



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

January 8, 2025

Via electronic mail

Mr. John Kraft
Edgar County Watchdogs
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Via electronic mail

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RE: OMA Request for Review – 2023 PAC 78926

Dear Mr. Kraft and Mr. Zukowski:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA).¹ For the reasons explained below, the Public Access Counselor concludes that the Dalzell Fire Protection District (District) Board of Trustees (Board) violated the requirements of OMA.

On November 9, 2023, Mr. John Kraft, on behalf of the Edgar County Watchdogs, submitted this Request for Review alleging that "[o]n or about November 7, 2023, a majority of a quorum of Dalzell Fire Protection District Trustees attended a meeting with the Mayor of Dalzell * * * to discuss business pertaining to the Dalzell Fire Protection District and with the village of Dalzell[, but t]here was no meeting notice posted at least 48 hours in advance

¹5 ILCS 120/3.5(e) (West 2022).

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of this meeting."²

On November 17, 2023, this office sent a copy of the Request for Review to the Board and asked it to provide a written response to Mr. Kraft's allegations. On December 4, 2023, the Board provided a response to this office. The next day, this office forwarded a copy of the Board's response to Mr. Kraft with an opportunity to reply; he did not reply. On December 16, 2023, the Dalzell Fire Chief, Tom Riordan, submitted an e-mail to this office containing his summary of the gathering. In response to inquiries posed by this office, on September 6, 2024, the Board provided additional information concerning the November 7, 2023, gathering.

DETERMINATION

"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). For the requirements of OMA to apply, a gathering must constitute a "meeting" as defined by section 1.02 of OMA:³

"Meeting" means 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[.]

The Office of the Attorney General has stated, "whether a gathering falls within the definition of meeting as used in the Act, would depend upon the peculiar facts in each situation." 1974 Ill. Att'y Gen. Op. No. S-726, issued March 22, 1974, at 126. "In theory, there is no absolute prohibition against the members of a public body attending an 'informational meeting' without triggering the application of" OMA, as long as the members do not make "[d]eliberational statements" or engage in "unrecorded discussions" amongst themselves. Ill. Att'y Gen. Op. No. 95-004, issued July 14, 1995, at 10-11. In that opinion, the Attorney General concluded that the "mere fact that a majority of a quorum of the members of a public body attend and participate in a bona fide presentation on new legislative developments in an area of public concern" did not make the presentation subject to OMA, but the extensive discussions of public business by members of two county boards during the presentation did trigger the requirements of OMA. (Emphasis in original.) Ill. Att'y Gen. Op. No. 95-004, at 10-11; *see also Nabhani v. Coglianesi*, 552 F. Supp. 657, 661 (N.D. Ill. 1982) (a gathering does not constitute a meeting for purposes of OMA when there is "no examining or weighing of reasons for or against a course of

²E-mail from John Kraft, Edgar County Watchdogs to Public Access (November 9, 2023).

³5 ILCS 120/1.02 (West 2022).

action, no exchange of facts preliminary to a decision, [and] no attempt to reach accord on a specific matter of public business.").

In Binding Opinion 23-003, the Attorney General concluded that a "Meet and Greet" gathering involving a majority of a quorum of a library board's trustees constituted a "meeting" subject to OMA's requirements. Ill. Att'y Gen. Pub. Acc. Op. No. 23-003, issued March 14, 2023. In that matter, the board contended that the event was an informal gathering intended to allow staff to get to know trustees and to ask questions or present concerns to the board. Although there was no indication that the board attempted to reach an accord on any matters, the Attorney General noted that "[t]he requirements of OMA apply not only to those gatherings in which public bodies take formal actions, but also to discussions of public business for the purpose of collecting information." Ill. Att'y Gen. Pub. Acc. Op. No. 23-003, at 7. Because the trustees had engaged in the collective inquiry phase of deliberations by gathering and exchanging information on issues of library business, the Attorney General determined that the board improperly held a "meeting" without following OMA's requirements. Ill. Att'y Gen. Pub. Acc. Op. No. 23-003, at 6-7.

The Board provided this office with affidavits from the two Board members who were present at the gathering. In his affidavit, Mr. David Bernabei, the President of the Board, stated that he "was invited to the Village Hall, and subsequently visited Village Hall, on the evening of November 7, 2023, by the Mayor of Dalzell, Mr. Gary Orlandi, to listen to unspecified 'concerns' of the Mayor."⁴ Mr. William Liesse, a Board member, stated that he "was invited by Mr. David Bernabei to visit the Dalzell Village Hall with him on the evening of November 7, 2023, to listen to unspecified 'concerns' of the Dalzell Mayor[.]"⁵ Both Board members affirm that they were "not informed as to the nature of the 'concerns' and had no reason to presume with certainty that the 'concerns' involved the public business of the Dalzell Fire Protection District."⁶ According to the affidavits, the Village attorney was present at the November 7, 2023, gathering. In his statement to this office, Chief Riordan noted that he and several firefighters were also present. "[U]pon arriving at the Village Hall to listen to the Mayor, [the Board members] were advised by the Village attorney that, out of respect for the Illinois Open Meetings Act, we should say nothing to each other or to the Mayor[.]"⁷ Mr. Riordan

⁴Affidavit from David Bernabei, Board President, Dalzell [Fire Protection District] (December 4, 2024).

⁵Affidavit from William Liesse, Board Member, Dalzell [Fire Protection District] (December 4, 2024).

⁶Affidavit from David Bernabei, Board President, Dalzell [Fire Protection District] (December 4, 2024).

⁷Affidavit from David Bernabei, Board President, Dalzell [Fire Protection District] (December 4, 2024).

indicated that the village attorney's statement was made because the Board members "had a quorum there and didn't do an agenda[.]"⁸ The affidavits further state that "neither [Mr. Bernabei] nor Mr. Liesse said anything to each other, to the Mayor of Dalzell, to the Village Attorney or to anyone else during the Mayor's recitation of his concerns."⁹ According to the affidavits, the only statement made by either Board member was "at the conclusion of the Mayor's recitation of his concerns. At that point Mr. Bernabei stated 'we're done[.]'"¹⁰ Finally, both affidavits maintain "[t]hat neither [Mr. Liesse] nor Mr. Bernabei discussed public business together on November 7, 2023."¹¹

In its answer, the Board argued that the November 7, 2023, gathering was not a meeting because it "was not for the purpose of discussing public business, but rather to listen to undefined 'concerns' of the Mayor."¹² The Board further stated "there was no deliberation, much less any secret deliberation, regarding public business. The District Board Members listened to what the Mayor had to say and departed."¹³ Mr. Riordan's statement corroborated the affidavits provided by the Board.

In its supplemental response to this office, the Board provided details concerning the substance of the Mayor's concerns shared during the November 7, 2023, gathering:

Mr. William Liesse * * * recalls that he and Mr. David Bernabei were told that the Dalzell FPD did not own the building in which the Dalzell fire truck is parked or the land upon which the building sits. The Village Attorney and/or the Mayor then said something about drafting a Lease Agreement between the Village and the Dalzell FPD regarding the Dalzell FPD's future use of the Village building.

⁸E-mail from Tom Riordan, Fire Chief, to Victoria Frazier (December 16, 2024).

⁹Affidavit from David Bernabei, Board President, Dalzell [Fire Protection District] (December 4, 2024).

¹⁰Affidavit from William Liesse, Board Member, Dalzell [Fire Protection District] (December 4, 2024).

¹¹Affidavit from William Liesse, Board Member, Dalzell [Fire Protection District] (December 4, 2024).

¹²Letter from Walter J. Zukowski, Zukowski Law Office, to Victoria Frazier, Assistant Attorney General, Public Access Bureau (December 4, 2024).

¹³Letter from Walter J. Zukowski, Zukowski Law Office, to Victoria Frazier, Assistant Attorney General, Public Access Bureau (December 4, 2024).

Mr. Bernabei's recollections are similar. * * * Mr. Bernabei recalls that he and Mr. Liesse were told that the Dalzell FPD fire truck was present within the subject building during the previous week and that its presence interfered with a festive Halloween get-together. They were also told that the Dalzell FPD Fire Chief had been asked to move the fire truck, but that he had refused to do so.^[14]

The Board maintained that the "concerns the Mayor raised were not related to any action taken by the [Board] or contemplated by the [Board] during or before the November 7, 2023, gathering."¹⁵ The Board noted, however, that it included on its January 2024 meeting agenda an item for possible action regarding a lease "on the chance that the Village were to submit a lease in a timely fashion for the" Board's consideration.¹⁶ The Board noted that the Village did not submit a lease and therefore, the Board did not consider a lease during the January 2024, meeting. The Board stated that it did discuss possible lease terms at the March 2024, meeting, but did not take action to approve a lease. The Board emphasized that the Mayor's invitation to the November 7, 2023, gathering and the topics discussed were "surprise[s]" to the Board members who attended the meeting.¹⁷

Based on the available information, a majority of a quorum of Board members was present for the November 7, 2023, gathering.¹⁸ Further, the topics discussed were unquestionably public business of the Board, as they pertained to the Dalzell fire station and actions of the fire chief. The Board denies that any deliberation or discussion occurred at the gathering, but the President specifically invited an additional trustee to attend, ostensibly for the purpose of receiving the information the Mayor intended to convey. Contrary to the Board's assertion that its members did not engage in deliberation because there was no discussion, the Attorney General has noted that "[d]eliberation *** connotes not only collective discussion, but the collective acquisition and exchange of facts preliminary to the ultimate decision." Ill. Att'y Gen. Op. No. S-726, issued March 22, 1974, at 125 (quoting *Sacramento Newspaper Guild v. Sacramento County Board of Supervisors*, 263 Cal. App. 2d 41, 47–48 (1968)). In the same

¹⁴Letter from Walter J. Zukowski, Zukowski Law Offices, to Victoria Frazier, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (September 6, 2024), at [1].

¹⁵Letter from Walter J. Zukowski, Zukowski Law Offices, to Victoria Frazier, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (September 6, 2024), at [2].

¹⁶Letter from Walter J. Zukowski, Zukowski Law Offices, to Victoria Frazier, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (September 6, 2024), at [2].

¹⁷Letter from Walter J. Zukowski, Zukowski Law Offices, to Victoria Frazier, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (September 6, 2024), at [2].

¹⁸Although the Board did not specify how many trustees serve on the Board, other records in this office's possession indicate that three trustees serve on the Board; accordingly, two trustees constitute a quorum.

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opinion, the Attorney General also quoted *Sacramento Newspaper Guild* for the proposition that,

[t]here is rarely any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors. Only by embracing the *collective inquiry* and discussion stages, as well as the ultimate step of official action, can an open meeting regulation frustrate these evasive devices. (Emphasis added.) Ill. Att'y Gen. Op. No. S-726, at 125 (quoting *Sacramento Newspaper Guild*, 263 Cal. App. 2d at 50).

It is unclear why the President invited another trustee to attend the gathering if the Board did not have any reason to believe that the Mayor would discuss matters germane to the Board's business. But even if the topic of discussion was a surprise, the Board members could have terminated the gathering rather than listening to the Mayor's concerns about the District's use of Village property. Therefore, the purpose of the November 7, 2023, gathering was to obtain information in anticipation of responding to the Mayor's concerns. Indeed, in response to the November 7, 2023, gathering, the Board prepared to consider a lease for the fire station, should one have been proposed by the Village.

Taking all these factors into account, this office concludes that the November 7, 2023, gathering was a meeting subject to the requirements of OMA. Therefore, the Board violated OMA by holding a meeting without providing advance notice and otherwise complying with the requirements of the Act. Because the Board did not vote upon items of final action at the meeting, no further remedial action is required, but this office cautions the Board to comply with the requirements of OMA when gathering to deliberate on matters of public business.

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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