



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

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ATTORNEY GENERAL

October 4, 2013

Mr. Kirk Allen  
P.O. Box 593  
Kansas, Illinois 61933

Mr. John Kraft  
7060 Illinois Highway 1  
Paris, Illinois 61944

Mr. August Griffin  
Edgar County Clerk and Recorder  
Edgar County Board  
115 W. Court St., Rm. J  
Paris, Illinois 61944

RE: OMA Requests for Review – 2012 PAC 22357, 22360

Dear Mr. Allen, Mr. Kraft, 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)). Because both Requests for Review concern the same meeting and raise the same issue, we have consolidated these matters. For the reasons set forth below, the Public Access Bureau concludes that the Edgar County Board (Board) violated the requirements of OMA by failing to timely post the agenda for its November 7, 2012, meeting.

On November 28, 2012, Mr. Kirk Allen and Mr. John Kraft each filed a Request for Review alleging that the Board had failed to post the agenda at least 48 hours before the November 7, 2012, meeting that commenced at 9:00 a.m., as required by section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2012)). On December 7, 2012, the Public Access Bureau forwarded copies of Mr. Allen's and Mr. Kraft's Requests for Review to the Board and asked it to clarify when and where the agenda for the November 7, 2012, meeting was posted, and whether any final action had been taken during the meeting. On December 13, 2012, the Board responded by conceding that the agenda was not posted in a timely manner, but asserted that the agenda was posted only 30 minutes late, or 47.5 hours before the meeting commenced. The

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Board stated that when it realized that the agenda had not been timely posted, it consulted with both the Edgar County state's attorney and the Board chairman and decided to move the closed session portion of the meeting to the front of the agenda. The Board's response further states that the meeting started at 9:00 a.m., and the Board adjourned to closed session. The public portion of the meeting resumed at 9:40 a.m., and no final action was taken as a result of the closed session. However, the meeting minutes show that the Board did take final action on other matters. The Board asserts that members of the public were not denied the opportunity to participate in the meeting, and that "[t]he public was able to hear the entire Open Session of the meeting."<sup>1</sup>

On January 14, 2013, this office received Mr. Allen's and Mr. Kraft's<sup>2</sup> replies, which reiterated the Board's acknowledgement that it violated OMA by failing to post the agenda at least 48 hours in advance of the November 7, 2012, meeting, and requested the nullification of all action taken during the meeting.

#### DETERMINATION

Section 1 of OMA (5 ILCS 120/1 (West 2012)) 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 "[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 requires a public body to post agendas for its regular meetings on its website if the website is maintained by a full-time staff member.

Based on the information provided to this office, at least ten members of the public attended the meeting, including the requesters in this matter, Mr. Allen and Mr. Kraft. The Board also provided the public with two opportunities to address the Board through public comment: one at the beginning of the meeting, and one at the end. The minutes further reflect

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<sup>1</sup>Correspondence from August H. Griffin, Clerk and Recorder, Edgar County to Lindsay LaVine, Assistant Attorney General, Public Access Bureau (December 13, 2012).

<sup>2</sup>Mr. Kraft's reply is written in response to 2012 PAC 22357, Mr. Allen's matter, which is virtually identical to Mr. Kraft's Request for Review.



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that both Mr. Allen and Mr. Kraft addressed the Board during the public comment portions of the meeting.

The facts are undisputed that the Board failed to post an agenda at least 48 hours in advance of the November 7, 2012, meeting as required by OMA. Accordingly, we conclude that the Board violated section 2.02(a) of OMA by failing to provide the required notice to the public of what was to be discussed at the meeting. However, we have received no evidence suggesting that any members of the public were dissuaded or precluded from attending the meeting because of the 30-minute delay in the agenda's posting. In fact, the individuals who submitted the Requests for Review both attended and spoke at the meeting. We conclude that under these circumstances no remedial action by the Board is needed. The Board is cautioned, however, to conduct all future meetings in full compliance with 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 (877) 299-3642. This correspondence shall serve to close this matter.

Very truly yours,



LINDSAY LAVINE  
Assistant Attorney General  
Public Access Bureau

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