



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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August 23, 2024

Via electronic mail

Mr. Kirk Allen
kirk@illinoisleaks.com

Via electronic mail

The Honorable Jesse Danley
State's Attorney for Coles County
651 Jackson Avenue, Room 330
Charleston, Illinois 61920-2074
jdanley@co.coles.il.us

RE: OMA Request for Review – 2023 PAC 75375

Dear Mr. Allen and Mr. Danley:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2022)). For the reasons explained below, the Public Access Bureau concludes that the Coles County Board (Board) violated OMA in connection with its December 13, 2022, meeting.

BACKGROUND

In a Request for Review received by this office on February 6, 2023, Mr. Kirk Allen alleged that the agenda for the Board's December 13, 2022, meeting stated that the Board would amend the minutes from the May 10, 2022, meeting, but rather than merely amending the minutes, it effectively passed an alternative version of a resolution on Board members' salaries. He explained that the resolution concerning Board members' salaries had failed to pass during the May meeting.

On February 27, 2023, this office asked the Board or its representative to provide a written response to this office in which it addressed Mr. Allen's allegations. On March 8, 2023,

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the Coles County State's Attorney responded on behalf of the Board. On March 9, 2023, this office forwarded the Board's answer to Mr. Allen; he replied on March 16, 2023.

The resolution at issue concerns the salaries of Board members. On May 2, 2022, the Board's Finance Committee discussed the resolution. The minutes from the May 2, 2022, Finance Committee meeting provide:

7. The members discussed the last sentence of the County Officers Salary resolution (County Board) ["Said compensation shall include optional health insurance pursuant to 55 ILCS 5/5-1069 *et[] seq.*"]. Mr. Cox motioned to strike the last sentence of the resolution and forward to the County Board. Seconded by Mr. Watts.

MOTION FAILED: AYES: Cox & Watts (2)
NAYES: Unanimous – Metzger, Bell, Jaco
(3)

Mr. Bell motioned to keep the original sentence, as presented, of the County Officers Salary (County Board) and forward to the County Board. Seconded by Ms. Jaco.

MOTION CARRIED: AYES: Unanimous (3)
NAYES: Cox & Watts (2)^[1]

During the Committee Reports portion of the May 10, 2022, Board meeting, the Chairman of the Finance Committee, Stan Metzger, presented the resolution to the Board. He explained that during the May 2, 2022, Finance Committee meeting:

The members discussed the last sentence of the County Officers Salary resolution regarding the County Board. Mr. Cox moved to strike the last sentence of the resolution and forward to County Board. Second by Watts. This motion, however, failed by a vote of 2 to 3. Mr. Bell then motioned to keep the original sentence, as presented, [* * *] regarding County [* * *] Board salaries and forward this to the County Board, second by Jaco. Carried 3 to 2, and at this time, I so move.^[2]

Board member Lisa Jaco seconded the motion. The Board Chairman, Bob Bennett, asked for any discussion. A Board member asked, "what is the sentence?" Board member Darrell Cox

¹Coles County Board Finance Committee, Meeting, May 2, 2022, Minutes 2.

²Coles County Board – 5.10.2022, meeting recording, https://www.youtube.com/watch?v=VDMx_fbWsIQ&t=1018s, at approximately 16:48.

then spoke about why he was opposed to the sentence in the resolution that would offer optional health insurance to Board members. The Chairman then asked for a roll call vote. Board member John Doty asked, "and this is to leave the sentence in?" The Chairman said, "it is." Five members voted in favor, five voted against. In response to a question from the audience, the Chairman stated that the motion failed.

The May 10, 2022, meeting minutes state:

RESOLUTION RE: COUNTY OFFICERS SALARY – COUNTY BOARD

For a copy of the resolution see page 5419

Motion by Metzger, seconded by Jaco with the consent of the County Board.

AYES: Bell, Doughty, Jaco, Metzger, Shook (5)
NAYS: Bennett, Cox, Doty, Mason, Watts (5)
ABSENT: Corray, Purdy (2)^[3]

Page 5419 of the May 10, 2022, minutes packet contained the language of the resolution. The last sentence of the copy of the resolution included in the minutes stated, "Said compensation shall include optional health insurance pursuant to 55 ILCS 5/5-1069 *et. [sic] seq.*"

On the agenda for the December 13, 2022, Board meeting, Item 1 under Old Business was "Amend Minutes – May 10, 2022 – Resolution Officers Salary[.]"⁴ The December 13, 2022, Board meeting minutes reflect that a motion passed to amend the May 10, 2022, minutes. The recording of the December 13, 2022, meeting reflects that Board Chairman Darrell Cox introduced the agenda item as follows:

Amend the minutes of May 10, 2022, Resolution Officers' Salaries. [* * *] Basically, we're removing a sentence. The old resolution stated '[t]hat the compensation to be paid to the County Board members shall be computed on an annual basis. Said compensation to include mileage and expenses. Said compensation shall include optional health insurance pursuant to 55 ILCS 5/5-1069 *et[] seq.*' The amended version strikes that last sentence and only states

³Coles County Board, Meeting, May 10, 2022, Minutes 5349.

⁴Coles County Board, Agenda Item, Committee Reports 6. Res. – County officers (County Board) Salaries/Compensation (May 10, 2022).

'[t]hat the compensation to be paid to the County Board members shall be computed on an annual basis. Said compensation to include mileage and expenses.' Any discussion?^[5]

Multiple members of the audience then objected to the motion, alleging that it is illegal and that minutes cannot be changed after the fact. The Board Chairman informed the individuals that they could raise their objections during the period for public comment. He also stated that the Board was amending the minutes on the advice of the Coles County State's Attorney. The Board then voted on and passed the motion to amend the minutes.

The amended May 10, 2022, meeting minutes state:

RESOLUTION RE: COUNTY OFFICERS SALARY – COUNTY BOARD

For a copy of the resolution see page 5419 AMENDED 12/13/22

Motion by Metzger, seconded by Jaco with the consent of the County Board.

AYES: Bell, Doughty, Jaco, Metzger, Shook (5)
NAYS: Bennett, Cox, Doty, Mason, Watts (5)
ABSENT: Corray, Purdy (2)^[6]

Page 5419 of the amended May 10, 2022, minutes packet contains a version of the resolution without the sentence concerning optional health insurance.

DETERMINATION

It is 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." 5 ILCS 120/1 (West 2022). "The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (1989).

⁵Coles County Board Meeting 12 13 22, <https://www.youtube.com/watch?v=OMam9lyIMXA>, at approximately 25:05.

⁶Coles County Board, Meeting, May 10, 2022, Amended Minutes 5349.

Section 2.06(a) of OMA (5 ILCS 120/2.06(a) (West 2022)) provides:

(a) All public bodies shall keep written minutes of all their meetings, whether open or closed, and a verbatim record of all their closed meetings in the form of an audio or video recording. Minutes shall include, but need not be limited to:

- (1) the date, time and place of the meeting;
- (2) the members of the public body recorded as either present or absent and whether the members were physically present or present by means of video or audio conference; and
- (3) **a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken.** (Emphasis added.)

In its response to this office, the Board appeared to argue that during the May 10, 2022, meeting, the Board intended to approve the version of the salary resolution that did not include the health insurance language:

The board unanimously passed the elected official salary resolution regarding all elected officials. Following that vote, Stan Metzger addressed the portion of the resolution as to the last sentence regarding the County Board members health insurance option. It is my opinion, had Mr. Metzger covered this issue first, the intent of the Board would be more clear but unfortunately, that is not the order in which he addressed the matter. Once again, passionate discussion was had about insurance and about the proposed added sentence. A vote resulted in a 5-5 vote thereby the motion to keep the "last sentence" failed.^[7]

The Board's response characterizes the vote on May 10, 2022, as limited to the question of whether to leave the last sentence in the resolution. It argued, "[t]he vote resulted in a 5 to 5 vote. Thereby the motion to keep the 'last sentence' failed. Sometime in November of 2022, it was brought to the board's attention that the resolution that included the 'last sentence' had mistakenly been filed with the minutes rather than the resolution without the last sentence. To correct that mistake the County Board voted to amend as noted on the 12/13/2022 Agenda[.]"⁸

⁷Letter from Jesse Danley, Coles County State's Attorney, to Laura S. Harter, Deputy Bureau Chief, Public Access Bureau (Mach 7, 2023), at 2.

⁸Letter from Jesse Danley, Coles County State's Attorney, to Laura S. Harter, Deputy Bureau Chief, Public Access Bureau (Mach 7, 2023), at 3.

The Board argued that "[t]he Budget of the County, of course, provides for these salaries, these salaries were approved at the May 10, 2022, meeting."⁹

The meeting recordings indicate that on May 10, 2022, the Board voted on the version of the resolution that passed out of the Finance Committee on May 2, 2022, which included the sentence concerning optional health insurance for Board members. The Board voted 5 to 5 on that resolution and the motion failed. The Board characterizes the vote as limited to only whether to keep the last sentence concerning optional health insurance, but the resolution that passed out of the Finance Committee was not so limited; it was a complete resolution. The full resolution was then subject to a vote. Although the Board's response to this office stated that the Board salaries were approved at the May 10, 2022, meeting, there is no indication in the meeting minutes or video recordings that on May 10, 2022, the Board discussed or voted on any other motion concerning Board member salaries. Contrary to the Board's argument to this office, the Board's vote immediately prior to its discussion of the sentence in the resolution concerning optional health insurance did not address the resolution setting forth the salaries of Board members. That prior vote (described during the meeting as Item 6) concerned the salaries of other elected officials, and the copy of the ordinance included at pages 5416-5418 of the minutes packet reflects that it does not address salaries for Board members. There is therefore no evidence to support a conclusion that a version of the Board member salary resolution that did not contain the last sentence was approved on May 10, 2022, either before or after the motion pertaining to the version that contained the sentence about health insurance.

On December 13, 2022, the Board amended the May 10, 2022, minutes to include a version of the resolution that did not pass out of the May 2, 2022, Finance Committee and was never voted on by the Board. The amended May 10, 2022, minutes indicate that the Board voted 5 to 5 on the version of the resolution that did not include the reference to health insurance, which is not what occurred at the May 10, 2022, meeting. Therefore, the amended minutes do not provide an accurate summary of the resolution proposed or an accurate record of the votes taken on the resolution. Accordingly, the Board's amended May 10, 2022, meeting minutes violate the requirements of section 2.06(a)(3) of OMA. To remedy this violation, this office recommends that the Board vote to amend the May 10, 2022, minutes to reflect the motion that

⁹Letter from Jesse Danley, Coles County State's Attorney, to Laura S. Harter, Deputy Bureau Chief, Public Access Bureau (Mach 7, 2023), at 3.

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the Board voted on and which failed, which was to approve the version of the resolution that passed out of the Finance Committee, and which included language on optional health insurance.¹⁰

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at laura.harter@ilag.gov. This letter serves to close this file.

Very truly yours,



LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

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¹⁰The relevant agenda item for the December 13, 2022, meeting adequately identifies the general subject matter of the action taken by the Board to amend the minutes of the May 10, 2022, meeting as required by section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2022)). OMA requires public bodies to take final action openly, but it generally does not require public bodies to take final actions, except on certain matters such as approving minutes and conducting semi-annual reviews of minutes. *See* 5 ILCS 120/2.06(a)(3), (d) (West 2022). Whether the Board has improperly received salary compensation if it failed to approve any version of the resolution authorizing salary compensation for Board members at the May 10, 2022, or December 13, 2022, meetings does not raise an issue concerning compliance with OMA that is subject to review by the Public Access Counselor. *See* 15 ILCS 205/7 (West 2022) (limiting the Public Access Counselor's authority to reviewing compliance with OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2022))).