



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

August 7, 2018

*Via electronic mail*

Ms. Diane Benjamin  
Bloomington Normal News  
blnnews@yahoo.com

*Via electronic mail*

Mr. Brian Day  
Corporation Counsel  
Town of Normal  
11 Uptown Circle  
Post Office Box 589  
Normal, Illinois 61761-0589  
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RE: OMA Request for Review – 2018 PAC 51301

Dear Ms. Benjamin and Mr. Day:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the Town of Normal (Town) Town Council (Town Council) provided the required advance notice of its January 18, 2018, meeting, but improperly failed to keep minutes of that meeting.

On January 19, 2018, the Public Access Bureau received a Request for Review from Ms. Diane Benjamin, on behalf of Bloomington Normal News, alleging that the Town Council did not post notice or an agenda for a January 18, 2018, budget work session attended by a majority of a quorum of members of the Town Council. In particular, Ms. Benjamin asserted that no notice had been posted to the Town's website, and that "[t]he only notice of this meeting appeared in the press[.]"<sup>1</sup> On January 24, 2018, this office sent a copy of the Request for Review

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<sup>1</sup>E-mail from Diane Benjamin, BlnNews.com, to Public Access, Office of the Attorney General (January 19, 2018).

Ms. Diane Benjamin  
Mr. Brian Day  
August 7, 2018  
Page 2

to the Town Council and asked it to respond to Ms. Benjamin's allegations. On January 24, 2018, counsel for the Town provided this office with a written answer on behalf of the Town Council. On January 31, 2018, this office sent Ms. Benjamin a copy of the Town Council's answer; she submitted a written reply on February 1, 2018. On July 17, 2018, an Assistant Attorney General in the Public Access Bureau contacted counsel for the Town requesting a copy of the minutes of the January 18, 2018, meeting and clarification of any votes that were taken, at the meeting. On July 30, 2018, the Town Council provided a supplemental response.

### 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 2016). "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).

As an initial matter, there appears to be a question of whether the January 18, 2018, budget work session was a "meeting" that was subject to the requirements of OMA. OMA defines a "meeting" as "any gathering \* \* \* of a majority of a quorum of the members of a public body held for the purpose of discussing public business." 5 ILCS 120/1.02 (West 2016). In its answer to this office, the Town Council stated that "[a]ll seven Council members attended [the work session]."<sup>2</sup> Although the Town Council stated it did not "conduct any formal business"<sup>3</sup> at the work session, the Town Council's supplemental response provided a list of budgetary items that were discussed during the work session. Because a majority of a quorum of Town Council members were present at the budget work session and because the members were discussing matters concerning the Town's budget, which is public business, this office concludes that the Town Council's January 18, 2018, budget work session was a "meeting" as defined by section 1.02 of OMA. Therefore, the Town Council was required to adhere to all requirements of OMA related to the meeting.

With respect to the notice and agenda requirements of OMA, section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016)) requires a public body to post notice and an agenda for its meetings "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." Section 2.02(b) of OMA (5

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<sup>2</sup>Letter from Brian Day, Corporation Counsel, Town of Normal, to Sandra Cook, Assistant Attorney General, Public Access Bureau (January 24, 2018), at 1.

<sup>3</sup>Letter from Brian Day, Corporation Counsel, Town of Normal, to Sandra Cook, Assistant Attorney General, Public Access Bureau (January 24, 2018), at 1.

Ms. Diane Benjamin  
Mr. Brian Day  
August 7, 2018  
Page 3

ILCS 120/2.02(b) (West 2016)) further requires "a public body that has a website that the full-time staff of the public body maintains shall post notice on its website of all meetings of the governing body of the public body." In addition, a public body must "ensure that at least one copy of any requested notice and agenda for the meeting is continuously available for public review during the entire 48-hour period preceding the meeting." 5 ILCS 120/2.02(c) (West 2016). Section 2.02(c) of OMA also states that "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." Under the plain language of those provisions, a public body must post notice and an agenda of its meetings at least 48 hours before the meeting, have one copy of the notice and agenda available for continuous review by the public during that time period, and post the notice and agenda to its website if the public body's full-time staff maintain the public body's website.

The Town Council's answer to this office stated: "the Town posted notice at both City Hall, where the workshop occurred and on the Town's website. The notice included the time, place, and date of the workshop. It also included [an] item that it was a budget discussion workshop. The notice was placed in both locations on November 29, 2017[.]"<sup>4</sup> The Town Council's response further stated that notice of the January 18, 2018, meeting was also posted to the schedule of events on the front page of the Town's website. Ms. Benjamin replied by asserting that notice of the meeting was not provided in the location of the website where agendas for meetings are usually posted. She also alleged that the final decisions had been made at the meeting

It is undisputed that notice of the meeting was posted at the location of the meeting and the principal office of the Town at least a month and a half before the work session. Further, it is undisputed that notice of the meeting was posted on the Town's website. Ms. Benjamin appears to allege that the Town improperly posted notice on the front page of its website instead of under the agenda section of the website. No provision of OMA specifies the exact place on a public body's website that notice must be posted. The Town Council posted notice of the meeting in the upcoming events section of the front page of the Town's website where any visitor to the website could view it. Because the Town Council posted notice on the Town's website and because the posted location on the website was reasonably accessible to any person visiting the Town's website, this office concludes that the Town Council did not violate OMA by posting the notice of the budget workshop meeting in a different place on its website. This office further concludes, based on the available information, that the Town Council posted notice of the January 18, 2018, meeting at the principal office of the Town and at the location of the meeting as required by section 2.02(a) of OMA.

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<sup>4</sup>Letter from Brian Day, Corporation Counsel, Town of Normal, to Sandra Cook, Assistant Attorney General, Public Access Bureau (January 24, 2018), at 1.

Ms. Diane Benjamin  
Mr. Brian Day  
August 7, 2018  
Page 4

Ms. Benjamin also alleges that the Town violated OMA by failing to create and post an agenda for the meeting, in addition to the notice that was posted at City Hall and on the website. In its answer to this office, the Town Council stated that "[b]ecause there was no business conducted, there was no agenda other than the general description of the topic of discussion included on the notice."<sup>5</sup> The Town Council further stated that "[t]he workshop was for discussion purposes only. The Council took no final actions, nor did it conduct any formal business. No votes were taken."<sup>6</sup> The notice of the January 18, 2018, meeting was titled "Budget Work Session" and stated "notice is hereby given the Normal Town Council has been invited to several events in which a majority of the Council may be present. These events include: Budget Work Session Thursday, January 18, 2018 – Noon Normal City Hall."<sup>7</sup>

In her reply to that response, Ms. Benjamin alleged that the Town Council made final decisions by taking straw votes at the work session. Ms. Benjamin provided this office with a link to an article in *The Pantagraph* about the January 18, 2018, meeting that stated "[t]he council also **agreed through a series of straw polls** to eliminate its drop-box recycling program, a \$140,000 annual savings; the Bone Grant program, \$25,000; its annual Martin Luther King Jr. Day banquet, \$25,000; and the Normal Police substation on Orlando Avenue, \$20,000."<sup>8</sup> (Emphasis added.) In its July 30, 2018, supplemental response to this office, the Town Council asserted that no votes, including straw votes, were taken.

Regardless of whether any straw votes took place at the meeting, the Illinois Supreme Court has stated that preliminary votes, or straw votes, are not considered final action under OMA. *See Board of Education of Springfield School District No. 186 v. Attorney General of Illinois*, 2017 IL 120343, ¶73, 77 N.E.3d 625, 637 (2017) (finding that OMA's prohibition on final action in closed session does not prohibit a public body from taking preliminary votes in closed session). Further, the Town Council has confirmed that all matters discussed at the

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<sup>5</sup>Letter from Brian Day, Corporation Counsel, Town of Normal, to Sandra Cook, Assistant Attorney General, Public Access Bureau (January 24, 2018), at 1.

<sup>6</sup>Letter from Brian Day, Corporation Counsel, Town of Normal, to Sandra Cook, Assistant Attorney General, Public Access Bureau (January 24, 2018), at 1.

<sup>7</sup>Town Council, Town of Normal, Notice, Budget Work Session, Thursday, January 18, 2018, available at <http://www.normal.org/Calendar.aspx?EID=4648&month=7&year=2018&day=12&calType=0> (last accessed July 12, 2018).

<sup>8</sup>Derek Beigh, *Normal to cut 20 jobs, programs for \$4.25M Deficit*, THE PANTAGRAPH (Jan. 19, 2018), [https://www.pantagraph.com/news/local/government-and-politics/normal-to-cut-jobs-programs-for-m-deficit/article\\_4dd86157-44b1-57ad-b068-df901479331c.html#tracking-source=home-top-story-1](https://www.pantagraph.com/news/local/government-and-politics/normal-to-cut-jobs-programs-for-m-deficit/article_4dd86157-44b1-57ad-b068-df901479331c.html#tracking-source=home-top-story-1).

Ms. Diane Benjamin  
Mr. Brian Day  
August 7, 2018  
Page 5

January 18, 2018, budget session were the subject of final action at a properly noticed public meeting of the Town Council on March 5, 2018.

As noted above, OMA requires that an agenda list the general subject matter of an item subject to final action. This office is unable to conclude from the available information that the Town Council took final action at the meeting. Further, the notice provided by the Town Council informed the public that the general subject matter of the Town Council's discussion would be the budget. Accordingly, this office concludes that the Town Council's posted notice contained sufficient information about the subject of discussions at the meeting to constitute an agenda. Although this office concludes that information in the notice posted by the Town Council was sufficient as an agenda for the meeting, we remind the Town Council that, pursuant to the plain language of section 2.02(a) of OMA<sup>9</sup>, discussion of matters in a special meeting are limited to those specifically listed on the agenda. *See Ill. Att'y Gen. PAC Req. Rev. Ltr 32604*, issued April 9, 2015, at 3 (concluding that section 2.02(a) of OMA provides that in a special meeting, unlike in a regular meeting, a public body may only discuss those topics listed on the agenda for the meeting).

In its supplemental response to this office, the Town Council stated that no formal minutes were kept of the January 18, 2018, budget work session because "[the meeting] was a general budget discussion."<sup>10</sup> As noted above, the budget work session of the Town Council was a "meeting" for purposes of OMA, and the Town Council was obligated to adhere to each of the requirements of OMA with respect to that meeting. Section 2.06(a) of OMA (5 ILCS 120/2.06(a) (West 2016)) provides that:

All public bodies shall keep written minutes of all their meetings, whether open or closed, and a verbatim record of all their closed meetings in the form of an audio or video recording. Minutes shall include, but need not be limited to:

- (1) the date, time and place of the meeting;
- (2) the members of the public body recorded as either present or absent and whether the members were physically present or present by means of video or audio conference; and
- (3) a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken.

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<sup>9</sup>The relevant portion of section 2.02(a) of OMA concerning discussion matters not listed on the agenda provides: "The requirement of a regular meeting agenda shall not preclude the consideration of items not specifically set forth in the agenda."


<sup>10</sup>E-mail from Brian Day, Corporation Counsel, Town of Normal, to Matt Hartman, Assistant Attorney General, Public Access Bureau (July 30, 2018).

Ms. Diane Benjamin  
Mr. Brian Day  
August 7, 2018  
Page 6

Because the Town Council has acknowledged that it did not keep minutes of January 18, 2018, meeting and because section 2.06(a) requires the Town Council to keep minutes of all of its meetings, this office concludes that the Town Council violated OMA. In order to remedy this violation, this office requests that the Town Council create minutes of its January 18, 2018, meeting that comply with section 2.06(a) of OMA using available resources, such as notes, to create the minutes.

The Public Access Counselor has determined that resolution of this matters does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, please contact me at (217) 782-9054, [mhartman@atg.state.il.us](mailto:mhartman@atg.state.il.us), or the Springfield address on the bottom of the first page of this letter.

Very truly yours,

  
MATT HARTMAN  
Assistant Attorney General  
Public Access Bureau

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