



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

September 12, 2017

*Via electronic mail*  
Ms. Rogene Hamilton



*Via electronic mail*  
The Honorable Joseph Musso, Supervisor  
Pecatonica Township Board



Pecatonica, Illinois 61063  
pectwnsp@frontier.com

RE: OMA Request for Review – 2017 PAC 48463

Dear Ms. Hamilton and Mr. Musso:

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 Pecatonica Township Board (Board) did not violate OMA in connection with the minutes of its March 21, 2017, meeting, but did violate OMA in connection with its June 20, 2017, meeting by imposing an improper restriction on public comment and by failing to identify, on the agenda the general subject matter of a final action.

On June 26, 2017, Ms. Rogene Hamilton submitted this Request for Review to the Public Access Bureau alleging, in pertinent part,<sup>1</sup> that the Board: (1) improperly limited her remarks to three minutes during its June 20, 2017, meeting; (2) failed to provide sufficient advance notice of its vote to appoint Mr. John Nelson as Township Attorney during its June 20,

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<sup>1</sup>During a telephone conversation with an Assistant Attorney General in the Public Access Bureau on August 16, 2017, and in a follow-up e-mail on August 20, 2017, Ms. Hamilton clarified that these are the only allegations for which she is seeking a determination by this office.

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2017, meeting; and (3) inaccurately stated in the minutes of its March 21, 2017, meeting that she had been a cause of the previous Board attorney's resignation.

On July 6, 2017, this office sent a copy of the Request for Review to the Board and asked it to provide a written response to Ms. Hamilton's allegations concerning public comment and the sufficiency of the advance notice for the Board's vote to retain Mr. Nelson, together with copies of the June 20, 2017, meeting agenda and minutes and the Board's rules governing public comment. On July 14, 2017, the Township Clerk provided this office with copies of the June 20, 2017, meeting agenda and draft minutes, but did not furnish copies of any rules concerning public comment or a written response. On August 7, 2017, Mr. Nelson provided a written response on behalf of the Board addressing only Ms. Hamilton's public comment allegation. On August 14, 2017, Ms. Hamilton submitted a reply, reiterating her contentions. On August 22, 2017, the Board provided this office with a copy of the approved minutes for the June 20, 2017, meeting.

#### DETERMINATION

"The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

#### March 21, 2017, Meeting Minutes

Section 2.06(a) of OMA (5 ILCS 120/2.06(a) (West 2016)) provides, in pertinent part:

- (a) All public bodies shall keep written minutes of all their meetings, whether open or closed[.] \* \* \* Minutes shall include, but need not be limited to:
- (1) the date, time and place of the meeting;
  - (2) the members of the public body recorded as either present or absent and whether the members were physically present or present by means of video or audio conference; and



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- (3) *a summary of discussion on all matters proposed, deliberated, or decided*, and a record of any votes taken. (Emphasis added.)

Ms. Hamilton has alleged that the Board's March 21, 2017, meeting minutes incorrectly state that Supervisor Musso identified her as a reason for the resignation of the former Board attorney. However, the plain language of section 2.06(a)(3) of OMA requires only that meeting minutes summarize matters *proposed, deliberated, or decided* by a public body. The Public Access Bureau has previously determined that OMA does not require public bodies to provide a detailed summary of any matter that was discussed in which the discussion did not rise to the level of deliberating upon or considering a related decision. See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 25528, issued March 5, 2014, at 4.

In this instance, this office's review of the March 21, 2017, minutes provided by Ms. Hamilton indicated that Supervisor Musso mentioned Ms. Hamilton in response to a member of the public's question. This office has received no evidence suggesting that the mention of Ms. Hamilton's name was part of a deliberation or decision-making process among Board members. Because the Board was not required under OMA to document Supervisor Musso's answer concerning why the former Board attorney resigned, this office is unable to conclude that the mention of Ms. Hamilton's name in the Board's March 21, 2017, meeting minutes violated the requirements of OMA. Nonetheless, this office generally encourages the Board to correct its past meeting minutes when it determines that they contain factual errors even with respect to matters that were not formally proposed, deliberated, or decided.

#### **June 20, 2017, Public Comment**

Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2016)) provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." Under the plain language of section 2.06(g), a public body may restrict public comment only pursuant to rules it has established and recorded, which must tend to accommodate, rather than unreasonably limit, the right to address public officials. See Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 2, 2014, at 4, 7.

In its response to this office, the Board asserted that Ms. Hamilton was allowed to address its members until she inferred misconduct by Supervisor Musso, whereby she was ruled out of order. In both her Request for Review and her reply to the Board's response, Ms. Hamilton contended that the previously accepted time limit for public comment was five minutes; the Board has not disputed that allegation. Ms. Hamilton also included with her reply an unsubstantiated copy of the Board's October 18, 2012, meeting minutes, wherein the Board

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approved a motion to limit public comment to five minutes per person unless an agenda item was designated for a person's remarks.

The Board has not provided this office with a copy of any rules governing public comment or otherwise demonstrated that, as of its June 20, 2017, meeting, it had established and recorded reasonable rules that allowed a member of the public's comments to be limited to three minutes or restricted based on their content. Because the Board has failed to demonstrate that it acted pursuant to established and recorded rules in restricting Ms. Hamilton's public comments during its June 20, 2017, meeting, this office concludes that the Board violated section 2.06(g) of OMA. Nonetheless, because the Board has indicated it will establish and record rules as required by section 2.06(g) of OMA, no further remedy is necessary at this time.

#### **Sufficiency of June 20, 2017, Agenda Item**

Section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2016)) 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.) 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 general notice of all matters upon which a public body would be taking final action:

[T]here was just no real requirement as to how specific they 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.

OMA does not define the term "general subject matter." However, the Public Access Bureau has previously determined that the General Assembly's use of the term "general subject matter" signifies that a meeting agenda must set forth the main element(s), rather than the specific details, of an item on which the public body intends to take final action. See Ill. Att'y Gen. PAC Req. Rev. Ltr. 46368, issued April 13, 2017, at 3.

The Board's response to this office did not address Ms. Hamilton's allegation that the Board failed to sufficiently set forth the general subject matter of its vote to hire Mr. Nelson as Township Attorney. The minutes of the June 20, 2017, meeting, however, confirm that the



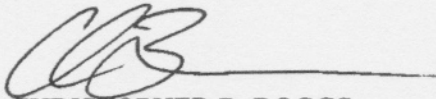
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Board indeed voted to retain Mr. Nelson as the Township Attorney. Although the agenda item "Attorney John M. Nelson" plainly identified Mr. Nelson by name and occupation,<sup>2</sup> the absence of any information as to what the Board was considering with respect to Mr. Nelson left the public without any indication as to what the Board would be acting upon. Accordingly, this office concludes that the Board violated the requirements of section 2.02(c) of OMA during its June 20, 2017, meeting by taking final action without having identified the general subject matter of that action on the meeting agenda.

To remedy this violation, this office requests that the Board reconsider and revote on Mr. Nelson's appointment at a future meeting after posting an agenda that adequately informs the public of the general nature of that action. This office also directs the Board to fully adhere to the requirements of OMA at all future meetings.

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 matter. If you have any questions, please contact me at the Springfield address on the bottom of the first page of this letter.

Very truly yours,



CHRISTOPHER R. BOGGS  
Assistant Attorney General  
Public Access Bureau

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cc: *Via electronic mail*  
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<sup>2</sup>Pecatonica Township Board, Agenda Item (unnumbered), Attorney John M. Nelson (June 20, 2017).