



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

July 17, 2019

Via electronic mail
Mr. John Kraft

Via electronic mail
Mr. Richard M. Kash, Jr.
Fruin & Kash
129 North Central Avenue
Paris, Illinois 61944
info@fgklaw.net

RE: OMA Request for Review – 2019 PAC 57971

Dear Mr. Kraft and Mr. Kash:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons explained below, the Public Access Bureau concludes that the Clark-Edgar Rural Water District (District) Board of Trustees (Board) failed to provide sufficient advance notice that it would discuss various issues concerning bulk water rates during its May 1, 2019, special meeting, but did adequately indicate on the meeting agenda that the Board would consider and take final action on an employee's salary.

In his Request for Review, received by this office on May 3, 2019, Mr. John Kraft alleged that the Board violated OMA during its May 1, 2019, special meeting by taking final action to increase the salary of the District's general manager despite the agenda item only mentioning the reevaluation of his salary. Mr. Kraft also alleged that the Board improperly discussed various matters because they did not fall within the scope of the following agenda item: "Discussion and Approval of Village of Vermillion [sic] and Bulk Water Rates."¹

¹Clark-Edgar Rural Water District Board of Trustees, Agenda Item V(c), Discussion and Approval of Village of Vermillion [sic] and Bulk Water Rates (May 1, 2019).

Mr. John Kraft
Mr. Richard M. Kash, Jr.
July 17, 2019
Page 2

On May 14, 2019, this office sent a copy of the Request for Review to the Board and requested that it provide this office with copies of the agenda and minutes for its May 1, 2019, special meeting along with a detailed written response to Mr. Kraft's allegations.

On May 29, 2019, counsel for the Board furnished those materials. On June 3, 2019, this office forwarded a copy of the Board's response to Mr. Kraft; he did not reply

DETERMINATION

The intent of OMA is to "ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly[,]" and to ensure that individuals are "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." 5 ILCS 120/1 (West 2016).

Notice of Final Action

Section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2016)) 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.) 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.

The Public Access Bureau has previously determined that "the General Assembly's use of the term 'general subject matter' signifies that a meeting agenda must set forth the main element(s), rather than the specific details, of an item on which the public body intends to take final action." Ill. Att'y Gen. PAC Req. Rev. Ltr. 45667, issued February 16, 2017, at 4-5 (determining that agenda item "appointment of the city administrator" did not violate section 2.02(c) of OMA). Additionally, the Public Access Bureau has determined that the language of section 2.02(c) of OMA "requires a public body's agenda to identify the general subject matter of

Mr. John Kraft
Mr. Richard M. Kash, Jr.
July 17, 2019
Page 3

final action – not what particular action will be taken by a public body." Ill. Att'y Gen. PAC Req. Rev. Ltr. 39177, issued February 2, 2016, at 3-4 (determining that agenda item "Illinois Rt. 53/120 Project Environmental Impact Statement" did not violate section 2.02(c) of OMA because by inclusion on the agenda, it could be inferred that the Board anticipated taking final action on the matter).

The agenda item concerning the salary for the District's general manager provided:

V. New business Consider and Act Upon:

* * *

b) Re-evaluation of General Man[a]ger Salary^[2]

This agenda item sufficiently identified the general subject matter of the action to be taken, namely that the Board planned to act on the general manager's salary after reevaluation. Although, the agenda item did not specify that the Board would vote to increase the salary of the general manager, that level of detail was not required to provide adequate advance notice of the general subject matter of the Board's final action. Accordingly, this office concludes that the Board did not violate section 2.02(c) of OMA in connection with that vote during its May 1, 2019, special meeting.

Special Meeting Discussion

Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016)) provides that "[p]ublic notice of any special meeting * * * shall be given at least 48 hours before such meeting, which notice shall also include the agenda for the special * * * 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." Section 2.02(a) of OMA also provides that "[t]he requirement of a regular meeting agenda shall not preclude the consideration of items not specifically set forth in the agenda." Although a public body may discuss items not on the agenda during a regular meeting under the express language of section 2.02(a) of OMA, the General Assembly specifically omitted that right for a public body holding a special meeting. See *People v. Smith*, 2016 IL 119659, ¶30, 76 N.E.3d 1251, 1258 (2016) ("[W]here the legislature includes particular language in one section of a statute but omits it in another section of the same statute, courts will presume that the legislature acted intentionally in the exclusion or

²Clark-Edgar Rural Water District Board of Trustees, Agenda Item V(b), Re-evaluation of General Man[a]ger Salary (May 1, 2019).

Mr. John Kraft
Mr. Richard M. Kash, Jr.
July 17, 2019
Page 4

inclusion." Therefore, the Public Access Bureau has determined that is improper for a public body to discuss a topic at a special meeting that is not listed on the agenda. See, for example, Ill. Att'y Gen. PAC Req. Rev. Ltr. 32604, issued April 15, 2015.

Mr. Kraft's Request for Review alleged that "this Special meeting consisted of extended discussions on items not placed on the agenda[.]" such as "various grants/loans for townships to obtain to hook up unserved customers, grant/loans and extended discussions on taking over the Vermilion water service instead of selling them bulk water, and costs for boring under the railroad."³ In its response to this office, the Board argued that the agenda item for the "Discussion and Approval of Village of Vermillion [sic] and Bulk Water Rates"⁴ was sufficiently descriptive to include the matters Mr. Kraft mentioned because the Board's discussion focused on providing water service to the Village of Vermilion (Village).

This office disagrees with the Board. Although the above-quoted agenda item indicated that the Board planned to consider and potentially take some type of action concerning the Village and, specifically, bulk water rates, the meeting minutes reflect that the Board discussed other issues, including potentially taking over the Village's system if the Village qualified for a loan.⁵ The agenda item did not notify members of the public that the Board would discuss taking over the system or identify the general subject matter of this alternative. The Board's response to this office also argued that even if the discussion went beyond the scope of the agenda item, it did not violate the requirements of OMA because it did not take final action on that matter. The requirement to limit special meeting discussions to items listed on the agenda, however, is independent of considerations concerning final action. Accordingly, this office concludes that the Board's May 1, 2019, special meeting discussion exceeded the scope of the meeting agenda. Because it is undisputed that the Board did not take final action on that matter, however, no action by the Board is required to remedy this violation. Nonetheless, this office advises the Board to constrain future special meeting discussions to the items listed on the agenda.

³E-mail from John Kraft to AG PAC (May 3, 2019).


⁴Clark-Edgar Rural Water District Board of Trustees, Agenda Item V(c), Discussion and Approval of Village of Vermillion [sic] and Bulk Water Rates (May 1, 2019).

⁵Clark-Edgar Rural Water District Board, Special Meeting, May 1, 2019, Minutes 1-2.

Mr. John Kraft
Mr. Richard M. Kash, Jr.
July 17, 2019
Page 5

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter will serve to close this matter. If you have questions, you may contact me by mail at the Chicago address on the bottom of the first page of this letter, by e-mail at sbarnaby@atg.state.il.us, or by phone at (312) 550-4480. Thank you.

Very truly yours,


SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

57971 o 202 notice proper improper spd