



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

September 13, 2018

Via electronic mail
Ms. Diane Benjamin
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Via electronic mail
The Honorable John McIntyre
Chairman
McLean County Board
115 East Washington Street
Bloomington, Illinois 61701
john.mcintyre@mcleancountyil.gov

RE: Open Meetings Act Request for Review – 2018 PAC 53982

Dear Ms. Benjamin and Chairman McIntyre:

This determination letter 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 is unable to conclude that the McLean County Board (Board) violated the requirements of OMA in connection with a gathering held on July 11, 2018.

On July 11, 2018, Ms. Diane Benjamin submitted a Request for Review to the Public Access Bureau alleging that the Board held a meeting without adhering to the requirements of OMA during a legislative breakfast earlier that same day. On August 14, 2018, this office sent a copy of the Request for Review to the Board and asked it to respond to the allegations by addressing whether a majority of a quorum of its members gathered together on the date in question, and, if so, whether the members discussed public business at that gathering.

On August 23, 2018, counsel for the Board provided a written response, confirming that a majority of a quorum of Board members gathered with area members of the Illinois General Assembly and members of the public on the date in question. The Board asserted, however, that no two Board members addressed one another, nor did they discuss among themselves the public business of the county. Rather, the Board stated that the gathering

Ms. Diane Benjamin
The Honorable John McIntyre
September 13, 2018
Page 2

provided an opportunity for the State legislators to comment on the recently-concluded legislative session and address questions or concerns from those in attendance. On August 28, 2018, this office received from the Board an audio recording of the gathering in question. On August 30, 2018, this office forwarded a copy of the Board's written response to Ms. Benjamin. On that same date, she replied, reiterating her contention that the gathering was a meeting subject to the requirements of OMA.

DETERMINATION

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 2016).

Section 2(a) of OMA (5 ILCS 120/2(a) (West 2017 Supp.), as amended by Public Act 100-646, effective July 31, 2018) 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 (5 ILCS 120/1.02 (West 2016)) defines a "meeting" subject to the Act 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[.]

If a gathering of members of a public body meets this definition, then all of the requirements of OMA apply, including the proper posting of notice and an agenda (5 ILCS 120/2.02(a) (West 2016)), holding the meeting at a specified time and place that is convenient and open to the public (5 ILCS 120/2.01 (West 2017 Supp.)), keeping minutes (5 ILCS 120/2.06(a) (West 2016)), and allowing public recording (5 ILCS 120/2.05 (West 2016)) and comment (5 ILCS 120/2.06(g) (West 2016)).

However, OMA "is not intended to prohibit bona fide social gatherings of public officials, or truly political meetings at which party business is discussed. Rather, the Act is designed to prohibit secret deliberation and action on business which properly should be discussed in a public forum due to its potential impact on the public." *People ex rel. Difanis v. Barr*, 83 Ill. 2d 191, 202 (1980). "In theory, there is no absolute prohibition against the members of a public body attending an 'informational meeting' without triggering the application of" OMA, as long as the members do not make "[d]eliberational statements" or engage in "unrecorded discussions" among themselves. Ill. Att'y Gen. Op. No. 95-004, issued July 14, 1995, at 10-11. In that opinion the Attorney General concluded that the "mere fact that a

Ms. Diane Benjamin
The Honorable John McIntyre
September 13, 2018
Page 3

majority of a quorum of the members of a public body attend and participate in a bona fide presentation on new legislative developments in an area of public concern" did not make the presentation subject to OMA, but the extensive discussions of public business by members of two county boards during the presentation did trigger the requirements of OMA. (Emphasis in original.) Ill. Att'y Gen. Op. No. 95-004, at 10-11; *see also Nabhani v. Coglianesi*, 552 F. Supp. 657, 661 (N.D. Ill. 1982) (a gathering does not constitute a meeting for purposes of OMA when there is "no examining or weighing of reasons for or against a course of action, no exchange of facts preliminary to a decision, [and] no attempt to reach accord on a specific matter of public business.")

Although the Board acknowledged that a majority of a quorum of its 20 members gathered at the July 11, 2018, legislative breakfast, it also asserted that no two members discussed among themselves the public business of the county. The Board also noted that it posted a "Notice of Special Event" at both entrances of the McLean County Government Center as a courtesy to members of the public and media, all of whom were openly invited to the event. The Board did not, however, prepare any agenda for the gathering, as it did not intend to discuss or take final action on any items of public business, as governed by OMA.

This office has reviewed the audio recording provided, which captures approximately 53 minutes of the July 11, 2018, gathering. The first 16 minutes of the recording consist of self-introductions by each of the invited legislators, followed by individual questions from those gathered in the meeting space. Although this office was unable to clearly identify each speaker, it was readily apparent that members of the Board, members of the Board's legislative sub-committee, and other county officers and dignitaries present posed questions to the state legislators. A great majority of the recording consists of the State legislators' opinions on the current state of legislative affairs both across the State and in and around the McLean County area. At no point, however, was this office able to identify a time when two or more Board members discussed public business or otherwise attempted to reach accord on any matter of public business. As discussed above, a gathering of a majority of a quorum of the members of a public body is subject to the safeguards of OMA only if the members gather "for the purpose of discussing public business." *See, e.g.,* Ill. Att'y Gen. PAC Req. Rev. Ltr. 28092, issued March 6, 2014 (allegation that members of public body met at brewery per Facebook post was insufficient to find that an improper meeting was held absent evidence that they discussed public business amongst themselves). Accordingly, based on the available information, this office lacks sufficient evidence to conclude that the Board violated OMA in connection with the July 11, 2018, gathering.

Ms. Diane Benjamin
The Honorable John McIntyre
September 13, 2018
Page 4

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, you may contact me at (217) 785-7438.

Very truly yours,



CHRISTOPHER R. BOGGS
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Public Access Bureau

53982 2a meeting proper co

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