S.C. §12101 *et seq.* (2018)).

Your Requests for Review included links to video recordings that appear to be the recent public meetings of the Board. This office reviewed the video recordings available at those

links, as well as the copies of minutes and videos available on the Township's website.¹ We note that the video recording of the November 8, 2021, meeting supports the allegation that the meeting was held at a public indoor place and that the Township Supervisor and some of the Trustees attending the meeting were not wearing face coverings during the meeting. After receipt of your third Request for Review, we reviewed the copy of the video recording of the November 8, 2021, meeting that is available at the link on the Township's website, but did not observe the "title page" with the inflammatory commentary you described in that correspondence.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2020)) provides that "[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[,]" and that the submission "must include a summary of the facts supporting the allegation."

Section 2.01 OMA (5 ILCS 120/2.01 (West 2020)) requires meetings to be held "at specified times and places which are convenient and open to the public." In construing this provision long before the COVID-19 pandemic, the Illinois Appellate Court in *Gerwin v. Livingston Co. Council*, 345 Ill. App. 3d 352, 362 (4th Dist. 2003) stated that "[a] meeting can be open in the sense that no one is prohibited from attending it, but it can be held in such an ill-suited, unaccommodating, unadvantageous place that members of the public, as a practical matter, would be deterred from attending it." *Gerwin*, 345 Ill. App. 3d at 361. Still, the court found that "[i]t would be unreasonable to suppose the legislature intended * * * that public bodies hold their meetings 'at such locations as are sufficient to accommodate *all* interested members of the public, such that they may see and hear all proceedings in reasonable comfort and safety.'" (Emphasis in original.) *Gerwin*, 345 Ill. App. 3d at 361. Accordingly, the court construed section 2.01 as requiring "not 'absolute accessibility' but 'reasonable accessibility.'" *Gerwin*, 345 Ill. App. 3d at 362, quoting *State ex rel. Badke v. Village Board of the Village of Greendale*, 173 Wis. 2d 553, 579, 494 N.W.2d 408, 418 (Wis. 1993).

Based on the information provided in your Request for Review, the Board's meetings were open to the public. You allege that the Board's failure to comply with COVID-19 safety guidelines deters you and others from attending meetings. Because an Executive Order designed to address the continued spread of COVID-19 currently requires "all individuals in Illinois who are age two or over and able to medically tolerate a face covering (a mask or cloth face covering) * * * to cover their nose and mouth with a face covering when in an indoor public place[,]"² this office encourages the Board to reconsider its practices, or to provide remote access to meetings, even if held in-person. However, OMA does not contain specific provisions

¹<https://homertownship.com/agendas-minutes/2021-minutes> (last visited December 7, 2021).

²Executive Order 2020-21, §1, issued August 26, 2021.

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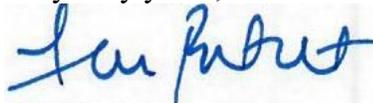
concerning face coverings and social distancing at meetings during a pandemic. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 67055, issued March 16, 2021, at 3 (determining that no further action is warranted on allegation that Board members' refusal to wear face coverings violates OMA). Accordingly, this office cannot conclude that the Board violated section 2.01 of OMA by not requiring face coverings or taking steps to ensure recommended social distancing at its meetings. *See also* Ill. Att'y Gen. PAC Req. Rev. Ltr. 67584, issued April 8, 2021 (OMA does not require a public body to facilitate audio access to in-person meetings, despite the continued prevalence of COVID-19 infections throughout Illinois).

With respect to the allegations in your third Request for Review, no section of OMA requires a public body to create and make available to the public a verbatim video (or audio) recording of the open session of a meeting held in person. *Contrast* 5 ILCS 120/7(e)(9) (West 2020) (public bodies holding meetings by video or audio conference pursuant to section 7(e) of OMA must keep verbatim recording of open meeting in the form of an audio or video recording). The Board nevertheless posts links on the Township's website to video recordings of many of its 2021 meetings. As stated above, this office did not observe the title page commentary you allege was present on that video; therefore, your Request for Review does not include sufficient facts indicating the videos violate any provision of OMA.

Finally, we note that the Public Access Counselor does not have the authority to address alleged violations of Illinois Executive Orders pertaining to face covering requirements, or the federal Americans with Disabilities Act. 15 ILCS 205/7(c)(3) (West 2020) (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 2020))).

Accordingly, the Public Access Bureau has determined that no further action is warranted in these matters. These files are closed. If you have questions, please contact me at (312) 814-6437 or the Chicago address on the bottom of the first page of this letter.

Very truly yours,



LEAH BARTELT
Deputy Public Access Counselor
Public Access Bureau

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cc: *Via electronic mail*
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