



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

May 13, 2025

Via electronic mail

Mr. John Kraft
Edgar County Watchdogs
Box 124
Paris, Illinois 61944
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Via electronic mail

The Honorable Steven Whritenour
Chairman, Marion County Board
P.O. Box 637
Salem, Illinois 62881
swhritenour@marionco.illinois.gov

RE: OMA Request for Review – 2024 PAC 84215

Dear Mr. Kraft and Mr. Whritenour:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2022)).

BACKGROUND

On December 6, 2024, Mr. John Kraft submitted a Request for Review to the Public Access Bureau alleging that the Marion County Board (Board) violated OMA at its December 2, 2024, meeting by voting for a board chairman and vice chairman via "secret" ballot.¹ In support of his assertion, he cited this office's Binding Opinion 13-006, which concerned a vote that was conducted by secret ballot.

¹E-mail from John Kraft, Edgar County Watchdogs, to AG PAC (December 6, 2024).

On December 11, 2024, this office forwarded a copy of the Request for Review to the Board and asked it to provide this office with copies of the December 2, 2024, meeting agenda and minutes, together with a written response to Mr. Kraft's allegation. Having received no response, this office sent follow-up correspondence to the Board on January 7, 2025. On January 14, 2025, this office received the requested materials from the Marion County State's Attorney on behalf of the Board. On January 16, 2025, this office forwarded a copy of the Board's response to Mr. Kraft; he replied that same day, maintaining that the Board violated OMA.

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). To that end, section 2(e) of OMA (5 ILCS 120/2(e) (West 2023 Supp.)) provides: "No final action may be taken at a closed meeting. Final action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted."

As Mr. Kraft highlighted, the Attorney General has issued a binding opinion pertaining to the use of secret ballots by public bodies. Ill. Att'y Gen. Pub. Acc. Op. No. 13-006, issued May 13, 2023. In that binding opinion, the Attorney General explained that the intent and public policy behind OMA is to protect the public's right to know, and that the use of secret ballots by public bodies undermines that right. Ill. Att'y Gen. Pub. Acc. Op. No. 13-006, at 5-6. The Attorney General alluded to *WSDR, Inc. v. Ogle County*, 100 Ill. Appl. 3d 1008 (1981), in which the Illinois appellate court held that the use of secret ballots to select a board chairman violated OMA. *WSDR, Inc.*, 100 Ill. Appl. 3d at 1011. The Attorney General concluded that an airport advisory board violated section 2(e) of OMA when it voted to recommend a candidate to fill a vacant seat by secret ballot. Ill. Att'y Gen. Pub. Acc. Op. No. 13-006, at 7.

In its response to this office, the Board stated that it selected a new board chair and vice-chair at the December 2, 2024, organizational meeting by written ballot. Specifically, two members were nominated for board chair, "[w]ritten ballots were cast, and Steven Whritenour was elected chair by a vote of 9-5."² The same procedure was followed for selecting a vice-chair. Two members were nominated, "[w]ritten ballots were cast, and Tyson McHenry was elected vice-chair by an 8-6 vote."³ The Board acknowledged the court's opinion in *WSDR*,

²Letter from Timothy J. Hudspeth, Marion County State's Attorney, to Teresa Lim, Office of the Attorney General, State of Illinois (January 14, 2025), at 2.

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Mr. John Kraft
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Page 3

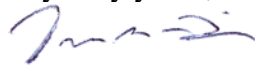
Inc. regarding the improper use of secret ballots and stated that "it was decided Board members should publicly announce at the December 23, 2024, Board meeting for whom they voted in the chair and vice-chair elections."⁴ The Board provided a copy of its December 23, 2024, meeting agenda.

It is undisputed that the Board selected a new chair and vice-chair by secret ballots that did not reveal the vote of each member. Because such ballot votes contravene the public policy and intent of OMA that final actions be taken openly, this office concludes that the Board violated section 2(e) at its December 2, 2024, meeting.

This office's review of the Board's December 23, 2024, meeting agenda and minutes confirmed that the Board resolved the matter by having its members publicly declare their votes through a voice vote at that meeting. Accordingly, no further remedial action is required.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,



TERESA LIM
Deputy Bureau Chief
Public Access Bureau

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cc: *Via electronic mail*
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⁴Letter from Timothy J. Hudspeth, Marion County State's Attorney, to Teresa Lim, Office of the Attorney General, State of Illinois (January 14, 2025), at 2.