



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

December 2, 2021

Via electronic mail

Ms. Sheri Lynn Boniecki
sherilynnhtdo@gmail.com

Via electronic mail

Ms. Lauren M. DaValle
Odelson, Sterk, Murphey, Frazier & McGrath, Ltd.
3318 West 95th Street
Evergreen Park, Illinois 60805
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RE: OMA Request for Review – 2021 PAC C-0386; C-0387

Dear Ms. Boniecki and Ms. DaValle:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2020)). For the reasons explained below, the Public Access Bureau is unable to conclude that the Homer Township Board (Board) held an improper meeting to discuss a resolution prior to the regular meeting of the Board on September 13, 2021. The Public Access Bureau is also unable to conclude that the Board violated the OMA requirement that public bodies meet at times and places convenient to the public by holding the September 13, 2021, meeting at the Homer Township Office.

On September 18, 2021, Ms. Sheri Lynn Boniecki submitted the above-referenced Request for Review alleging that the Board held an improper meeting based on the Township Supervisor's statement that "[t]he township is going to vote on it. I talked to all of the board members, one at a time so I don't break no meeting act stuff, and they all like it. So please come out on September 13. That's the township board meeting when we're hopefully gonna pass this thing."¹ Ms. Boniecki also alleged that the September 13, 2021, meeting was not sufficiently

¹Homer Township Republican Organization, Meeting, August 30, 2021, *available at* https://rumble.com/vlwu10-htro-8-30-2021.html?fbclid=IwAR0r-ddXtBdNh4k4-SCnM_uTgvJ6MQBrk1eQoystbLqEWxuJc5u5eIis3yE.

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convenient to the public, in violation of section 2.01 of OMA (5 ILCS 120/2.01 (West 2020)). Specifically, she noted that the Board had moved meetings from the Town Hall, which has a 68-person capacity, to the Township Office, which has a 48-person capacity.

On October 1, 2021, this office forwarded a copy of the Request for Review to the Board and asked it to provide a written response to Ms. Boniecki's allegations. On October 19, 2021, counsel for the Board provided its written response. On October 22, 2021, this office forwarded a copy of the Board's written response to Ms. Boniecki. On November 4, 2021, Ms. Boniecki submitted a reply.

DETERMINATION

Section 2(a) of OMA

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." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

Section 2(a) of OMA (5 ILCS 120/2(a) (West 2020)) provides that "[a]ll meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." Section 1.02 of OMA defines "meeting" as:

[A]ny 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).

If a gathering of a majority of a quorum of public body members is determined to be a "meeting," then all the requirements of OMA apply, including proper advance posting of notice and an agenda (5 ILCS 120/2.02 (West 2020)), holding the meeting at a specified time and place that is convenient and open to the public (5 ILCS 120/2.01 (West 2020)), keeping minutes, and allowing public comment (5 ILCS 120/2.06(a), (g) (West 2020)).

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In this matter, the Board consists of five members; three members constitute a quorum. Therefore, if three members of the Board engaged in contemporaneous, interactive, deliberative communications which concern "public business," such communications would be subject to all of the requirements of OMA.

The Board's response, including an affidavit from Homer Township Supervisor Steven Balich, indicates that Mr. Balich did not speak with more than one member at a time before the September 13, 2021, meeting.² This office has not received evidence that a quorum of the Board engaged in contemporaneous, interactive communication about public business before that meeting. Accordingly, this office cannot conclude that the Board violated OMA by holding private discussions that constitute meetings subject to the Act.

This office cautions the Board to consider in advance whether any gatherings, in person or via e-mail, could involve three or more of its members engaging in deliberative discussions of public business, which would be "meetings" requiring advance notice and adherence to the other requirements of OMA.

Section 2.01 of OMA

Section 1 of OMA (5 ILCS 120/1 *et seq.* (West 2020)) provides that "it is the intent of this Act to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." Section 1 of OMA further provides that members of the public have "the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." Section 2.01 of OMA provides that "[a]ll meetings required by this Act to be public shall be held at specified times and places which are convenient and open to the public." "By its plain terms, section 2.01 requires a venue that is not only 'open,' but 'convenient,' to the public." *Gerwin v. Livingston County Board*, 345 Ill. App. 3d 352, 359 (4th Dist. 2003).

In addressing the meaning of "convenient" for purposes of section 2.01 of OMA, the *Gerwin* court 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.

²Affidavit of Steven Balich, Homer Township Supervisor, attached as Exhibit 1 to Letter from Lauren M. DaValle, Odelson, Sterk, Murphey, Frazier & McGrath, Ltd., to Benjamin Silver, Assistant Attorney General, Public Access Bureau (October 19, 2021).

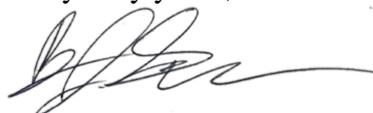
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App. 3d at 361. Accordingly, the court construed section 2.01 as requiring "not 'absolute accessibility' but 'reasonable accessibility.'" *Gerwin*, 345 Ill. App. 3d at 362, quoting *State ex rel. Badke v. Village Board of the Village of Greendale*, 173 Wis. 2d 553, 579, 494 N.W.2d 408, 418 (Wis. 1993).

The Board's response to this office stated that the Board's regular meeting location, Town Hall, had been closed for repairs so several meetings, including the September 13, 2021, meeting, were held at the Township Office. The response acknowledged that the Township Office has a smaller capacity than Town Hall and that a speaker was set up outside the Township Office to allow any members of the public who could not be seated to listen to the proceedings. However, the response also claimed that attendance at the meeting did not exceed the Township Office's 48-person capacity.³ A recording of the meeting to which Ms. Boniecki directed this office shows that the public was advised that anyone who could not be seated would have to listen to the meeting outside and that four people were given the last remaining seats. Although Ms. Boniecki disputed in her reply that Town Hall was under repair at the time of the September 13, 2021, meeting, she does not allege that the Township Office was too small to accommodate members of the public who wished to attend. This office has not received evidence that attendance on September 13, 2021, exceeded capacity of the Township Office or that any member of the public was unable to attend in-person. Even if the meeting room was over capacity, the Board appears to have taken reasonable measures to accommodate the public by setting up a speaker for members of the public to listen to the meeting. Accordingly, this office cannot conclude that the Board violated OMA by holding a meeting at this location.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at benjamin.silver@ilag.gov. This letter serves to close this file.

Very truly yours,



BENJAMIN J. SILVER
Assistant Attorney General
Public Access Bureau

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³Letter from Lauren M. DaValle, Odelson, Sterk, Murphey, Frazier & McGrath, Ltd., to Benjamin Silver, Assistant Attorney General, Public Access Bureau (October 19, 2021), at 4.

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cc: *Via electronic mail*
The Honorable Steven Balich
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