



MEMORANDUM

To: Robert Berlin
DuPage County State's Attorney

From: Adam Andrzejewski
Chairman, American Transparency

Date: July 30, 2015

Subject: College of DuPage Board of Trustees Open Meetings Act Violations regarding President Dr. Robert Breuder's 2008 Employment Contract (November 18, 2008), First Addendum (April 16, 2009), 2010 Amendment to Employment Agreement (June 22, 2010), Second Addendum (January 24, 2011), Third Addendum to President Employment Contract (July 12, 2011), and (3) Extensions to Contract purportedly by mail or email (January 11, 2012; January 14, 2013; January 16, 2014)

Illinois Attorney General Lisa Madigan's determination letter of Friday, July 24, 2015 was issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5ILCS 120/3.5(e) (West 2014)). From the letter:

"However, the Board violated OMA by failing to provide a sufficient public recital of the nature of the action and other information necessary to inform the public of the business being conducted before approving a contract extension for the College President."

Consider this memorandum notice to review each of the eight contracts, extensions, modifications, or addendums in regard to College of DuPage President Robert Breuder. We argue below that a valid appointment and contract consistent with the OMA has never been properly conferred by the college Board regarding Robert Breuder.

A citizen has a defined time period after an OMA violation to submit a Request for Review, but a State's Attorney has 60 days from notice of the violation. In this memo, evidence is provided that each of the eight contract actions have possible violations of OMA. Your action is vital so that students, citizens, and taxpayers served by the College of DuPage and across the state gain a clear understanding of the law.

Over the next 60 days, we urge you to investigate and take action on each OMA violation to the fullest extent of the law. The importance of your actions can not be taken lightly. For example, if you prosecute in accordance with the Attorney General's determination letter, a judge could rule that President Robert Breuder's employment contract expired on June 30, 2015.

1. 2008 Employment Contract (November 18, 2008)

On the Board meeting Agenda, the action is listed as “Appointment of College President.” 1. The board vote was not to ‘appointment the college president;’ the Meeting Minutes reflect a roll call vote to “approve the employment agreement between Dr. Robert L. Breuder and the College of DuPage Board of Trustees.” Is the President therefore not appointed, but contracted without public notice? 2. The minutes of the Special Meeting do not reflect the recital of the contract as required by OMA.

Please investigate each point for possible OMA violation. The public deserves clarity on whether or not Dr. Robert Breuder has a legally valid Employment Contract with College of DuPage.

2. First Addendum (April 16, 2009)

1. On the Board Meeting Agenda, the “President’s Contract” is listed under point “7. President’s Contract” as a discussion item. But it’s not on the Consent Agenda. All actions on the Consent Agenda are under point “9”. As the Agenda notice to the public was just a discussion item, not a voting issue, the validity of the First Addendum is in question.

Furthermore, the April 16, 2009 meeting may have been an illegal meeting. The meeting was a ‘lame-duck’ meeting after the April 2009 college of trustee elections. The Community College Act does not provide for ‘lame duck’ meetings. In a note read at the April 16th meetings, Trustee Kathy Wessel calls attention to this issue – see Meeting Minutes.

Please investigate each point for possible OMA violation. Please investigate the legal issues regarding the lame duck meeting of April 16, 2009. The public deserves clarity on whether or not Dr. Robert Breuder has a legally valid contract through June 30, 2015.

3. 2010 Amendment to Employment Agreement (June 22, 2010)

On the Board Meeting Agenda, the “2010 Amendment to Employment Agreement” was not specifically delineated. The Agenda listed “Personnel Actions.” According to the IL AG determination letter of July 24, 2015, this would seem to suffice under OMA. However, the Minutes of the Meeting do not reflect recital of the addendum and the determination letter holds this as a violation of the Act.

Please investigate each point for possible OMA violation. The public deserves clarity on whether or not Dr. Robert Breuder has a legally valid amendment conferring “annual respite and renewal leave” of 12 days per as granted in this amendment. *“The purpose of the leave is to provide the President with dedicated time to... focus his thinking and energies...”*

4. Second Addendum (January 24, 2011)

On the Board Meeting Agenda, the “Second Addendum” was not specifically delineated. The Agenda listed “Personnel Actions.” According to the IL AG determination letter of July 24, 2015, this would seem to suffice under OMA. However, the Minutes of the Meeting do not reflect recital of the addendum and the determination letter holds this as a violation of the Act.

Please investigate each point for possible OMA violation. The public deserves clarity on whether or not Dr. Robert Breuder has a legally valid addendum which conferred hundreds of thousands of dollars in extra compensation – including back dated compensation to July 1, 2009.

5. Third Addendum to President Employment Contract (July 12, 2011)

From the IL AG determination letter of July 24, 2015, Lisa Madigan's Public Access Counselor issued an opinion that the lack of recital on the Third Addendum before the board vote violated OMA.

Please prosecute this violation of OMA to the fullest extent of the law. Without a legally valid Third Addendum, at a minimum, the contract for Dr. Breuder expired on June 30, 2015.

6. (3) Extensions to Contract purportedly by mail or email (January 11, 2012; January 14, 2013; January 16, 2014)

At a minimum, public employment contracts must conform to OMA. These three "contract extensions" were conferred by extra-ordinary means - circumventing a public meeting altogether - by mailing to the COD Chairmen's personal residences.

Furthermore, evidence raises real questions as to the actual validity of the letters - two of the three letters have no receipt evidence that the mailing occurred.

For example, on the letter to previous Board Chairman David Carlin purportedly on January 11, 2012, there is no address typed into the address field of the letter; there is no signature on the letter; there is no receipt that the letter was actually mailed, only a hand written note saying it was mailed.

For example, on the letter to previous Board Chairman David Carlin purportedly on January 14, 2013, there is no address typed into the address field of the letter; there is no signature on the letter; there is no receipt that the letter was actually mailed, only a hand written note saying, "Mailed by U.S. Mail to David Carlin's home address on 1/14/ 2013".

Please investigate each point for possible OMA violation. The public deserves clarity on whether or not Dr. Robert Breuder had a legally valid contract extension through 2019!