



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

June 30, 2022

PUBLIC ACCESS OPINION 22-008
(Request for Review 2022 PAC 71237)

OPEN MEETINGS ACT:
Taking Final Action on Matter Not
Sufficiently Identified on Meeting Agenda

Mr. Jeremy D. Williams
[REDACTED]

The Honorable Jeff Slifer
Chairman
Farm Committee
Shelby County Board
P.O. Box 230
Shelbyville, Illinois 62565

Dear Mr. Williams and Mr. Slifer:

This binding opinion is issued by the Attorney General pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2020)). For the reasons discussed below, this office concludes that the Farm Committee (Committee) of the Shelby County Board (Board) violated OMA at its April 7, 2022, meeting by voting to approve two resolutions without providing advance notice of those final actions on the Committee's meeting agenda.

BACKGROUND

In an e-mail addressed to the Public Access Counselor and sent to an Assistant Attorney General in the Public Access Bureau on April 13, 2022, Mr. Jeremy D. Williams submitted a Request for Review alleging that the Committee violated OMA by voting on two items, the hiring of Jim Schwerman to buy crop insurance for the county, and borrowing \$ 7,500

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for crop expenses, which were not listed on the agenda for its April 7, 2022, meeting.¹ On April 14, 2022, Mr. Williams sent an e-mail to the Public Access Bureau containing the agenda and minutes of the Committee's April 7, 2022, meeting.² The Public Access Bureau construed this Request for Review as alleging that the Committee violated section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2020)) by taking final action to borrow money for crop expenses and hire a certain individual to obtain crop insurance without including the general subject matter of those actions on the meeting agenda.

On April 26, 2022, the Public Access Bureau sent a copy of the Request for Review to Mr. Jeff Slifer, the Chairman of the Shelby County Farm Committee, and requested a written response to Mr. Williams' allegations, as well as copies of the agenda and minutes of the April 7, 2022, meeting.³ By e-mail dated May 5, 2022, Ms. Nichole Kroncke, Shelby County State's Attorney, provided the Public Access Bureau with a written response on behalf of the Committee.⁴ The Committee's response acknowledged that during its April 7, 2022, meeting, the Committee voted to recommend that the Board approve borrowing money for herbicide expenses, and to use the services of Mr. Jim Schwerman, at no charge, to secure crop insurance.⁵ The Committee asserted that it provided sufficient advance notice of those recommendations because they were "germane" to a matter listed on its agenda,⁶ specifically item 3, which provided "Discussion and vote on recommendation to the County Board regarding farming options for the County Farm[.]"⁷ On May 13, 2022, Ms. Kroncke e-mailed this office copies of the agenda and minutes of the Committee's April 7, 2022, meeting.⁸

¹E-mail from Jeremy Williams to Public Access Counselor [Office of the Attorney General] (April 13, 2022).

²E-mail from Jeremy Williams to [Lorraine] Dunham, [Paralegal II, Public Access Bureau, Office of the Attorney General] (April 14, 2022).

³Letter from Edie Steinberg, Senior Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Mr. Jeff Slifer, Chair, Shelby County Farm Committee (April 26, 2022).

⁴Letter from Nichole Kroncke, Shelby County State's Attorney, to Edie Steinberg, Senior Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (May 5, 2022).

⁵Letter from Nichole Kroncke, Shelby County State's Attorney, to Edie Steinberg, Senior Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (May 5, 2022), at 2.

⁶Letter from Nichole Kroncke, Shelby County State's Attorney, to Edie Steinberg, Senior Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (May 5, 2022), at 2-3.

⁷Shelby County Farm Committee, Meeting, Agenda Item 3 (April 7, 2022).

⁸E-mail from Nichole Kroncke, Shelby County State's Attorney, to [Edie] Steinberg (May 13, 2022).

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Also on May 13, 2022, the Public Access Bureau forwarded a copy of the Committee's written answer to Mr. Williams and notified him of his opportunity to reply.⁹ On June 20, 2022, Mr. Williams submitted a reply.¹⁰

On June 9, 2022, the Public Access Bureau extended the time within which to issue a binding opinion by 21 business days, to July 12, 2022, pursuant to section 3.5(e) of OMA.¹¹

ANALYSIS

The OMA "provides that public bodies exist to aid in the conduct of the people's business[.]" *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989). The intent of OMA is "to protect the citizen's right to know[.]" 5 ILCS 120/1 (West 2020). Further, the General Assembly "declares it to be the public policy of this State that its citizens shall be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way."

Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2020)) 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." Section 2.02(c) of 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.)

"The primary objective * * * when construing the meaning of a statute is to ascertain and give effect to the intent of the legislature." *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). "The most reliable indicator of legislative intent is the statutory language, given its plain and ordinary meaning." *Gaffney v. Board of Trustees of the Orland Fire Protection District*, 2012 IL 110012, ¶56, 969 N.E.2d 359, 372 (2012). When statutory language is ambiguous, the

⁹Letter from Edie Steinberg, Senior Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Jeremy Williams (May 13, 2022).

¹⁰E-mail from Jeremy Williams to [Edie] Steinberg (June 20, 2022).

¹¹Letter from Edie Steinberg, Senior Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Jeremy D. Williams, and to Jeff Slifer, Chair, Shelby County Farm Committee (June 9, 2022).

statute's legislative history and debates are "[v]aluable construction aids[.]" *Advincula v. United Blood Services*, 176 Ill. 2d 1, 19 (1996).

OMA does not define "general subject matter," and no Illinois reviewing court has precisely defined that term. "General" is defined as "[i]nvolving only the main features of something rather than details or particulars." The American Heritage Dictionary 552 (2d coll. ed. 1985). "Subject matter" is defined as "[t]he issue presented for consideration[.]" Black's Law Dictionary 1561 (9th ed. 2009). These definitions are broad in scope, and provide little guidance as to the amount of information the General Assembly intended public bodies to include on agendas for topics of final action. Although the modifier "general" signifies that an agenda item may identify a broad subject matter, the word is inherently ambiguous.

However, the Illinois Supreme Court has indicated that section 2.02(c) requires that a public body's agenda include sufficient detail to notify members of the public of the types of final actions that public bodies anticipate taking. *Board of Education of Springfield School District No. 186 v. Attorney General of Illinois*, 2017 IL 120343, ¶¶ 32-33, 77 N.E.3d 625, 632 (2017). In that case, the meeting agenda at issue "listed item 9.1, 'Approval of a Resolution regarding the Separation Agreement and Release between Superintendent Dr. Walter Milton, Jr., and the Board of Education.'" *Board of Education of Springfield School District No. 186*, 2017 IL 120343, ¶8, 77 N.E.3d at 628. During the meeting, the Board of Education voted in favor of a resolution that its president recited: "I have item 9.1, approval of a resolution regarding the separation agreement. The Board President recommends that the Board of Education of Springfield School District No. 186 vote to approve the separation agreement and release between Dr. Walter Milton, Jr., and the Board of Education." *Board of Education of Springfield School District No. 186*, 2017 IL 120343, ¶9, 77 N.E.3d at 628. The Court determined that agenda item 9.1 "not only set forth the general subject matter—approval of a resolution regarding a separation agreement—it specifically identified the individual employee with whom the agreement had been negotiated, and it contained a link to the full text of the agreement itself." *Board of Education of Springfield School District No. 186*, 2017 IL 120343, ¶33, 77 N.E.3d at 632.¹²

The Illinois Supreme Court's analysis is consistent with the reason section 2.02(c) of OMA was enacted and the problems this provision was intended to remedy. 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 enacted this provision to ensure

¹²Although the adequacy of the Board of Education's public recital rather than the agenda item was at issue, the Court analyzed the agenda item in holding that "an agenda posting standing alone cannot fulfill the public recital requirement in section 2(e)." *Board of Education of Springfield School District No. 186*, 2017 IL 120343, ¶35, 77 N.E.3d at 632.

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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**. (Emphasis added.) Remarks of Sen. Dillard, May 16, 2012, Senate Debate on House Bill No. 4687, at 47.¹³

Here, the agenda for the April 7, 2022, meeting listed as item three: "Discussion and vote on recommendation to the County Board regarding farming options for the County Farm[.]"¹⁴ The handwritten minutes of the Committee's April 7, 2022, meeting, provide in relevant part:

7. Motion by Swits, 2nd by Coffman
to hire Jim Schwerman (N/C) to attain crop insurance
No - Orman, Bennett
Yes - Coffman, Slifer, Swits PASSED
8. Motion by Swits, 2nd by Coffman
To borrow up to \$7500 at 0% interest for crop expense
No - Orman, Bennett
Yes - Coffman, Slifer, Swits PASSED
9. To be presented to full board[.]¹⁵

The general subject matter of these final actions were to recommend that the Board (1) attain crop insurance and (2) borrow money for crop expenses. The agenda for the

¹³See also Ill. Att'y Gen. Pub. Acc. Op. No. 19-012, issued November 13, 2019, at 7 ("The Senate debate on House Bill No. 4687, which as Public Act 97-827, effective January 1, 2013, added section 2.02(c) to OMA, indicates that the General Assembly intended this provision to ensure that agendas provide sufficient detail to notify members of the public of the types of final actions public bodies anticipated taking at their meetings.").

¹⁴Shelby County Farm Committee, Meeting, Agenda Item 3 (March 28, 2022).

¹⁵Shelby County Farm Committee, Meeting, April 7, 2022, Minutes 2.

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April 7, 2022, meeting did not list attaining crop insurance or borrowing money for crop expenses as any item. Rather, the agenda merely states that the Committee will make recommendations about "farming options for the County Farm[.]"¹⁶ Therefore, the general subject matter of the Committee's final actions are absent.

In support of its position that its agenda did not violate OMA, the Committee's response to this office explained:

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.

* * *

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.^[17]

As explained by the Committee, its purpose is to address issues related to the County Farm and make recommendations to the Board regarding options for the County Farm. Thus, agenda item three ("Discussion and vote on recommendation to the County Board regarding farming options for the County Farm") merely restates the Committee's purpose rather than describing the subject

¹⁶Shelby County Farm Committee, Meeting, Agenda Item 3 (April 7, 2022).

¹⁷Letter from Nichole Kroncke, Shelby County State's Attorney, to Edie Steinberg, Senior Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (May 5, 2022), at 1-2.

matter of particular options on which the Committee might vote at that particular meeting. The Committee's argument is analogous to contending that an agenda item for a county board meeting sufficiently identified the general subject matter of a final action if it stated the county board would discuss matters regarding the county, which is patently overbroad and insufficient. The Committee's agenda was simply too vague and imprecise to provide any meaningful notice to the public that the Committee would take action concerning borrowing money for crop expenses or obtaining crop insurance. Because agenda item three merely restates the Committee's purpose, the agenda did not satisfy the requirements of section 2.02(c) of OMA by setting forth the general subject matter of the Committee's actions concerning its recommendations to attain crop insurance and to borrow money for crop expenses, such as herbicides.

The Committee also argued that its agenda provided sufficient advance notice because both of the Committee's final actions were "germane" to agenda item three. Specifically, the Committee asserted that the actions are closely related, appropriate, relative, and pertinent to recommending farming options for the County Farm.¹⁸ The Committee cited two cases to support its position that being "germane" to an agenda item satisfies the requirements of section 2.02(c) of OMA: *In re Foxfield Subdivision*, 396 Ill. App. 3d 989 (2d Dist., 2009); *Argo High School Council of Local 571 v. Argo Community High School District*, 163 Ill. App. 3d 578 (1st Dist. 1987). The court in those cases, however, considered whether agendas provided sufficient advance notice pursuant to language that is similar or substantively identical to the current version of section 2.02(a) of OMA.¹⁹ *In re Foxfield Subdivision*, 396 Ill. App. 3d at 994; *Argo High School Council of Local 571*, 163 Ill. App. 3d at 581-82. Both decisions pre-date the enactment of section 2.02(c) of OMA, which became effective on January 1, 2013. The General Assembly manifested an intent to impose on public bodies an additional advance notice requirement by amending OMA to require public bodies to include the general subject matter of final actions on meeting agendas. See *People v. Woodard*, 175 Ill. 2d 435, 444 (1997) (statutory amendments are "presumed to have a purpose, and a court must consider the language of an

¹⁸Letter from Nichole Kroncke, Shelby County State's Attorney, to Edie Steinberg, Senior Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (May 5, 2022), at 3-4.

¹⁹Section 2.02(a) (5 ILCS 120/2.02(a) (West 2020)) provides, in relevant part:

Public notice of any special meeting except a meeting held in the event of a bona fide emergency, or of any rescheduled regular meeting, or of any reconvened meeting, shall be given at least 48 hours before such meeting, which notice shall also include the agenda for the special, rescheduled, or reconvened meeting, but the validity of any action taken by the public body which is **germane** to a subject on the agenda shall not be affected by other errors or omissions in the agenda."

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amended statute in light of the need for amendment and the purpose it serves."). The term "germane" in section 2.02(a) of OMA is not synonymous with the phrase "general subject matter" in section 2.02(c). "Germane" is defined as "[r]elevant; pertinent[.]" Black's Law Dictionary 756 (9th ed. 2009). If the legislature meant to use the term "germane" in section 2.02(c) of OMA, it could have done so. *See Jacobson v. General Finance Corp.*, 227 Ill. App. 3d 1089, 1098 (2d Dist. 1992) ("In construing statutory enactments, the General Assembly is presumed to know existing law[.]") Instead, it chose the language "general subject matter," signifying that it intended a public body to provide the public with more detailed advance notice of its upcoming actions.

The Committee also asserted that even if the Committee had violated OMA, the Board cured the violation by considering and voting on the Committee's recommendations at its April 14, 2022 meeting. The minutes of the Board's April 14, 2022, meeting establish that the Board considered the Committee's recommendations to borrow money for the crop expense of procuring chemicals and to use the services of Mr. Schwerman to procure crop insurance on behalf of the county. During the meeting, Committee Chair Slifer pulled the Committee's recommendation for borrowing money, and the Board voted to approve the motion allowing Mr. Schwerman to procure crop insurance on behalf of the county.²⁰ As such, the Committee argued that if it had violated OMA, the Board cured its violation. A committee of a public body, such as a board, is a separate public body from the board for purposes of compliance with the requirements of OMA. Ill. Att'y Gen. Pub. Acc. Op. No. 13-002, issued April 16, 2013, at 5.²¹ Thus, the Board's actions at its April 14, 2022, meeting did not cure the Committee's violation of OMA. However, because the Board already considered and voted on the Committee's recommendations, there is no legal or practical reason for the Committee to prepare a new agenda and re-vote on its final actions.

Based on the foregoing, this office concludes that the Committee violated section 2.02(c) of OMA during its April 7, 2022, meeting, by taking final action to recommend that the Board attain crop insurance and borrow money for crop expenses without including the general subject matter of those final actions on the meeting agenda.

²⁰Shelby County Board, Meeting, April 14, 2022, Minutes 2.

²¹*See also* section 1.02 of OMA (5 ILCS 120/1.02) (West 2020), which defines a "Public body" to include "all legislative, executive, administrative or advisory bodies of the State, counties, * * * **boards**, bureaus, **committees** or commissions of this State, and any subsidiary bodies of any of the foregoing including but not limited to **committees** and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue[.]" (Emphasis added.)

FINDINGS AND CONCLUSIONS

After full examination and giving due consideration to the arguments presented, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

1) On April 13, 2022, Mr. Jeremy D. Williams submitted a Request for Review alleging that at its April 7, 2022, meeting the Farm Committee of the Shelby County Board voted to buy crop insurance and to borrow \$7,500 for crop expenses without listing those items on the meeting agenda. Mr. Williams' Request for Review was timely filed and otherwise complies with the requirements of section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2020)).

2) On April 26, 2022, the Public Access Bureau sent a copy of the Request for Review to Mr. Jeff Slifer, the Chairman of the Committee, and requested a written response to Mr. Williams' allegations, along with copies of the agenda and minutes of the April 7, 2022, meeting.

3) On May 5, 2022, Ms. Nichole Kroncke, Shelby County State's Attorney, provided the Public Access Bureau with a written response on behalf of the Committee. On May 13, 2022, Ms. Kroncke provided this office with the requested agenda and minutes.

4) On May 13, 2022, the Public Access Bureau forwarded a copy of the Committee's written answer to Mr. Williams and notified him of his opportunity to reply. On June 20, 2022, Mr. Williams submitted a reply.

5) On June 9, 2022, the Public Access Bureau extended the time within which to issue a binding opinion in this matter by 21 business days, to July 12, 2022, pursuant to section 3.5(e) of OMA. Accordingly, the Attorney General may properly issue a binding opinion with respect to this matter.

6) Section 2.02(c) of OMA requires that a meeting agenda "set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting." This provision requires public bodies to include on agendas sufficient detail to notify members of the public of the types of final actions that public bodies anticipate taking at their meetings.

7) The purpose of the Committee is to address issues related to the county farm and to make recommendations to the Board regarding options for the farm.

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8) Agenda item 3 of the agenda for the Committee's April 7, 2022, meeting indicated that the Committee would discuss and vote on recommendations to the Board regarding farming options for the county farm.

9) During its April 7, 2022, meeting, the Committee voted to recommend to the Board that it borrow up to \$7,500 for crop expenses and use the services of Mr. Schwerman, at no charge, to attain crop insurance.

10) The general subject matter of the Committee's final actions were to (1) recommend that the Board borrow money for crop expenses, and (2) recommend that the Board attain crop insurance.

11) The Committee's agenda for its April 7, 2022, meeting did not contain agenda items identifying the general subject matter of its final actions to recommend that the Board borrow money for crop expenses or to recommend that the Board attain crop insurance.

12) Accordingly, the Attorney General concludes that the Committee violated section 2.02(c) of OMA by failing to include the general subject matter of those final actions on the agenda for its April 7, 2022, meeting.

In accordance with these findings of fact and conclusions of law, directs the Committee to include the general subject matter of its anticipated final actions on its agendas for future meetings and to conduct its future meetings in full compliance with OMA. As required by section 3.5(e) of OMA, the Committee shall either take necessary action as soon as practical to comply with the directives of this opinion or shall initiate administrative review under section 7.5 of OMA (5 ILCS 120/7.5 (West 2020)).

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This opinion shall be considered a final decision of an administrative agency for the purpose of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2020). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review in the Circuit Court of Cook County or Sangamon County within 35 days of the date of this decision, naming the Attorney General of Illinois and Mr. Jeremy Williams as defendants. *See* 5 ILCS 120/7.5 (West 2020).

Very truly yours,

KWAME RAOUL
ATTORNEY GENERAL

By:


Brent D. Stratton
Chief Deputy Attorney General

cc: The Honorable Nichole Kroncke
Shelby County State's Attorney
301 East Main Street
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CERTIFICATE OF SERVICE

Steve Silverman, Bureau Chief, Public Access Bureau, hereby certifies that he has served a copy of the foregoing Binding Opinion (Public Access Opinion 22-008) upon:

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by causing a true copy thereof to be sent electronically to the addresses as listed above and by causing to be mailed a true copy thereof in correctly addressed, prepaid envelopes to be deposited in the United States mail at Chicago, Illinois on June 30, 2022.


STEVE SILVERMAN
Bureau Chief

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