



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

September 21, 2021

Via electronic mail
Mr. Jeremy Williams
Cardinalsfan1968@juno.com

RE: OMA Request for Review – 2021 PAC C-0203

Dear Mr. Williams:

The Public Access Bureau has received the attached response letter to your Request for Review from the Shelby County Board Insurance Committee. You may, but are not required to, reply in writing to the public body's response. If you choose to reply, you must submit your reply to this office within 7 working days of your receipt of this letter. 5 ILCS 120/3.5(c) (West 2020). Please send a copy of any reply to Ms. Nichole Kroncke as well. Please contact me at (312) 814-4467 or via e-mail if you have any questions or would like to discuss this matter. Thank you.

Very truly yours,

A handwritten signature in black ink that reads "Grace Angelos". The signature is written in a cursive, flowing style.

GRACE ANGELOS
Assistant Attorney General
Public Access Bureau

Attachment

cc: *Via electronic mail*
Ms. Nichole Kroncke
Shelby County State's Attorney
301 East Main Street
Shelbyville, Illinois 62565
statesattorney@shelbycounty-il.com



Nichole D. Kroncke

Shelby County State's Attorney

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September 16, 2021

Ms. Grace Angelos
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 – 2021 PAC C-023

Dear Ms. Angelos:

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

The Shelby County Board Insurance Committee consists of three members: Barbara Bennett, Bryon Coffman, and Theresa Boehm. Barbara Bennett was not present for the August 5, 2021 committee meeting that is at issue. Bryon Coffman and Theresa Boehm were present. The meeting was conducted in person and was videotaped by Jeremy Williams as a member of the public. No audio or visual recording was made of the meeting by any member of the board. Also present for the meeting was myself as State's Attorney, the treasurer, two invited representatives of Consociate Insurance (with whom the county contracts with for employee insurance benefits), and Sharon Barricklow (a local newspaper reporter).

During the meeting, the agenda item of "Discuss recommendation to be presented to county board regarding former employee" was addressed. The issue involved an allegation made by the Shelby County Treasurer against the former employee that he had defrauded Shelby County by remaining on the county's insurance policy after retirement and during a time in which he was eligible to obtain Medicare benefits. Two representatives of Consociate Insurance attended the meeting and responded to questions involving the insurance policy and the actions of the former employee. The name of the former employee was omitted from the agenda because of the nature of the allegations and in an effort to prevent wrongful defamation of his character. The entire meeting occurred in open session with members of the public present and at no point was the meeting held in closed session. The board members and representatives from Consociate Insurance did not state the former employee's name. Instead, he was generally referred to as a "former employee" of Shelby County.

The representatives from Consociate Insurance explained that the former employee was not receiving benefits from the county insurance plan simultaneously with Medicare benefits. The former employee had signed up for Medicare Part A, but not Part B. Part A did not cover the vast majority of the former employee's medical expenses resulting from a catastrophic medical condition. In addition, it was unclear when the former employee was notified by Medicare that he had been approved for Part A coverage. It was also shown that the former employee was paying approximately \$600 more a month in premium payments by remaining on the county's insurance rather than enrolling in Medicare Part B. Further, one representative of the Consociate explained that doctors often advise patients to remain on their employer's plan until Medicare is approved and is actually covering medical expenses.

Because (1) the former employee did not profit and in actuality paid a substantially higher premium by remaining on the county insurance (2) it is unclear when the employee was notified that he was enrolled in Medicare Part A, and (3) he did not enroll in Medicare Part B (the plan that would have covered the vast majority of his medical expenses) during the time that he remained on the county's insurance plan, the committee members determined that no further action was necessary with respect to this issue.

Mr. Williams alleged that the two committee members who were present held an inaudible conversation during the meeting. I have not had the opportunity to review Mr. Williams' recording but I do not recall a conversation that was inaudible nor do I recall Mr. Williams stating that he was unable to hear any portion of the meeting. I have discussed the allegation with Bryon Coffman and he surmises that Mr. Williams is referring to a statement made by Bryon Coffman to Theresa Boehm (who was seated next to him) asking a procedural question of whether she was in favor of making a decision on the former employee issue that was listed on the agenda. Ms. Boehm responded in the affirmative and shortly thereafter both members voted to take no further action on the issue. Theresa Boehm provided a committee report at the August County Board meeting about the committee's findings and explained why the committee determined no further action was necessary.

It is the committee's position that a violation of the Open Meetings Act did not occur with respect to the allegation that an inaudible conversation occurred for the following reasons: (1) the entire meeting was open to the public, pursuant to 5 ILCS 120/2; (2) no committee member intentionally spoke in a manner so that others present could not hear; (3) the inquiry and response of whether one committee member was prepared to act on an issue was promptly followed up with the action that was discussed: a vote on the issue.

With respect to the allegation that the committee voted on a matter that was not identified on the meeting agenda, it is the committee's position that no violation of the Open Meetings Act occurred. The agenda read "Discuss recommendation to be presented to county board regarding former employee." The committee discussed at length whether potential fraud existed with respect to the former employee's actions, consistent with the agenda item. Having determined that no fraudulent behavior had been committed, the committee determined that no further action was warranted in that there was no need to recommend to the board that further action be taken.

The agenda accurately described the topic that was to be considered at the meeting and the action taken was consistent with the agenda item. Further, the committee made a report, through board member Theresa Boehm, to the Shelby County Board regarding the committee's recommendation. The Shelby County Board may, if it so chooses, make a determination that further action is in fact warranted with respect to the former employee at issue.

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."

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. In that case, similar to this case, the agenda item did not list "vote" or "final action" as it related to the agenda item. 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.

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 topic of what recommendations, if any, were to be made to the county board regarding the conduct of a former employee was to be considered. The committee's decision to recommend to the county board that no further action is necessary is consistent with the notice provided on the agenda item.

By your request, I have enclosed the committee meeting agenda and minutes for the August 5, 2021 meeting at issue. Please advise if you require further information. Thank you for your consideration.

Sincerely,



Nichole Kroncke
Shelby County State's Attorney