



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 7, 2017

Via electronic mail
Ms. Diane Benjamin
blnnews@yahoo.com

Via electronic mail
Mr. Paul Shannon
Executive Director
Board of Election Commissioners
City of Bloomington
115 East Washington Street, Room 403
P.O. Box 2400
Bloomington, Illinois 61702
pauls@becvote.org

RE: OMA Request for Review – 2016 PAC 45469

Dear Ms. Benjamin and Mr. Shannon:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2015 Supp.)). For the reasons explained below, the Public Access Bureau concludes that the City of Bloomington Board of Election Commissioners, sitting as the Bloomington Electoral Board (Board) violated OMA by failing to provide sufficient advance notice in connection with its December 5, 2016, and December 9, 2016, meetings. This office further concludes, however, that the Board did not hold an improper closed session discussion in violation of OMA during the December 5, 2016, meeting.

BACKGROUND

On December 15, 2016, Ms. Diane Benjamin submitted a Request for Review alleging the Board held a meeting on December 5, 2016, without giving proper public notice. She also alleged that the Board improperly closed its December 5, 2016, meeting. Ms. Benjamin further contended that during a Board meeting held on or about December 12, 2016, the Board

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voted on the adoption of rules for public comment, a matter that was not identified on the meeting agenda as an item on which final action would be taken.¹

On December 30, 2016, this office sent a copy of the Request for Review to the Board and requested a written response to the allegations in the Request for Review. We asked the Board to address (1) whether it held a meeting on December 5, 2016, and, if so, to specify when and where the meeting agenda was posted; (2) whether the Board entered closed session at its December 5, 2016, meeting, and, if so, whether the Board publicly disclosed the citation to the specific exception contained in section 2 of OMA (5 ILCS 120/2 (West 2015 Supp.), as amended by Public Acts 99-642, effective July 28, 2016; 99-646, effective July 28, 2016) that authorized the closed session; (3) whether the Board voted to adopt rules for public comment at a meeting on or near December 12, 2016, and, if so, to address whether the agenda for the meeting set forth the general subject matter of that final action, as required by section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2014)); and (4) to provide copies of the meeting notices, agendas, and all minutes, whether from open or closed sessions (draft form if necessary) for the December 5, 2016, meeting, and the meeting referenced in the Request for Review that was held on or near December 12, 2016. On January 11, 2017, the Board submitted a response letter and agendas for the December 5, 2016, and December 9, 2016, meetings and the agenda for the January 5, 2017, meeting of the Bloomington Board of Election Commissioners. Among other things, the Board explained that the meetings at issue were held for the purpose of hearing testimony from objectors to mayoral nomination petitions. Ms. Benjamin did not reply. In subsequent communications with this office, the Board clarified that the meeting during which it took final action on rules for public comment was held on December 9, 2016.²

DETERMINATION

Section 2.02(a) of OMA

The public policy of this State, as declared section 1 of OMA (5 ILCS 120/1 (West 2014)) is that "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." Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2014)) provides, in pertinent part, that "[a]n agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting[.]" and

¹Although no date of the meeting at issue was specified in the Request for Review, in an e-mail with an Assistant Attorney General in this office, Ms. Benjamin indicated that the meeting she attended likely occurred on December 12, 2016, or December 13, 2016. (E-mail from Diane Benjamin to Laura S. Harter, Assistant Attorney General, Public Access Bureau (December 29, 2016)). The Board has since confirmed via e-mail with an Assistant Attorney General in this office that the Board voted on rules for public comment during its December 9, 2016, meeting. (E-mail from Paul Shannon to Laura Harter (March 27, 2017)).

²E-mail from Paul Shannon to Laura Harter (March 24, 2017).

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that "[a] public body that has a website that the full-time staff of the public body maintains shall also post on its website the agenda of any regular meetings of the governing body of that public body."

In its response to this office, the Board confirmed that due to an oversight, it did not post the agenda for its December 5, 2016, meeting. Therefore, this office concludes that the Board violated the advance notice requirements of section 2.02(a) of OMA. Because the Board members did not take final action during the December 5, 2016, Board meeting, this office concludes that no action is necessary to remedy the Board's violation of section 2.02(a). However, we caution the Board to adhere to the advance notice requirements and all other provisions of OMA in connection with future Board meetings.

Allegation of Closed Session

OMA is intended "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2014). Section 2(a) of OMA (5 ILCS 120/2(a) (West 2015 Supp.), as amended by Public Acts 99-642, effective July 28, 2016; 99-646, effective July 28, 2016; 99-687, effective January 1, 2017) provides that all meetings of a public body shall be open to the public unless the subject of the meeting falls within one of the exceptions set out in section 2(c) of OMA (5 ILCS 120/2(c) (West 2015 Supp.), as amended by Public Acts 99-642, effective July 28, 2016; 99-646, effective July 28, 2016; 99-687, effective January 1, 2017).

Ms. Benjamin alleges that after taking a recess from the December 5, 2016, meeting, the Board met in a closed session with its attorney. She provided video footage of individuals meeting in a closed room. The video was filmed from outside of the room and therefore does not include an audio recording of any discussion that occurred among the individuals. The Board's response to this office stated that Board members moved from the meeting room to the Executive Director's office during the recess, but asserted that no public business was discussed, only the topic of a colleague's upcoming retirement party.

The requirements of OMA apply to each "meeting," which section 1.02 of OMA (5 ILCS 120/1.02 (West 2014)) defines as "any gathering, * * * of a majority of a quorum of the members of a public body **held for the purpose of discussing public business.**" (Emphasis added.) No facts provided to this office support the assertion that members of the Board discussed public business during a recess of the December 5, 2016, meeting. Therefore, this office is unable to conclude from the available information that the Board met in an illegal closed session during that recess.

Notice of Final Action

Section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2014)) provides: "Any agenda required under this Section shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting." The Senate debate on House Bill No. 4687, which as Public Act 97-827, effective January 1, 2013, added section 2.02(c) of OMA, indicates that the General Assembly intended this provision to ensure that agendas provide sufficiently descriptive advance notice of the matters upon which a public body anticipates taking final action:

[T]here was just no real requirement as to how specific [public bodies] needed to be to the public of what they were going to discuss that would be final action. And this just says that you have to have a * * * general notice, if you're going to have and take final action, as to generally what's going to be discussed so that — that people who follow their units of local government know what they're going to be acting upon. Remarks of Sen. Dillard, May 16, 2012, Senate Debate on House Bill No. 4687, at 47.

The Public Access Bureau has previously determined that "the General Assembly's use of the term 'general subject matter' signifies that a meeting agenda must set forth the main element(s), rather than the specific details, of an item on which the public body intends to take final action." Ill. Att'y Gen. PAC Req. Rev. Ltr. 45667, issued February 16, 2017, at 4-5.

In her Request for Review, Ms. Benjamin contends that the Board's agenda for the hearing to address objections to the mayoral nomination petitions did not provide sufficient advance notice of the Board's intention to propose and vote on rules for public comment. The Board explained to this office that it voted on rules for public comment during its December 9, 2016, meeting. The December 9, 2016, agenda included the following:

1. Call to Order
2. Roll Call
3. Introductory Remarks by Board Chairman
4. Adoption of Rules
5. Case No. 2016-1 Kevin Gerrard vs Tari Renner
6. Adjournment or Recess³

³The City of Bloomington Board of Election Commissioners Sitting as The Municipal Officers Electoral Board, Special Meeting, Agenda (December 9, 2016).

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The Board's response to this office explained that it must adopt rules of procedure pursuant to the Illinois Election Code (10 ILCS 5/10-10 (West 2015 Supp.), as amended by Public Act 99-642, effective July 28, 2016) for the introduction of evidence, the presentation of arguments, and for conducting the hearing.⁴ The Board also explained that the Chairman of the Board "thought that there needed to be a separate rule for public comment during an Electoral Board hearing, and therefore, a rule concerning public comment was adopted in addition to" the rules of procedure.⁵

While the phrase "adoption of rules" is generic enough to encompass both rules required by the Election Code and rules for public comment, it is so broad that it does not reasonably describe the nature of the Board's actions. The agenda's description did not provide enough information to notify the general public that the Board planned to vote on rules of procedure and rules for public comment. At a minimum, the Board should have described the general subject matter the rules were to cover. Accordingly, we conclude that the Board violated section 2.02(c) of OMA with respect to the "Adoption of Rules" agenda item.⁶ Although the Board has informed this office that it will not meet again until December 2018, at the earliest, we request that at its next meeting the Board remedy its violation of section 2.02(c) by re-voting on the rules upon which it took final action after providing sufficient advance notice of the general subject matter of those rules.

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 the Springfield address on the first page of this letter. This letter serves to close this file.

Very truly yours,



LAURA S. HARTER
Assistant Attorney General
Public Access Bureau

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⁴Section 10-10 of the Election Code provides, in part, "[t]he electoral board on the first day of its meeting shall adopt rules of procedure for the introduction of evidence and the presentation of arguments and may, in its discretion, provide for the filing of briefs by the parties to the objection or by other interested persons."

⁵Letter from Paul Shannon, Executive Director of the Bloomington Election Commission (received January 11, 2017).

⁶In her Request for Review, Ms. Benjamin also alleges that the Board's rules for public comment violate OMA. Because Ms. Benjamin did not allege that a member of the public was restricted from addressing the Board because of the rules, this office will not reach the issue of whether the rules are permissible under section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2014), as amended by Public Act 99-515, effective June 30, 2016).