

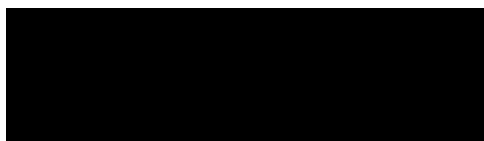


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

June 8, 2021

Via electronic mail
Mr. Steve Warmowski



Via electronic mail
The Honorable Andy Ezard
Mayor
City of Jacksonville
200 West Douglas Avenue
Jacksonville, Illinois 62650
mayor@jacksonvilleil.gov

RE: OMA Request for Review – 2021-PAC-S-0011

Dear Mr. Warmowski and Mr. Ezard:

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 City of Jacksonville City Council (Council) violated OMA by taking final action on a matter not listed on the agenda for its March 22, 2021, meeting.

BACKGROUND

On April 14, 2021, this office received Mr. Steve Warmowski's Request for Review in which he alleged that the Council violated OMA during its March 22, 2021, meeting by taking final action to approve a race scheduled for April 29, 2021, when that matter was not identified on the Council's meeting agenda. Mr. Warmowski is a member of the Council but did not submit his Request for Review in that capacity.

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On April 28, 2021, this office sent a copy of the Request for Review to the Council and asked it to provide a written response to Mr. Warmowski's allegations. Specifically, this office asked the Council to clarify whether it took the final action alleged by Mr. Warmowski and, if so, to address whether the agenda for the March 22, 2021, meeting set forth the general subject matter of that final action, as required by section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2018)). This office also requested copies of the March 22, 2021, meeting agenda, minutes, and verbatim recording. On May 12, 2021, the Council provided an answer and the requested materials. On May 13, 2021, this office forwarded a copy of the Council's response to Mr. Warmowski, who replied on May 21, 2021. On May 28, 2021, the Council responded to Mr. Warmowski's reply.

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).

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 define the term "general subject matter." However, the Senate debate on House Bill No. 4687, which added section 2.02(c) to OMA as part of Public Act 97-827, effective January 1, 2013, 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.

In its response to this office, the Council explained that during the "Communications" portion of its March 22, 2021, meeting, it approved the Jacksonville Speedway's (Speedway) request to extend an April 29, 2021, race past the 6:00 p.m. end time established by ordinance. The Council explained that it considered the Speedway's request to be routine and approved it during the Communications period as it had for similar requests, such as

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approving the use of City parks for specific purposes, raffle license applications, and street blocking. The copy of the March 22, 2021, agenda provided by the Council did not include any items for consideration under the "Communications" section. The Council appeared to argue that the approval of the race extension was not a final action, stating "[i]f approving this type of request * * * is considered 'a final action item' for purposes of the Open Meetings Act, the City will certainly revise its practices and not grant any requests under 'Communications'"¹ without placing those items on an agenda.

In his reply, Mr. Warmowski contrasted the Council's vote to approve the race extension with administrative matters handled by the mayor and the City's administration. Mr. Warmowski stated that the mayor and City administration use the Communications period

as a way to inform the City Council, and by extension the general public, of general communication with the city and also to make public notification of administrative actions being taken. None of these administrative actions require a council vote or council approval. This process is just a way to discuss pending administrative action and seek feedback.^[2]

To illustrate the kinds of matters handled during the Communications period, Mr. Warmowski cited, among other things, the Council's February 22, 2021, meeting during which "[t]he use of Community Park for a vintage baseball game; the use of Community Park for a business event; and a raffle license for the public schools foundation" were approved as "purely administrative action guided by the city code, with no vote by the city council."³ He asserted that the Council's March 22, 2021, vote regarding the April 29, 2021, race was not merely an administrative notification, but a final action taken by the Council.

In response to Mr. Warmowski's reply, the Council stated in most instances, there are no voice votes during the Communications period. It explained that during the March 22, 2021, discussion of the Speedway's request, Mr. Warmowski had expressed concerns, and therefore, the Council took a voice vote.

¹Letter from Daniel J. Beard, City Attorney, City of Jacksonville, to Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (May 12, 2021), at 2.

²Letter from Steve Warmowski to Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (undated).

³Letter from Steve Warmowski to Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (undated).

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This office has listened to the recording of the Communications period of the March 22, 2021, meeting and confirmed that the Council voted to approve a motion in favor of the Speedway's request to host a race past 6:00 p.m. on April 29, 2021. Although the Council's answer to this office characterized the race approval as "routine," the vote was a final action, as it resolved a substantive matter before the Council. Even if the mayor or City administration had the unilateral authority to approve the race extension, this office has previously concluded that when a public body manifests final action by reaching a consensus on a matter at the request of a mayor, that action cannot be reasonably construed as unilateral action by the mayor. "Such an interpretation would permit public bodies to evade the advance notice requirements of OMA[.]" Ill. Att'y Gen. PAC Req. Rev. Ltr. 38115, issued December 15, 2015, at 3 (concluding that a public body took final action by reaching a consensus to approve street closures proposed by the mayor). Accordingly, this office concludes that the Council violated section 2.02(c) of OMA during its March 22, 2021, meeting by voting to approve the April 29, 2021, race without having listed the general subject matter of that final action on the meeting agenda. No corrective action can be taken to remedy this violation at this time, but we caution the Council that its agendas for future meetings must identify the general subject matter of all matters upon which the Council takes final action.

To the extent that Mr. Warmowski's Request for Review alleged that the Council did not have authority to extend the race's ending time or that state and local governments give illegal support to the Speedway, those issues are outside the scope of this office's review because the Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2018)). *See* 15 ILCS 205/7(c)(3) (West 2018).

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 Springfield address on the first page of this letter, laura.harter@illinois.gov, or (217) 524-7958. This letter serves to close this file.

Very truly yours,



LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

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cc: *Via electronic mail*
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