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October 23, 2022
(by email to timcondron@mcusd2.com)

Superintendent Tim Condron
Mattoon CUSD #2
1701 Charleston Ave.
Mattoon, IL 61938

Re: Board Member Emails to Quorum of Board
Confidential Opinion Subject to Attorney-Client Privilege

Dear Superintendent Condron:

This is written pursuant to your request in an email sent to me on October 17, 2022. You have asked for guidance concerning what your Board President perceived to be a potential Open Meetings Act violation of another Board Member. As you know, the Open Meetings Act requires that business of public bodies, including school boards, be conducted in the public. The Open Meetings Act defines a “meeting” as “any gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business...” 5 ILCS 120/1.01 [emphasis added]. The phrase “discussing public business” has been identified to mean “an exchange of views and ideas among public body members, on any item germane to the affairs of their public body. It is not directed at casual remarks, but in effectuation of Section 1 of the Act (5 ILCS 120/1), at discussions that are deliberative in nature.” *Guide to the Illinois Open Meetings Act, 5 ILCS 120*, Lisa Madigan, Attorney General of the State of Illinois (August 2004).

As a related preliminary issue, please bear in mind that email communication among board members is presumed to be a public record under the Illinois Freedom of Information Act (5 ILCS 140/), unless an exemption applies. Illinois courts have been clear that this includes messages pertaining to public business on personal accounts. *City of Champaign v. Madigan*, 2013 IL App. (4th) 12062; *Better Government Ass’n v. The City of Chicago Office of Mayor*, 2020 IL App. (1st), 190038.

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Your question asks whether Board Member, Heidi Larson, violated the Open Meetings Act when she sent an email, on October 4, 2022, to Superintendent Condrón, Board Member Hedges, Board Member Kepley, and Board President Skinlo, requesting that “Federal Sex Education Curriculum” be added to the agenda for the upcoming board meeting. Board Member Larson also wrote about how she was “blocked from asking for an update on the committee” at the previous board meeting and asked for the “Robert’s Rule” or “copy of the Board policy that was violated” when she asked for said update during the meeting. Finally, Board Member Larson asked for updates on the LIFT building to be added to the agenda. As you’re already aware, four members of a seven-person board is more than a majority of a quorum of the board, and in fact constitutes a quorum.

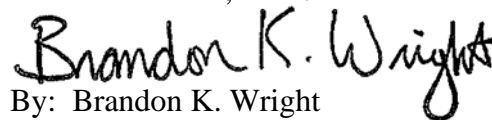
It is my opinion that Board Member Heidi Larson likely violated the Open Meetings Act with her email on October 4, 2022: she created a “gathering” via electronic communication with a total of four board members in an attempt to discuss school district business. I would advise that future emails of that nature be limited to only the necessary persons, which must be fewer persons than a majority of a quorum of the board (i.e., fewer than three board members total, including the sender). In her email, Board Member Larson created a situation where others may feel invited to respond and engage in the discussion of public business by electronic communication. Those responses, if they were to occur, would clearly violate the Open Meetings Act. Additionally, if another member of the board was to take a similar action and begin a new email thread but visit those same topics by forwarding the communication to other board members, I would have concern that could cause a violation as well. I caution against similar group emails in the future that might involve three or more board members.

My general advice is that administrators or board members who are sending emails to a majority of a quorum of the board use the blind carbon copy function and to only use in the case of important notifications that all board members need to receive and to not engage in any responses or comments which may be perceived as discussion of public business. Nor should board members use a “reply all” function using email, or in any other avenue of electronic communication, including, but not limited to chats, text messages, social media messages, etc. – particularly where more than two board members are involved.

I hope the foregoing is responsive to your request. If you have any questions or would like clarification, please do not hesitate to contact me.

Sincerely,

MILLER, TRACY, BRAUN, FUNK &
MILLER, LTD.



By: Brandon K. Wright

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