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MAY 5, 2022

Ms. Edie Steinberg
Senior Assistant Attorney General
Public Access Bureau
Office of the Attorney General, State of Illinois
100 West Randolph Street
Chicago, Illinois 60601

Re: Response to OMA Request for Review – 2022 PAC 71237

Dear Ms. Steinberg:

In response to your request for a detailed written response to the allegation raised by Mr. Jeremy Williams' Request for Review, please consider this written memorandum on behalf of the Shelby County Board Farm Committee.

On April 7, 2022, the Shelby County Board Farm Committee held a meeting to determine what recommendations, if any, the committee would make to the Shelby County Board regarding farming options for a farm owned by the county, known as "the Shelby County Farm." The agenda read "Discussion and vote on recommendation to the County Board regarding farming options for the Shelby County Farm."

The Shelby County Farm was purchased by the county in 1867 to be utilized as a "Poor Farm." In the late 1960's, poor farms were eliminated by the State. As a result, in the early 1970's, Shelby County, like many other counties, began leasing the county farm to private entities for the purpose of generating revenue for the county. Shelby County leased the County Farm from the early 1970's until 2020. No farming occurred in 2021 (for the first time since the early 1970's) when a minority of board members maintained that it is unconstitutional for the county to farm. As of the April 7, 2022 meeting, no decision had been made regarding use of the land for the 2022 farming season.

The Farm Committee of the Shelby County Board exists for the purpose of addressing all issues related to the County Farm. Various options are available to the county with respect to the County Farm, including: selling the land; maintaining ownership of the land without farming it (as in 2021); leasing the farm to a private entity; licensing / custom farming the land; and engaging in a pilot program with local schools to educate students on agriculture. The Farm Committee was tasked with considering various options as they relate to the County Farm and making its recommendation(s) to the full county board for a final decision.

At the April 7, 2022 meeting, the committee chairman introduced a proposal of recommending that the county enter into a custom farming agreement with a local farmer who expressed a willingness to donate seed, fertilizer, supplies, and equipment as well as plant, maintain, and harvest the crop in consideration for \$1.00. Under this proposed agreement, the county would receive 100% of the profit. The farm committee considered, and the majority voted to approve the custom farm option as a recommendation to the full county board.

With respect to the allegation that the committee voted on a matter that was not identified on the meeting agenda, it is the county's position that no violation of the Open Meetings Act occurred for the following reasons: discussions and recommendations regarding procurement of funding for herbicides and obtaining crop insurance were closely related to, appropriate, relative and pertinent to the discussion and recommendations of "farming options" for the Shelby County Farm.

A term and condition of the proposed Custom Farm Agreement was that the county would be responsible for procuring herbicides; however, inadequate funds existed within the County Farm budget to purchase the herbicides. For that reason, the committee discussed, considered, and voted to recommend to the full county board that the county borrow money for herbicide expenses to facilitate implementation of the recommended Custom Farm Agreement. The necessity of purchasing herbicides was related to, appropriate, relative, and pertinent to the proposed Custom Farm Agreement in that funding was necessary to procure herbicides under the terms of the proposed Custom Farm Agreement. Without herbicides, the crop yield would be negatively impacted.

A second topic directly related to the proposed Custom Farm Agreement was whether the committee would recommend obtaining crop insurance to protect the county against either the loss of its crops due to natural disasters, or the loss of revenue due to declines in the process of agricultural commodities. The deadline for applying for crop insurance had passed as of April 7, 2022. Jim Schwerman, an employee of the Shelby County State Bank, manages county farmland affiliated with the Shelby County Airport and, pursuant to this management role, separately obtained crop insurance for the airport farm, prior to the expiration of the application deadline. Because of his managerial role with the Shelby County Airport, Mr. Schwerman was able to extend the deadline for application for crop insurance as it related to the County Farm and, likewise, was able to obtain crop insurance on behalf of the county. Mr. Schwerman was not hired to purchase crop insurance. Rather, he volunteered, for no monetary compensation, to secure crop insurance on behalf of the county (if approved by the County Board). At the meeting in question, the farm committee had the option of recommending the purchase of crop insurance by accepting Mr. Schwerman's offer to secure it or, on the contrary, the option of recommending that the County Board decline to obtain crop insurance.

Under a custom farm arrangement, profit to the county is determined by the value of the crop yield. Crop insurance guarantees that the county will receive revenue from the crop in the event of a poor crop yield. For that reason, the committee voted to recommend that the full county board include crop insurance within the option to farm under a Custom Farm Agreement.

The procurement of crop insurance is closely related to, appropriate, relative, and pertinent to the recommended option of custom farming.

Recommendations to procure funding for herbicides and to obtain crop insurance were both subjects that were closely related, appropriate, relative, and pertinent to the agenda item of "Discussion and Vote on recommendation to the County Board regarding farming options for the County Farm." As such, the recommendations of these two options were germane to the agenda item listed and was included within the general subject matter of the agenda item.

In the case of In re Foxfield Subdivision, 396 Ill.App.3d 989, 920 N.E.2d 1102 (2nd Dist., 2009), the court held that a village board's action of annexing property was closely related or germane to an agenda item listed in the notice of the meeting, despite the fact that the agenda item did not read that a vote on the annexation was to occur. In that case, the agenda item read "Discussion and Consideration of potential annexation of property." The court held that, "even if we were to apply the provision regarding regular meetings, the agenda clearly informed the public that a potential annexation was to be discussed and considered." 396 Ill. App. 3d at 995-6. In rendering its decision, the court reasoned that "our Open Meetings Act does not require that an agenda be specifically detailed or that it be tailored to reach those specific individuals whose private interests are most likely to be affected by the actions of the public body. It requires only that the action taken at a special meeting be germane to the agenda listed in the notice. We do not find that anything more is required under the Open Meetings Act, and we will not depart from the plain language of the statute by reading into it exceptions, limitations, or conditions not expressed therein." Id.

Further, in Argo High School Council of local 571 v. Argo Community High School District 217, 163 Ill. App.3d 578, 114 Ill. Dec. 679 (1987), the court held that items voted upon at a special meeting were germane to the agenda item listed and for that reason, no OMA violation occurred. The court held that the board took actions that were not specifically detailed, but that were closely related to the agenda listed, within the meaning of the Open Meetings Act. 163 Ill.App.3d at 883.

In Argo High School Council of local 571 v. Argo Community High School District 217, a union contended that the Open Meetings Act was violated when the Argo Community High School District adopted certain motions: (1) extension of the superintendent's contract for one year through the 1986-1987 school year; (2) a change in the appointment of department chairpersons from a permanent basis to a three-year rotational basis; and (3) the posting and receiving of applications for the position of Athletic Director for the 1986-1987 school year. In that case, the agenda item read "review and discussion of salaries involving administrators, supervisors, and other personnel not covered by the agreement." The agenda did not specifically refer to extensions of contracts, change in chairperson appointments to temporary rather than permanent appointments; nor did it refer to Athletic Director applications at all.

The union argued that the notice violated section 2.02 of the Act because "some of the items considered and voted upon at the meeting were not germane to the listed agenda." 516 N.E.2d 834, 836. The court rejected the union's argument, reasoning that "we note that the word

germane literally means having the same parents... 'germane' is defined as 'in close relationship, appropriate, relative, pertinent.'" Id. Further, the court noted that courts have expanded the meaning of the word even further than the definition found in Black's Law Dictionary Id.


In Argo, the court determined that discussions of who can authorize salary increases (the rotation system), who will receive a salary, and the length of contracts are "closely related" and "pertinent" to a discussion of personnel salaries (as referred to in the agenda). Id. at 837. Moreover, the court noted, "the Act only requires that a public body 'substantially' comply with the Act's provisions." Id. Further, the court stated, "the Board took actions which were not specifically detailed but which were 'closely related' to the agenda listed in the notice. Accordingly, we find no lack of substantial compliance with the Act or that the motions passed were not germane to the agenda listed in the district's notice." Id.

Finally, in the Argo case, the court noted that at a later meeting a successor board affirmed the actions taken by the board at issue. Accordingly, the court held, the subsequent meeting would have cured the alleged violation of the Act, if a violation had in fact occurred. Id.

Here, it is the county's position that adequate notice was provided, consistent with the Open Meetings Act and in consideration of the above-referenced cases. The agenda item provided notice that the subject matter of farming option recommendations would be discussed and voted upon. Recommendations to procure funding for herbicides and to obtain crop insurance were closely related to, appropriate, relative, and pertinent to the recommended option of custom farming. Further, the committee's recommendations to custom farm, procure funding for herbicides and to obtain crop insurance were all subsequently considered, voted upon, and approved by the County Board at its April 14, 2022 meeting. Any alleged violation of the Act would have been cured by the subsequent county board meeting, if a violation had in fact occurred.

Pursuant to your request, I have enclosed the committee meeting agenda and minutes for the April 7, 2022 meeting at issue. Please advise if you require further information. Thank you for your consideration.

Sincerely,


NICHOLE KRONCKE
SHELBY COUNTY
STATE'S ATTORNEY