



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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January 29, 2026

Via electronic mail

Mr. Kirk Allen
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Via electronic mail

The Honorable Tad A. Mayhall
Chairman, Shelby County Board of Trustees
1184 N 1300 East Rd
Shelbyville, Illinois 62565
shcboardchair@shelbycounty-il.gov

RE: OMA Request for Review – 2025 PAC 90196

Dear Mr. Allen and Mr. Mayhall:

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 Bureau concludes that the Board of Trustees (Board) of Shelby County violated OMA at its September 11, 2025, meeting by entering closed session under an exception that did not authorize its discussion.

On October 24, 2025, Mr. Kirk Allen submitted a Request for Review alleging that the Board violated OMA during its September 11, 2025, meeting by discussing in closed session the hiring of an outside law firm "[t]o assist with the preparation, negotiation, review, and revision of road use agreements for solar and wind farm projects in Shelby County."² Mr. Allen asserted that "[t]he discussion of hiring a private law firm is neither a County Board

¹5 ILCS 120/3.5(e) (West 2024).

²Board of Trustees of Shelby County, Meeting, Agenda Item 9 (September 11, 2025).

function permitted by law nor an exemption we have been able to identify in the Open Meetings Act."³ On November 4, 2025, this office forwarded a copy of Mr. Allen's Request for Review to the Board and asked it to provide a written response to the allegations and a copy of the relevant closed session audio recording and minutes.

On November 25, 2025, Ms. Ruth Woolery, the Shelby County State's Attorney, furnished those materials on the Board's behalf. On November 14, 2025, this office forwarded the written response to Mr. Allen; he replied on November 24, 2025.

DETERMINATION

OMA is intended "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly."⁴ Accordingly, section 2(a) of OMA⁵ provides that all meetings of a public body must be open to the public unless the discussion falls within the scope of one of the exceptions—to the general requirement that public bodies conduct public business openly—set out in section 2(c) of OMA.⁶ The section 2(c) exceptions are to be "strictly construed, extending only to subjects clearly within their scope."⁷ Before entering closed session, a public body must hold a public vote to do so and cite "the specific exception that authorizes the closing of the meeting[;]" the relevant exception also must be recorded in the meeting minutes. 5 ILCS 120/2a (West 2024).

The minutes of the September 11, 2025, meeting indicate that the Board voted to enter closed session pursuant to section 2(c)(11)⁸ of OMA, which applies to:

Litigation, when an action against, affecting or on behalf of the particular public body has been filed and is pending before a court or administrative tribunal, or **when the public body finds that an action is probable or imminent, in which case the basis for the finding shall be recorded and entered into the minutes of the closed meeting.** (Emphasis added.)

³E-mail from Kirk Allen to Public Access [Bureau, Office of the Attorney General] (October 24, 2025).

⁴5 ILCS 120/1 (West 2024).

⁵5 ILCS 120/2(a) (West 2024).

⁶5 ILCS 120/2(c) (West 2024).

⁷5 ILCS 120/2(b) (West 2024).

⁸5 ILCS 120/2(c)(11) (West 2024).

Unless litigation has been filed, a public body that enters closed session under section 2(c)(11) "must (1) find that the litigation is probable or imminent and (2) record and enter into the minutes the basis for that finding." *Henry v. Anderson*, 356 Ill. App. 3d 952, 956-57 (2005). These requirements "prevent public bodies from using the distant possibility of litigation as pretext for closing their meetings to the public." *Henry*, 356 Ill. App. at 956-57. "In the absence of reasonable, specifically identified grounds to believe that litigation was close at hand or more likely than not to ensue, the mere possibility that a lawsuit might be filed does not constitute 'probable' or 'imminent' litigation within the scope of section 2(c)(11) of OMA." Ill. Att'y Gen. Pub. Acc. Op. No. 16-007, issued September 13, 2016, at 8. Moreover, the scope of the exception is limited to "discussion of legal theories, defenses, claims, or possible approaches to litigation." *City of Bloomington v. Raoul*, 2021 IL App (4th) 190539, ¶ 36;

The closed session audio recording and minutes reflect that the relevant portion of the Board's closed session discussion concerned the possibility of hiring a law firm. In its response to this office, the State's Attorney's Office contended that the closed session discussion is protected by the attorney-client privilege and that "whether or not to engage outside counsel to assist with a specialized area of the law to prevent future litigation certainly falls within a request for legal advice, **even if the Board themselves cannot hire outside counsel.**"⁹ In his reply, Mr. Allen asserts that no provision of OMA "permits a closed session for the purpose of 'preventing future litigation'."¹⁰

There is no indication from the Board's response to this office or our review of the relevant portion of the closed session recording that the discussion at issue concerned probable or imminent litigation, and no basis for such a finding was recorded in the closed session minutes. Even if the motive for considering whether to hire a law firm may have been to prevent the possibility of exposing the County to future liability in a lawsuit, section 2(c)(11) only permits public bodies to discuss pending, probable, or imminent litigation and the legal theories, defenses, claims, or possible approaches to such litigation. No provision of OMA generally authorizes a public body to enter closed session to receive legal advice when the topic of discussion is not within the scope of an exception in section 2(c) of the Act. Accordingly, the Board violated OMA by improperly discussing the law firm in closed session pursuant to the section 2(c)(11) exception.

This office notes, however, that section 2(c)(1) of OMA¹¹ permits a public body to enter closed session to discuss "[t]he appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or **legal counsel for the**

⁹E-mail from Ruth A. Woolery, Shelby County State's Attorney, to [Matthew] Rogina [Senior Assistant Attorney General, Public Access Bureau, Office of the Attorney General] (November 14, 2025).

¹⁰E-mail from Kirk Allen to Matthew Rogina (November 24, 2025).

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public body[.]" (Emphasis added.) This exception permits the Board to discuss the hiring of a law firm to represent the County and to receive legal advice from the State's Attorney about that matter in closed session even if the Board's approval is not required to enter into an agreement with the law firm. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 87104, issued January 12, 2026, at 5 ("The plain language of section 2(c)(1) does not provide that a public body only may discuss in closed session specific employees that the public body has authority to hire, fire, or discipline."). Under these circumstances, disclosure of the verbatim recording would not be an appropriate remedy for the Board violating OMA by improperly entering closed session under section 2(c)(11) instead of section 2(c)(1).

In accordance with the conclusions expressed above, the Board should be mindful of the limited scope of section 2(c)(11) as well its statutory obligation to construe all section 2(c) exceptions narrowly and to publicly cite and identify only applicable exceptions when entering closed session at future meetings. This file is closed. 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 224-267-8477 or at Matthew.Rogina@ilag.gov.

Very truly yours,

Matthew Rogina

MATTHEW ROGINA
Senior Assistant Attorney General
Public Access Bureau

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Cc: *Via electronic mail*
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