



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 19, 2018

Via electronic mail

Mr. John Kraft

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX
Paris, Illinois 61944
XXXXXXXXXXXXXXXXXXXXXXXXXXXX
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RE: OMA Request for Review – 2017 PAC 51019

Dear Mr. Kraft:

The Public Access Bureau has received the attached response letter to your Request for Review from the Jasper County Community Unit School District #1.

You may, but are not required to, reply in writing to the public body's response. If you choose to reply, you must submit your reply to this office within seven (7) working days of your receipt of this letter. 5 ILCS 140/9.5(d) (West 2016). Please send a copy of your reply to Mr. Steven M. Richart as well. Please contact me at the Springfield address listed below or by calling (217) 782-1699 if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Sandra Cook", is written over the typed name.

SANDRA COOK
Assistant Attorney General
Public Access Bureau

Attachment

cc: *Via electronic mail*
Mr. Steven M. Richart
Hodges Loizzi
Eisenhammer Rodick & Kohn LLP
3030 Salt Creek Lane, Suite 202
Arlington Heights, Illinois 60005
srichart@hlerk.com

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Eisenhammer Rodick & Kohn LLP

Steven M. Richart
srichart@hlerk.com

January 18, 2018

Via Electronic Mail

Ms. Sandra Cook
Assistant Attorney General, Public Access Bureau
Office of the Attorney General
500 South Street
Springfield, Illinois 60601
SCook@atg.state.il.us

Re: OMA Request for Review – 2017 PAC 51019 (Kraft)

Dear Ms. Cook:

We are writing in response to your January 2, 2018, further inquiry letter regarding the above-referenced matter, which was received by Jasper County Community Unit School District No.1 (the "District") on January 8, 2018. We represent the District in this matter and submit the requested response on the District's behalf.

Mr. Kraft's Request for Review is focused solely on conduct by the Board of Education that took place after its regular meeting on December 18, 2017, had already adjourned. Mr. Kraft does not allege that the Board violated the *Open Meetings Act* ("OMA"), 5 ILCS 120/1 *et seq.*, in any way during its meeting. Rather, he alleges that the Board violated the OMA when, after the meeting had adjourned, it closed the door to the room for "approximately 29 seconds" (according to Mr. Kraft's own Request for Review) while a police officer interviewed one or more Board members about a reported disturbance that had just taken place. As discussed further below, closing the door for what Mr. Kraft concedes was only 29 seconds after a lawful meeting has already adjourned simply does not establish that a "meeting" occurred or that there was any OMA violation. Mr. Kraft's allegations are meritless.

By way of background, Mr. Kraft is a reporter for the Edgar County Watchdog, a local government watchdog group that publishes a website titled, "Illinois Leaks." Mr. Kraft and his colleagues selectively post videos from school board meetings that they attend and provide commentary through articles and videos, which are often incomplete and provide faulty legal analysis. Mr. Kraft was present at the Board's meeting on December 18, 2017, and participated in public comment during the meeting. Although Illinois Leaks did not post the recording of the

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public comment during the Board meeting, the Board allowed Mr. Kraft to speak and received him politely with no objections.

As stated in Mr. Kraft's Request for Review, the Board had already adjourned the meeting when, apparently dissatisfied with the Board's response to his comment during the meeting, Mr. Kraft walked up to the Board table without permission to "ask a couple question [*sic*]," which led to a discussion in which he began to "raise the volume of [his] voice." (See Mr. Kraft's Request for Review.) A video of the encounter has been posted online by Illinois Leaks.¹ Mr. Kraft, an imposing figure, approached the Board table, where all of the Board members were seated after adjourning the meeting, and began to speak with a loud and angry tone. One Board member, Holly Farley, politely stated, "No thank you, Sir," and informed Mr. Kraft that the meeting was over. *Id.* at 6:00. Mr. Kraft, however, did not stop and stated, "I'm going to ask anyway." *Id.* at 6:02. The tone of the ensuing discussion escalated. Mr. Kraft, quite a large man, continued to angrily raise his voice and make wild gestures as he towered over the Board members. A female Board member, clearly feeling threatened, clutched her belongings as Mr. Kraft continued his tirade. The police were eventually called and Mr. Kraft left the Board room. Upon arrival, the police officers began to question Mr. Kraft and his colleague. Even in responding to the police, Mr. Kraft was difficult and argumentative when asked to show his media badge and driver's license.

While being interviewed by the police, the Board members closed the door to the Board room for what Mr. Kraft concedes was "approximately 29 seconds." *Id.* at 16:30. After the interview was over, the door opened and the police left the room. The Board members collected their belongings and left. Mr. Kraft is alleging that this closing of a door for a few moments during an interview of the Board members by the police was an improper closed session meeting. Specifically, Mr. Kraft is alleging that the Board (1) failed to vote during open session to enter this alleged closed session, (2) failed to disclose the reason for entering this alleged closed session, (3) failed to record the votes of each member to enter into this alleged closed session, (4) entered this supposed closed session for a reason outside of those provided under OMA, and (5) failed to record the ensuing closed session meeting. All of these allegations rest on the faulty premise that the Board engaged in another "meeting" under OMA during the 29 seconds when the door was closed. Mr. Kraft's Request for Review makes it abundantly clear that he has a severe misunderstanding of the law. His efforts to bate the Board into situations he can characterize as violations of OMA are fruitless; he is merely wasting District resources and taxpayer dollars.

In your letter dated January 2, 2018, you requested the District to respond to Mr. Kraft's allegations and provide copies of the notice, agenda, and minutes of the December 18, 2017, Board meeting. Per your request, we have included the notice, agenda, and draft minutes from the December 18, 2017, Board meeting for your review. In response to your request that we

¹ See https://www.youtube.com/watch?v=ZrKQXY24t_g&feature=youtu.be, starting at 5:40

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address Mr. Kraft's allegations, we provide the arguments below.

A. The Board Fully Complied With OMA Requirements During its December 18, 2017 Meeting.

Mr. Kraft does not accuse the Board of failing to comply with any OMA requirements during its December 18, 2017, meeting, and the enclosed exhibits demonstrate the Board's compliance with OMA. A notice for the meeting was publicly posted at least 48 hours in advance; public comment was allowed (and Mr. Kraft participated in it); minutes were kept; and a lawful closed session took place that was preceded by an appropriate roll call motion citing to the relevant OMA exceptions allowing closed session. As properly reflected in the agenda and draft minutes, only one closed session meeting occurred on December 18, 2017, and the Board fully complied with the requirements of OMA with respect to that meeting.

B. The Board Did Not Hold an Unlawful Closed Session Meeting When It Closed the Door for 29 Seconds After the Meeting Had Already Adjourned.

Under OMA, a "[m]eeting" means 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 (emphasis added). "[T]he Act comes into play only where public business which could eventually come up for decision before the full body is deliberated or acted upon in private." *People ex rel. Difanis v. Barr*, 83 Ill. 2d 191, 203 (1980) (determining that board members may participate in political caucus without implicating OMA). Particularly applicable to this case is the Northern District of Illinois's analysis of a "meeting":

In the case at bar, evidence of the statements made at the gathering fails to elevate the event to the status of a 'meeting' within Illinois law. There was no examining or weighing of reasons for or against a course of action, no exchange of facts preliminary to a decision, no attempt to reach accord on a specific matter of school district business. Instead, the evidence shows that the participants' discussions were exclusively political in nature.

Nabhani v. Coglianese, 552 F. Supp. 657, 661 (N.D. Ill. 1982) (holding there was no board meeting when board members were present at a political rally).

As both the Illinois Supreme Court and the Northern District of Illinois have made clear, a gathering of board members is not inherently a Board meeting. The purpose of the meeting must be one of "discussing public business." 5 ILCS 120/1.02. In *Difanis*, the Illinois Supreme Court noted,

It is unlikely that the casual non-prearranged conversation among less than, or even all, of the members of a particular body in a coffee shop, during which the

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business of the body was discussed, would constitute a meeting within the terms of the Act. I assume such a gathering is primarily a social gathering and business is discussed only incidentally between certain individuals and not among the group as a whole. Of course, if any decisions or agreements to make decisions are made, such a gathering would be a meeting within the terms of the Act. The Act is only addressed to meetings designed to discuss or reach an accord with regard to public business which properly should be deliberated or acted upon in an open forum.

83 Ill. 2d at 210 (internal citations and quotations omitted).

In this case, at approximately 7:08 pm on December 18, 2017, the Board adjourned its meeting for the night. Then, Mr. Kraft began harassing Board members. After the police were called because of Mr. Kraft's inappropriate conduct, a police officer met with the Board members to obtain a statement regarding the incident that had transpired. Like in *Nabhani*, the Board members' discussion with the police officer behind a closed door for 29 seconds did not involve any weighing of reasons for or against a course of action to be taken by the Board, exchanging facts preliminary to a Board decision, or attempting to reach an agreement on school district business. Indeed, 29 seconds is simply not enough time for any board to deliberate over a new issue, reach a conclusion, and vote on it. We know from the context and surprise of the situation that there was no way the Board members could have previously considered this issue. It takes this Board approximately 15 seconds just to vote on an item.² It would have been humanly impossible to conduct a closed session in the timeframe Mr. Kraft is alleging. Further, Mr. Kraft does not (and cannot) allege that anything that transpired during those 29 seconds amounted to a discussion of public business. In fact, nothing was said during those 29 seconds that related to any Board decision. There was hardly time to discuss *anything* other than to decide to open the door. Rather, the Board members were merely describing events that already occurred so the police officer may determine *his* next course of action. This was not a matter of public business, and the Board was not going to take any action regarding this matter.

Mr. Kraft's interpretation of a "meeting" clearly goes against the definition provided for in OMA and as interpreted by the courts. There was no closed session meeting after the scheduled Board meeting adjourned and, thus, no OMA violation.

Conclusion

For the reasons set forth above, the District's Board members have committed no violation under OMA. The District requests a finding to this effect and the dismissal of Mr. Kraft's Request for Review. If you have any questions or require any further information, please do not hesitate to contact us.

² See https://www.youtube.com/watch?v=ZrKQXY24t_g&feature=youtu.be, from 0:35-:0:50.

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Ms. Sandra Cook

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Sincerely,

HODGES, LOIZZI, EISENHAMMER,
RODICK & KOHN LLP



Steven M. Richart

Enclosures

cc: Andy Johnson, Superintendent

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