



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

February 26, 2015

Via electronic mail
Mr. Robert O. Bogue
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Via electronic mail
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Edgar County Clerk & Recorder
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RE: OMA Request for Review – 2013 PAC 27233

Dear Mr. Bogue and Mr. Griffin:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2012)). For the reasons that follow, the Public Access Bureau concludes that the Edgar County Board (Board) violated OMA by holding a meeting on December 6, 2013, without providing advance notice.

On December 10, 2013, Mr. Robert O. Bogue submitted a Request for Review to the Public Access Bureau alleging that a majority of a quorum of Board members attended and actively participated in the open and closed sessions of the Edgar County Airport Committee (Committee) meeting on December 6, 2013, and did not provide notice to the public or post an agenda for the Board meeting. On December 19, 2013, this office forwarded a copy of the Request for Review to the Board and asked it to respond to Mr. Bogue's allegations.

On January 7, 2014, this office received the Board's response. The Board stated that the Board consists of seven members and the Committee consists of two of those Board members. The Board stated that Committee members Karl Farnham, Jr. and Jeff Voigt were

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present at the December 6, 2013, Committee meeting, and that three additional Board members, Mike Heltsley, Dan Bruner, and Ben Jenness, who do not serve on the Committee also attended. The Board stated that the members of the Committee and the additional Board members who were present discussed the Main Hangar, a grant from the Federal Aviation Administration, access to fuel tanks, and the role of the Airport Advisory Board in open session, and discussed employee matters and pending litigation in closed session. The Board also provided this office with a copy of the agenda for the Committee meeting; the Board acknowledged that advance notice was not provided for a Board meeting.

On January 7, 2014, this office forwarded the Board's response to Mr. Bogue. On January 10, 2014, he replied that five of the seven Board members – a quorum of the Board – were present and actively participated in the open and closed sessions of the December 6, 2013, Committee meeting. On January 17, 2014, this office requested clarification from the Board on the participation of the three additional Board members who were present at the Committee meeting. This office also requested a copy of the verbatim recording of the closed session of the meeting. On January 31, 2014, the Board responded that "[t]he other three Board members in attendance had previously served on the Airport Committee and were present for historical significance. All five Board members participated in the meeting."¹ On January 8, 2015, this office received a hard copy of the verbatim recording of the closed session of the Committee meeting.

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 2012). Section 1 of OMA states that "it is the intent of this Act to protect the citizen's right to know[.]". To ensure that citizens know when a public body meets, section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2012)) provides 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." Section 2.02(a) also provides:

Public notice of any special meeting except a meeting held in the event of a bona fide emergency, or of any rescheduled regular meeting, or of any reconvened meeting, shall be given at least 48 hours before such meeting, which notice shall also include the agenda for the special, rescheduled, or reconvened meeting.

¹Letter from August H. Griffin, Edgar County Clerk, to Matt Hartman, Assistant Attorney General, [Public Access Bureau] (January 31, 2014).

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Section 1.02 of OMA (5 ILCS 120/1.02 (West 2012)) defines a "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 members of a public body held for the purpose of discussing public business.

The Board consists of seven members. Five Board members, which is a quorum of the Board, attended the open and closed sessions of the Committee meeting. Members of a public body who serve on a committee of a public body do not count toward a majority of a quorum of the full public body during a committee meeting provided that the discussion is confined to committee business. Ill. Att'y Gen. PAC Req. Rev. Ltr. 32213, issued December 8, 2014. However, in this matter, three Board members – a majority of a quorum of the Board – who do not serve on the Committee also participated in the Committee meeting. Therefore, if those three members attended the Committee meeting and discussed public business of the Board, the Committee meeting would also constitute a "meeting" of the full Board as defined in section 1.02 of OMA.

Mr. Bogue alleged that the five Board members met in closed session to discuss the possible discipline of the Edgar County Airport manager without providing advance notice or posting an agenda. Specifically, Mr. Bogue alleged that, during the closed session, the Airport manager resigned and the members decided to stop the investigation of the manager and recommend that the Board accept his resignation. The Board stated that the Committee entered closed session to discuss "the appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body, and to discuss pending litigation."² The Board does not dispute Mr. Bogue's contention that there was no notice or agenda for a Board meeting on December 6, 2013; instead, the Board maintains that the December 6, 2013, meeting was solely a Committee meeting, not a Board meeting.

The Office of the Attorney General has stated that "whether a gathering falls within the definition of meeting as used in the Act, would depend on the peculiar facts in each situation." Ill. Att'y Gen. Op. No. S-726, issued March 22, 1974, at 126. A gathering does not constitute a meeting where there is "no examining or weighing of reasons for or against a course

²Letter from August H. Griffin, Edgar County Clerk, to Matt Hartman, Assistant Attorney General, Public Access Bureau (December 27, 2013).

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of action, no exchange of facts preliminary to a decision, [and] no attempt to reach accord on a specific matter of public business." *Nabhani v. Coglianese*, 552 F. Supp. 657, 661 (N.D. Ill. 1982); *see also People ex rel. Difanis v. Barr*, 83 Ill. 2d 191, 202 (1980) (OMA "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."). The Public Access Bureau has previously determined that a majority of a quorum of a village board could attend a public meeting of the village planning commission without violating OMA if the board members did not engage in deliberative discussions concerning the public business of the board. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 12407, issued April 14, 2011, at 2. Unlike the members of the village board in our previous determination who merely observed the meeting, the Board in this matter acknowledges that all five Board members who attended the Committee meeting, including the three members who do not serve on the Committee, actively participated in the meeting.

Our review of the closed session verbatim recording of the December 6, 2013, meeting confirms that the five Board members deliberated on the employment, performance, discipline, and dismissal of the Airport manager. The Board members, however, did not vote to stop an investigation, recommend the employee's resignation to the Board, or otherwise take final action. The Airport manager is an employee of Edgar County, and discussions concerning the employment, performance, discipline, and dismissal of a County employee constitute public business of the Committee as well as the full Board. Accordingly, this office concludes that the three members of the Board who do not serve on the Committee held a Board meeting by deliberating on public business of the Board during the December 6, 2013, Committee meeting. Because a majority of a quorum of the Board met on December 6, 2013, to discuss Board business without providing advance notice or posting an agenda, the Board violated section 2.02(a) of OMA.

Because the Board members did not take final action during the December 6, 2013, Committee meeting, this office finds that no remedial 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 and Committee meetings. In particular, we emphasize that a majority of a quorum of Board members triggers all the procedural safeguards and requirements of OMA by participating in deliberative discussions of public business of the Board during meetings of Committees that they do not serve on.

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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) 782-9054 or at 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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