



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 20, 2017

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

Via electronic mail
The Honorable Tari Renner
Mayor
City of Bloomington
109 East Olive Street
Bloomington, Illinois 61701
mayor@cityblm.org

RE: OMA Request for Review – 2017 PAC 46767

Dear Ms. Benjamin and Mayor Renner:

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 discussed below, this office concludes that the City Council of the City of Bloomington (City Council) violated 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) at its February 20, 2017, meeting. During this meeting, the City Council improperly discussed in closed session matters related to an intergovernmental agreement that were not authorized by section 2(c)(11) of OMA (5 ILCS 120/2(c)(11) (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), which permits closed session discussions of pending, probable, or imminent litigation, and which the City Council had cited as its basis for closing the meeting to the public.

BACKGROUND

On March 7, 2017, Ms. Diane Benjamin submitted a Request for Review alleging that the City Council improperly entered closed session pursuant to section 2(c)(11) of OMA during its February 20, 2017, meeting to discuss withdrawing from a tax-sharing agreement with

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the Town of Normal (Town). Ms. Benjamin asserts that there was no pending or probable litigation that permitted the City Council to close that meeting.

On March 13, 2017, the Public Access Bureau sent a copy of the Request for Review to Mayor Tari Renner, as the head of the City Council, and asked for a written response to the allegations contained therein together with copies of the verbatim recording of the February 20, 2017, closed session meeting and the meeting minutes or draft minutes. In a letter dated March 21, 2017, counsel for the City furnished copies of the closed session verbatim recording and draft minutes and a written response asserting that the City Council "properly discussed the Metro Zone in closed session as probable litigation." The City's response was marked confidential, but the City also provided a redacted version of the response letter for distribution to Ms. Benjamin, pursuant to section 3.5(c) of OMA (5 ILCS 120/3.5(c) (West 2015 Supp.)). On March 24, 2017, this office forwarded a copy of the City Council's redacted response letter to Ms. Benjamin, who replied on March 25, 2017. The City Council furnished supplemental confidential information to this office on April 3, 2017, and on May 9, 2017, counsel for the City provided this office with the approved closed session minutes of the City Council's February 20, 2017, meeting.

DETERMINATION

"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).

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 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." Such exceptions "are in derogation of the requirement that public bodies meet in the open, and therefore, the exceptions are to be **strictly construed, extending only to subjects clearly within their scope.**" (Emphasis added.) 5 ILCS 120/2(b) (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. Section 2(c)(11) of OMA permits a public body to enter into closed session to discuss "[l]itigation, when an action against, affecting or on behalf of the particular public body has been filed and is pending before a court or administrative tribunal, or when the public body finds that an action is probable or imminent, in which case the basis for the finding shall be recorded and entered into the minutes of the closed meeting."

On the day before Ms. Benjamin submitted her Request for Review questioning the permissibility of closing the February 20, 2017, meeting of the City Council, the State's

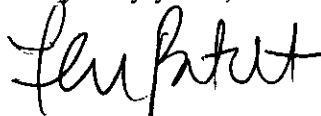
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Attorney for McLean County, the Honorable Jason Chambers, submitted a Request for Review (2017 PAC 46720) raising the same concern about the same meeting. In that matter, this office reviewed the verbatim recording and minutes of the City Council's February 20, 2017, closed session meeting, and the Attorney General issued a binding opinion concluding that the closed session was not authorized by section 2(c)(11) of OMA and therefore violated section 2(a) of OMA. Ill. Att'y Gen. Pub. Acc. Op. No. 17-004, issued June 6, 2017. Because at the time of the closed session discussion, the City Council had not yet taken definitive action to alter or terminate the tax-sharing agreement with the Town, it does not appear that the City Council had reasonable grounds to believe that a lawsuit was more likely than not to be instituted or was close at hand. Ill. Att'y Gen. Pub. Acc. Op. No. 17-004, at 7. Additionally, even if the City Council's finding that litigation was "probable or imminent" was reasonable, the closed session discussion did not focus on litigation, as required by the 2(c)(11) exception, but instead focused on the City Council's course of action with respect to the tax-sharing agreement. Ill. Att'y Gen. Pub. Acc. Op. No. 17-004, at 7. This office reiterates those findings in this matter, and again concludes that the City Council violated section 2(a) of OMA by improperly discussing matters related to the agreement during the closed session portion of its February 20, 2017, meeting.

In accordance with the determination in Binding Opinion 17-004, the Attorney General directed the City Council to remedy the violation of section 2(a) of OMA by disclosing to State's Attorney Chambers and making publicly available the closed session verbatim recording of its February 20, 2017, meeting. As required by section 3.5(e) of OMA (5 ILCS 120/3.5 (West 2015 Supp.)), the City Council shall either take necessary action as soon as practical to comply with the directives of Binding Opinion 17-004 or shall initiate administrative review under section 7.5 of OMA. 5 ILCS 120/7.5 (West 2014). In accordance with this determination, this office requests that the City Council also disclose the closed session verbatim recording of its February 20, 2017, meeting to Ms. Benjamin.

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, you may contact me at (312) 814-6473 or the Chicago address on the first page of this letter. This letter serves to close this file.

Very truly yours,



LEAH BARTELT
Assistant Attorney General
Public Access Bureau

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cc: *Via electronic mail*
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