



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 7, 2018

Via electronic mail

Mr. John Kraft

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Paris, Illinois 61944

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Via electronic mail

The Honorable Deanna Demuzio

Mayor

City of Carlinville

Carlinville City Hall

550 North Broad Street

Carlinville, Illinois 62626

ddemuzio@cityofcarlinville.com

RE: OMA Request for Review – 2018 PAC 51069

Dear Mr. Kraft and Ms. Demuzio:

On March 1, 2018, the Public Access Bureau issued a non-binding determination concluding that the City of Carlinville City Council (Council) did not violate section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2016)) by voting to pass a proposed ordinance prohibiting sexual harassment which was identified as "First Read" on its January 2, 2018, meeting agenda. Ill. Att'y Gen. PAC Req. Rev. Ltr. 51069, issued March 1, 2018. **That determination was inadvertently sent out prematurely and before the supervisory review process was complete. Accordingly, this office is withdrawing that premature determination and issuing the attached final determination letter in this matter.** We apologize for any confusion caused by this error. If you have questions, you may contact me at (312) 814-6756.

Very truly yours,

A handwritten signature in black ink, appearing to read "Steve Silverman", is written over a horizontal line.

STEVE SILVERMAN
Bureau Chief
Public Access Bureau

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cc: Mr. Dan O'Brien
Attorney at Law
124 East Side Square
P.O. Box 671
Carlinville, Illinois 62626



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RE: OMA Request for Review – 2018 PAC 51069

Dear Mr. Kraft and Ms. Demuzio:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). **For the reasons that follow, the Public Access Bureau concludes that the City of Carlinville City Council (Council) improperly voted to pass a proposed ordinance at its January 2, 2018, meeting when the Council's agenda indicated that the ordinance would only be the subject of a procedural motion.**

On January 2, 2018, Mr. John Kraft, on behalf of *Illinois Leaks*, submitted a Request for Review alleging that the Council violated OMA at its January 2, 2018, regular monthly meeting. Specifically, Mr. Kraft alleged that the Council failed to provide proper notice on the agenda of the final actions taken when it: (1) voted to suspend its rules; and (2) voted to approve a sexual harassment policy ordinance (Ordinance) that the agenda listed as being subject to a "First Read."¹ On January 4, 2018, the Public Access Bureau sent a copy of the Request for

¹Carlinville City Council, Agenda Item (unnumbered), Ordinance Adopting Policy Prohibiting Sexual Harassment – First Read (January 2, 2018).

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Review to the Council and asked it to provide a copy of the meeting agenda and minutes, together with a written response to Mr. Kraft's allegations.

On January 16, 2018, this office received those materials. The Council asserted that it properly suspended its rules and properly passed the Ordinance. On January 17, 2018, the Public Access Bureau forwarded a copy of the Council's response to Mr. Kraft. Later on that same date, Mr. Kraft replied that the Council should have labeled the Ordinance agenda item differently if it had intended to vote on the matter, and that public bodies cannot suspend their rules when doing so would frustrate the requirements of OMA. He also clarified that he is not disputing the Council's ability to suspend its rules, "only their ability to do so resulting in an OMA violation for the item not being properly placed on the agenda."²

DETERMINATION

OMA is intended "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2016).

Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016)) 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." OMA further provides that "[a]ny 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." (Emphasis added.) 5 ILCS 120/2.02(c) (West 2016).

The Senate debate on House Bill No. 4687, which, as Public Act 97-827, effective January 1, 2013, added section 2.02(c) of OMA, indicates that the General Assembly intended this provision to ensure that agendas provide sufficiently descriptive advance notice of the matters upon which a public body anticipates taking final action:

[T]here was just no real requirement as to how specific [public bodies] needed to be to the public of what they were going to discuss that would be final action. And this just says that you have to have a * * * general notice, if you're going to have and take final action, as to generally what's going to be discussed so that — that people who follow their units of local government know what they're going to be acting upon. Remarks of Sen. Dillard, May 16, 2012, Senate Debate on House Bill No. 4687, at 47.

²E-mail from John Kraft to AG- PAC (January 17, 2018).

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The agenda for the Council's January 2, 2018, regular meeting listed the relevant agenda item under "New Business" as "Ordinance Adopting Policy Prohibiting Sexual Harassment – First Read."³ In the Council's response to this office, the Council indicated that although it has a rule providing for the vote on a proposed ordinance to take place at a meeting subsequent to the meeting at which the ordinance is first read,⁴ it also has a rule allowing it to suspend its rules by a vote of two-thirds.⁵ Thus, the Council explained, it unanimously voted to waive the requirement of waiting until the next meeting to vote on the Ordinance after the first reading and then unanimously voted to pass the Ordinance. The minutes reflect the same.⁶

In his reply, Mr. Kraft argued that the Council "chose to place 'first reading' on the agenda – which means it was not up for vote on final action."⁷ He claimed that it would have been proper for the Council to vote on the Ordinance if the agenda item had simply stated "Ordinance Prohibiting Sexual Harassment" without qualifying language about a first reading.⁸

Although the phrase "Ordinance Adopting Policy Prohibiting Sexual Harassment – First Read" did describe the general subject matter of the Ordinance—a policy against sexual harassment—the language "First Read" indicated that the Council would only take a preliminary, procedural step on the matter. Further, the agenda did not indicate that the Council would consider suspending its rules in order to take final action on the ordinance. In the absence of the language "First Read," the public could have inferred that the Council would vote on the ordinance even if the agenda didn't expressly indicate that final action would be taken. *See Ill. Att'y Gen. PAC Req. Rev. Ltr. 39177*, issued February 2, 2016, at 3-4 (agenda item "Illinois Rt. 53/120 Project Environmental Impact Statement" sufficiently described general subject matter of final action because agenda was not required to specify what particular action would be taken). The inclusion of the "First Read" language, however, turned out to be misleading when the Council suspended its rules and adopted the ordinance. Construing section 2.02(c) of OMA as permitting public bodies to vote on matters that are identified on meeting agendas as merely procedural motions that precede final action would be contrary to the General Assembly's intent

³Carlinville City Council, Agenda Item (unnumbered), Ordinance Adopting Policy Prohibiting Sexual Harassment – First Read (January 2, 2018).

⁴Carlinville, Ill. Revised Code of Ordinances § 1-2-11(Y) (2017).

⁵Carlinville, Ill. Revised Code of Ordinances § 1-2-11(W) (2017).

⁶Carlinville City Council, Meeting, January 2, 2018, Minutes 2.

⁷E-mail from John Kraft to AG- PAC (January 17, 2018).

⁸E-mail from John Kraft to AG- PAC (January 17, 2018).

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of ensuring that agendas notify the public of all matters that public bodies will be acting upon. Because the Council's January 2, 2018, meeting agenda may not be reasonably construed as providing the public with advance notice that the Council would vote on the ordinance at that meeting, this office concludes that the Council violated section 2.02(c) of OMA. To remedy that violation, we request that the Council reconsider and revote on the ordinance after providing the public with the required advance notice of that final action.

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 file. If you have any questions, please contact me at (312) 814-6756 or the Chicago address listed on the first page of this letter.

Very truly yours,



STEVE SILVERMAN
Bureau Chief
Public Access Bureau

51069 o 202c notice improper mun

cc: Mr. Dan O'Brien
Attorney at Law
124 East Side Square
P.O. Box 671
Carlinville, Illinois 62626