



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

October 15, 2020

Via electronic mail
Ms. Alyssia Benford
alyssiabenford@comcast.net

Via electronic mail
Mr. Charles B. Pelkie, Jr.
Chief of Staff
Will County Clerk's Office
302 North Chicago Street
Joliet, Illinois 60432
cbpelkie@willcountyillinois.com

RE: OMA Request for Review – 2020 PAC 63331

Dear Ms. Benford and Mr. Pelkie:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2018)). For the reasons explained below, the Public Access Bureau concludes that the agenda for the June 9, 2020, meeting of the Will County Officers Electoral Board (Board) did not sufficiently identify all matters on which the Board took final action at that meeting.

BACKGROUND

On June 10, 2020, Ms. Alyssia Benford submitted this Request for Review alleging that the Board violated OMA at its June 9, 2020, meeting by: (1) failing to post an agenda for that meeting at either the location of the meeting or on a website, in violation of section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2018)); (2) voting on the adoption of rules without sufficiently identifying that item as potential final action on its meeting agenda, in violation of section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2018)); (3) requiring a speaker to provide his name and address, in violation of section 2.06(a) of OMA (5 ILCS 120/2.06(g) (West 2018)); (4) failing to create a verbatim recording of a closed session meeting, in violation of section 2.06(a) of OMA (5 ILCS 120/2.06(a) (West 2018)); and (5) holding the meeting in a

Ms. Alyssia Benford
Mr. Charles B. Pelkie, Jr.
October 15, 2020
Page 2

location that prohibited cell phones, in violation of section 2.05 of OMA (5 ILCS 120/2.05 (West 2018)).

On June 18, 2020, this office sent a copy of the Request for Review to the Board and asked that it provide a written response to the first three allegations listed above. This office also requested copies of the meeting agenda and minutes of the June 9, 2020, meeting, and any available recording of the meeting. On June 25, 2020, the Board provided an answer and the requested materials. Ms. Benford replied on July 7, 2020.

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).

Agenda Posting

Section 2.02(a) of OMA provides, in pertinent part:

An 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. A public body that has a website that the full-time staff of the public body maintains shall also post on its website the agenda of any regular meetings of the governing body of that public body.

Ms. Benford alleged in her Request for Review that the Board prepared a notice of the meeting but did not post that notice "on the building" or on any website, and that the meeting notice prepared by the Board did not include an agenda. The Board disputes this allegation, asserting that it posted a "Call/Agenda" on June 5, 2020, on the front doors and back doors of the Will County Courthouse (the location of the meeting), at the front counter of the Will County Clerk's Office, and on the Will County Clerk's Office website. The Board provided a copy of its "Call/Agenda" for this office's review. That document is entitled "Call of Will County Officers Electoral Board," and it stated that the Will County Officers Electoral Board would be meeting on June 9 at 10:00 a.m. in Courtroom 400 of the Will County Courthouse.¹

¹Section 10-10 of the Election Code (10 ILCS 5/10-10 (West 2018)) requires the Board to send a "call" containing certain information as notification that the Board is convening to hear and pass upon objections to nominations made for office.

Ms. Alyssia Benford
Mr. Charles B. Pelkie, Jr.
October 15, 2020
Page 3

The document also described two matters that the Board would consider at the meeting. In her reply, Ms. Benford accused the Board of "misrepresent[ing] facts."

The document the Board provided for this office's review, which Ms. Benford characterized in her Request for Review as a notice, does not bear the title "agenda," and is not formatted like a typical agenda, as it contains paragraphs rather than a lettered or numbered list of topics to be considered during the meeting (*i.e.*, roll call, adjournment). However, the document identifies the public body holding the meeting, the date, time, and location of the meeting, and two matters to be considered by the Board during the meeting. Other than the requirement in section 2.02(c) that the agenda set forth all matters on which a public body takes final action, OMA does not provide general requirements or outline a standard format for an agenda.

This office has received conflicting information as to whether the document entitled "Call" was posted in advance of the meeting, as required by section 2.02(a) of OMA. Ms. Benford alleges the document was not posted at "the building" or "any website." The Board, however, represented to this office that it posted the document in three separate physical locations and on the website of the Will County Clerk's Office more than 48 hours before the start of the meeting. Given these directly contradictory accounts, this office is unable to conclude that the Board violated section 2.02(a) of OMA.

Sufficiency of the Agenda

Section 2.02(c) of OMA 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." OMA does not contain a definition of "general subject matter." However, 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.* (Emphasis added.) Remarks of Sen. Dillard, May 16, 2012, Senate Debate on House Bill No. 4687, at 47.

Ms. Alyssia Benford
Mr. Charles B. Pelkie, Jr.
October 15, 2020
Page 4

The Board acknowledged that it adopted rules of procedure at its June 9, 2020 meeting. A transcript of the meeting that the Board provided with its written response reflects that the Board held a roll call vote to unanimously approve those rules. Board's Call notified the public that it would consider:

1. The question of whether or not said Electoral Board has jurisdiction under Illinois law to hear said Objector's Petition.
2. The question as to whether or not the Nomination papers of Rick Munoz as a candidate for the nomination of the Republican Party to the office of Will county State's Attorney are in proper form and whether or not the petition on file is valid and whether the objections thereto should be sustained.^[2]

In its response to the Request for Review, the Board argued only that "[o]ur counsel further advised us that the attached Call/Agenda set forth the general subject matter 'that will be the subject of final action at the meeting' pursuant to the Illinois Open Meeting Act 2.02(c)."³ However, neither of the listed items set forth the general subject matter of the Board's action to adopt procedural rules, and the adoption of those rules is a final action of the Board. Accordingly, this office concludes that the Board violated section 2.02(c) of OMA by taking action to adopt procedural rules without providing advance notice of its intent to do so.

The Board's response to this office further explained that the Board adjourned on June 12, 2020, "following a unanimous vote to start the hearing over with a newly constituted Electoral Board. Furthermore the newly constituted board posted a more specific Call/Agenda that addressed concerns raised" by Ms. Benford.⁴ Accordingly, there is no additional remedial action that can be taken to address the violation.

Public Comment

The Request for Review further alleges that an attorney present at the meeting interrupted an individual as he began to deliver public comment, and required that individual to

²Will County Officers Electoral Board, Call of Will County Officers Electoral Board (June 5, 2020).

³Letter from Charles B. Pelkie, Jr., Chief of Staff, Will County Clerk's Office, to Leah Bartelt, Deputy Public Access Counselor, Public Access Bureau, Illinois Attorney General, at 2 (June 23, 2020).

⁴Letter from Charles B. Pelkie, Jr., Chief of Staff, Will County Clerk's Office, to Leah Bartelt, Deputy Public Access Counselor, Public Access Bureau, Illinois Attorney General, at 2 (June 23, 2020).

Ms. Alyssia Benford
Mr. Charles B. Pelkie, Jr.
October 15, 2020
Page 5

provide his name and address before being allowed to complete his comment. The allegation explained that the speaker provided only his name and objected to disclosing his address, but did not explain whether the individual was allowed to provide comment after disclosing only his name. In its response to this office, the Board acknowledges that an attorney "made an outburst" demanding a speaker's address but asserts that the attorney was not representing the Board and the Board did not require that information to be disclosed. In reply, Ms. Benford alleges that the Board sat silent while the attorney demanded the speaker provide his address.

According to the transcript of the meeting that the Board provided with its response, the chair of the Board recognized the first public comment speaker, who introduced himself by name. When he attempted to continue, an attorney, who is not a member of the Board, interrupted and stated, "I'd like to have this gentleman's address and where he lives to show if he is – whether or not he is – a legally authorized voter of Will County."⁵ The Board chair then said "Could you state your name and – [,]" before the speaker interrupted her to restate his name and argue that it was improper for the Board to require him to provide his physical address.⁶ The chair then told the speaker to proceed and he provided his comment. Three more speakers then provided their comments; neither the Board nor the attorney asked any of them to identify their home addresses prior to being allowed to speak.

Section 2.06(g) of OMA provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." (Emphasis added.) The Attorney General has concluded that the right to address public officials at open meetings is not limited to individuals who live within the corporate boundaries of a particular public body. Ill. Att'y Gen. Pub. Acc. Op. No. 19-009, issued October 1, 2019, at 4. Further, in Binding Opinion 14-009, the Attorney General determined that requiring speakers to provide their home addresses prior to speaking would impermissibly exceed the scope of the rulemaking contemplated by section 2.06(g). "Requiring a member of the public to provide his or her complete home address prior to speaking may have a chilling effect on individuals who wish to speak at public meetings." Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 7; *see* Ill. Att'y Gen. PAC Req. Rev. Ltr. 61763, issued May 26, 2020 (same).

Based on the meeting transcript provided for this office's review, an attorney participating in the meeting interrupted the first speaker to demand that he provide his address. When the Board chair began to speak, the speaker interrupted her to argue that the demand to provide his address was improper. It is unclear what the Board chair was planning to say when the speaker interrupted her; however, when the speaker allowed the Board chair to speak, she invited the speaker to continue and did not repeat the demand that he provide his address.

⁵Will County Officers Electoral Board, Public Hearing, June 9, 2020, Report of Proceedings 29.

⁶Will County Officers Electoral Board, Public Hearing, June 9, 2020, Report of Proceedings 29.

Ms. Alyssia Benford
Mr. Charles B. Pelkie, Jr.
October 15, 2020
Page 6

Neither the Board nor the attorney asked any of the next three speakers to provide their addresses. Therefore, the available information indicates that no speakers' right to address the Board was premised on disclosure of their addresses. Accordingly, this office finds that the Board did not violate section 2.06(g) at its June 9, 2020, meeting.

Other Allegations

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2018)) provides that "[a] person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor[.]" and that the submission "must include a summary of the facts supporting the allegation."

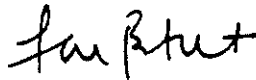
Ms. Benford alleged that the Board chair held a closed session meeting of the Board when she called a recess and conferred privately with the Board's legal counsel for several minutes. Because the Board did not record this discussion with the attorney, Ms. Benford alleged that the Board violated section 2.06(a) of OMA, which requires the Board to create a verbatim recording of any closed session meeting. However, the available information does not indicate that the Board convened a closed session meeting. Ms. Benford alleged that the chair met with the Board's legal counsel but does not allege that either of the other two members of the Board met with the chair and counsel at the same time. Furthermore, the Board did not take a vote to convene a closed session. Because the Board chair's recess of the Board's meeting to speak with the Board's counsel does not constitute a closed session meeting of the Board, the Board was not required to create a verbatim recording of the conversation between the Board chair and counsel.

Finally, Ms. Benford alleged that the Board violated section 2.05 of OMA, which provides that individuals may record open meetings, by holding its meeting at the Will County Courthouse, because individuals are not allowed to bring cell phones into the courthouse without a court order. As Ms. Benford did not allege that the policy prohibits individuals from bringing other types of recording devices into the Board's meeting, or that she specifically asked to be allowed to record the meeting but was denied permission, this office has determined that no further inquiry is warranted on this allegation.

Ms. Alyssia Benford
Mr. Charles B. Pelkie, Jr.
October 15, 2020
Page 7

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 the Chicago address on the first page of this letter, lbartelt@atg.state.il.us, or (312) 814-6437. This letter serves to close this file.

Very truly yours,



LEAH BARTELT
Deputy Public Access Counselor
Public Access Bureau

63331 o 202 notice proper improper 206g proper elec bd