



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

November 26, 2012

*Via electronic and U.S. mail*

Mr. John Kraft  
7060 Illinois Highway 1  
Paris, Illinois 61944  
john.m.kraft@us.army.mil

Mayor Jim Cooper  
Village of Redmon  
P.O. Box 215  
Redmon, Illinois 61949

RE: OMA Request for Review – 2012 PAC 21367

Dear Mr. Kraft and Mr. Cooper:

Pursuant to section 3.5 of the Open Meetings Act (OMA) (5 ILCS 120/3.5(a) (West 2010)), the Public Access Bureau has received a Request for Review in which Mr. John Kraft alleges that the Village of Redmon (Village) violated OMA at its September 10, 2012, meeting by voting on matters that were not listed on the meeting agenda. Specifically, Mr. Kraft alleged that the Council 1) "[v]oted to contract with Mr. Ben Leukin for the Audit[;]" 2) "[v]oted to contract with Kemper Tree Service for removal of a tree[;]" 3) "[v]oted to contract with Bob Horslay[] Tree Removal for removal of a tree[;]" and 4) "[v]oted to pay bills presented."<sup>1</sup>

On September 21, 2012, we forwarded a copy of the Request for Review to the Village and requested a written response to Mr. Kraft's allegations. In a September 26, 2012, telephone conversation with this office, Village Mayor Jim Cooper asserted that the Village complied with OMA based on guidelines in the Illinois Municipal Handbook. Mayor Cooper stated that the Village had posted at the front of its Town Hall: 1) a list of all scheduled meetings for the year and 2) a form of the agenda used for all meetings. He stated that, according to the Handbook, the Village did not think it needed a separate agenda for each meeting if every meeting agenda was identical. On October 1, 2012, the Village submitted its written response to

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<sup>1</sup> Request for Review submitted by John Kraft to Public Access Bureau, Office of the Attorney General (September 12, 2012).

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this office together with a copy of its standard meeting agenda.<sup>2</sup> The agenda does not contain action items for the first three action items referenced above; however, "Approval of Bills" is listed on the agenda, which also contains the items "Old Business" and "New Business". The Village's written response provided, in pertinent part:

I have [enclosed] a copy of the dates and time of our regular village meetings. Also on the posting is a copy of our agenda that we follow, this is posted on the village door. If you notice on our posting it is stated that a more detailed agenda may be posted. \* \* \* So as you can see by our posted notice we did not deviate from the agenda posted. If something more serious needed to be discussed, then we would have tabled it and discussed it at a later time.<sup>3</sup>

#### DETERMINATION

Section 1 of OMA (5 ILCS 120/1 (West 2010)) provides that OMA is intended to ensure "that the actions of public bodies be taken openly and that their deliberations be conducted openly." Section 1 further provides that 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."

Under section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2010)) "[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. \* \* \* The requirement of a regular meeting agenda shall not preclude the consideration of items not specifically set forth in the agenda." The Illinois Appellate Court has interpreted section 2.02(a) as permitting public bodies to discuss or deliberate upon matters that are not specifically set out in the agenda; a public body may not, however, take action on an item that does not appear in the agenda. *Rice v. Bd. of Trustees of Adams County*, 326 Ill. App. 3d 1120, 1123 (4<sup>th</sup> Dist. 2002) (an agenda item identified as "New Business" which a public body approved to create a new benefit program for elected officials did not provide "sufficient advance notice" to comply with section 2.02(a)). Although a "specifically detailed" agenda is not required, final action taken during a meeting must be "germane to the agenda listed in the

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<sup>2</sup> Letter from Jim Cooper, Mayor, Village of Redmon, to Christopher R. Boggs, Assistant Attorney General, Public Access Bureau (October 1, 2012).

<sup>3</sup> Letter from Jim Cooper, Mayor, Village of Redmon, to Christopher R. Boggs, Assistant Attorney General, Public Access Bureau (October 1, 2012).

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notice." *Foxfield Subdivison v. Village of Campton Hills*, 396 Ill. App. 3d 989, 997 (2<sup>nd</sup> Dist. 2009).

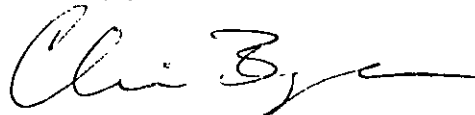
The facts are undisputed that the Village voted at the September 10, 2012, meeting, under the "New Business" agenda item, to award three contracts, none of which were listed or described on the agenda. Accordingly, we conclude that the Village violated section 2.02(a) of OMA by failing to provide sufficient notice before taking final action on those contracts

In addition, this office notes that the General Assembly has recently addressed the issue of proper notice to the public of final action by adding section 2.02(c) of OMA (5 ILCS 120/2.02(c). Public Act 97-827, which will become effective January 1, 2013, provides, in pertinent part: "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[.]" The language of this amendment makes it clear that, in cases where final action is to be taken, an agenda item consisting solely of the heading "New Business" will be insufficient, because "the general subject matter" of the resolution or ordinance is not identified.

Because all of the New Business items approved during the September 10, 2012, meeting have been acted upon, there is no action that the Village can take to remedy these violations at this time. However, we caution the Village to comply with all requirements of OMA in the future. In particular, a more detailed agenda is required for Village meetings where a final action will be voted upon. Simply identifying action items under a general "New Business" heading does not provide the public with sufficient advance notice under OMA.

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, please contact me at (217) 785-7438.

Very truly yours,



CHRISTOPHER R. BOGGS  
Assistant Attorney General  
Public Access Bureau