



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

December 15, 2022

Via electronic mail



Via electronic mail

Ms. Keri-Lyn J. Krafthefer
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RE: OMA Request for Review – 2021-PAC-C-0090/2021 PAC 68344

Dear [REDACTED] and Ms. Krafthefer:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2020)).

On April 22, 2021, [REDACTED], who at the time served as First Assistant to Cook County Board of Review (Board) Commissioner Tammy Wendt, submitted a Request for Review alleging that Commissioner Larry Rogers, Jr., and Commissioner Michael Cabonargi violated OMA by holding policy discussions outside of Board meetings held in compliance with the Act. [REDACTED] attached a copy of a memorandum on Board letterhead that expressed support for a proposed amendment to the Property Tax Code¹ which would require commissioners to be licensed attorneys. He also attached an e-mail from the Civil Actions Bureau of the Cook County State's Attorney's Office which opined that discussions of internal "policy should be treated as subject to OMA."²

¹35 ILCS 200/1-1 *et seq.* (West 2020).

²E-mail from Amy Crawford, Deputy Chief, Civil Actions Bureau, Cook County State's Attorney's Office, to Tammy Wendt, Commissioner, Cook County Board of Review (April 1, 2021).

On May 7, 2021, the Public Access Bureau sent a copy of the Request for Review to Commissioner Rogers and Commissioner Cabonargi (Board Majority) and asked for a response to the allegation that they engaged in communications about the proposed amendment that constitute a "meeting" without complying with OMA. This office requested an explanation of how the memorandum was developed and asked for copies of any related electronic communications. On July 24, 2021, counsel for the Board Majority responded that the memorandum did not pertain to any official business or policy of the Board and therefore any communications concerning the memorandum did not constitute meetings held in violation of OMA; no electronic communications were provided. On August 9, 2021, [REDACTED] submitted a reply. The Board Majority supplemented its response on November 16, 2021, and [REDACTED] replied on November 29, 2021.

On January 5, 2022, this office asked counsel for the Board Majority to clarify whether its argument that any discussions about the memorandum were not subject to OMA was an acknowledgment that such discussions occurred; if not, this office again requested an explanation and documentation about how the memorandum was developed. On April 6, 2022, counsel for the Board Majority submitted an additional response contending that "these allegations, even if true, do not constitute a violation of the OMA, because the actions alleged were taken by the Commissioners in their individual, rather than official capacities."³ An Assistant Attorney General in the Public Access Bureau replied that this office would "proceed with the understanding that it is undisputed such discussion occurred but the two Board members are reiterating/[supplementing] the assertion that it didn't violate OMA because it didn't pertain to public business. Let me know if I'm missing something"⁴ We did not receive a response.

DETERMINATION

The intent of OMA is "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2020). Section 1.02 of OMA (5 ILCS 120/1.02 (West 2020)) defines "public body" as including:

all legislative, executive, administrative or advisory bodies of the State, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, and any subsidiary bodies of any of the foregoing including but limited to committees and subcommittees which are supported in whole or in

³Letter from Keri-Lyn Krafthefer, Ancel Glink, to Steven Silverman, Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (April 6, 2022), at 1.

⁴E-mail from [Steve] Silverman to Yevgeniy Bolotnikov and Keri-Lyn Krafthefer (April 7, 2022).

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part by tax revenue, or which expend tax revenue, except the General Assembly and committees or commissions thereof. "Public body" includes tourism boards and convention or civic center boards located in counties that are contiguous to the Mississippi River with populations of more than 250,000 but less than 300,000. "Public body" includes the Health Facilities and Services Review Board. "Public body" does not include a child death review team or the Illinois Child Death Review Teams Executive Council established under the Child Death Review Team Act, an ethics commission acting under the State Officials and Employees Ethics Act, a regional youth advisory board or the Statewide Youth Advisory Board established under the Department of Children and Family Services Statewide Youth Advisory Board Act, or the Illinois Independent Tax Tribunal.

In its initial response to this office, the Board Majority argued that the public business of the Board concerns receiving evidence, conducting hearings, and internal policy changes. The response asserted that the memorandum discussing a proposed legislative change pertains to the public business of the General Assembly rather than the Board, and that Commissioners Rogers and Cabonargi have a constitutional right to discuss and advocate for legislation in their individual capacities. The Board Majority's supplemental response emphasized that the Board is a quasi-adjudicative body with limited statutory duties that do not include "authority to lobby or support or oppose legislation. Because the Board of Review does not have the legal ability to do such, it would be very odd to find that the Board of Review has to hold an open meeting to accomplish something it has no legal ability to do."⁵ While the response acknowledged that using the Board's letterhead on the memorandum may have created an inference that the Board Majority had taken action on the legislation, it maintained the Board Majority couldn't have violated OMA in connection with that subject because it lacked statutory authority to hold meetings on legislation or to endorse legislation.

In reply to that response, [REDACTED] stated: "Individually, Commissioners Rogers and Carbonargi have every right to advocate for any legislation but when they do it collectively, under their titles and submit memorandums on Cook County Board of Review letterhead it has every appearance of official business."⁶ He also disputed legislative amendments are not public business of the Board, adding that "[t]he Board of Review has and will continue to lobby for change when and where it sees fit. In fact, the Board of Review is

⁵Letter from Keri-Lyn Krafthefer, Ancel Glink, to Steven Silverman, Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (November 16, 2021), at 4.

⁶E-mail from [REDACTED] to [Steve] Silverman (November 29, 2021).

currently working with legislators to change details of the Illinois Property Tax Code relating to the Property Tax Appeal Board."⁷

"Public business" for purposes of OMA is not limited to items on which the Board necessarily intends to vote. The Act defines "meeting" as "any gathering of a majority of a quorum of the members of a public body held for the purpose of **discussing** public business." (Emphasis added.) 5 ILCS 120/1.02 (West 2020). OMA does not define "public business." In *City of Champaign v. Madigan*, 2013 IL App (4th) 120662, ¶31, 992 N.E.2d 629, 637 (2013), the Illinois Appellate Court examined the meaning of the term "public business" in the context of a Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2012)) request involving communications sent and received by members of a public body during an open meeting. The court found that the term "public business" has a plain and ordinary meaning: "to qualify as a public record a communication must first pertain to 'business or community interests as opposed to private affairs.'" *City of Champaign*, 2013 IL App (4th) 120662, ¶31, 992 N.E.2d at 637 (quoting Merriam–Webster's Collegiate Dictionary 941 (10th ed. 2000)). The meaning in FOIA is relevant to the meaning in OMA because "[b]oth statutes ensure the public's access to information concerning the conduct of public bodies, except in limited circumstances, and must be construed together." *Copley Press, Inc. v. Board of Education for Peoria School District No. 150*, 359 Ill. App. 3d 321, 325, 834 N.E.2d 558, 562 (3d Dist. 2005).

A proposed amendment that would require commissioners to be licensed as attorneys to serve on the Board does not concern private affairs. The Board Majority's memorandum states that the "amendment acknowledges that as the courts have held a person must be a licensed attorney to represent a party before the Cook County Board of Review – because practice before the Board is the practice of law – then the Commissioners * * * themselves should be attorneys."⁸ The memorandum further asserts that the amendment "would improve the ethical safeguards of the Cook County Board of Review[]" and that "[t]he public agrees and the voters want this amendment. As a result of the November 2020 election, for the first time in its history the voters have elected attorneys for all three Commissioners[.]"⁹ The qualifications for eligibility to serve on the Board and the justifications for the proposed change outlined in the memorandum unequivocally pertain to community interests and the Board's interests in conducting public business. This office's reasoning in 2021 PAC S-0135, which

⁷E-mail from ██████████ to [Steve] Silverman (November 29, 2021).

⁸Memorandum by Hon. Larry Rogers, Jr., Commissioner, Cook County Board of Review and Hon. Michael Cabonargi, Commissioner, Cook County Board of Review (undated), at 2.

⁹Memorandum by Hon. Larry Rogers, Jr., Commissioner, Cook County Board of Review and Hon. Michael Cabonargi, Commissioner, Cook County Board of Review (undated), at 2.

concluded that the Board's discussions of policy changes were subject to the requirements of OMA, is equally applicable to this matter:

To construe OMA as permitting a public body to hold a private discussion of any matter pertaining to the public body's interests or community interests as long as the discussion does not involve deliberations that culminate in a formal vote authorized by a statute narrowly defines "public business" as limited to matters upon which a public body is expressly empowered to take "final action." That interpretation is unsupported by case law, and adopting it would undermine the intent of the General Assembly articulated in section 1 of OMA:¹⁰ "The General Assembly * * * declares it to be 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.**" (Emphasis added to section 1 of OMA in original.). Ill. Att'y Gen. PAC Req. Rev. Ltr. S-0135, issued January 19, 2022, at 6-7.

With respect to the Board Majority's argument that the Board only is subject to OMA when it convenes as a quasi-adjudicative body to conduct particular property valuation functions prescribed under the Property Tax Code, we reiterate the conclusion in 2021 PAC S-0135 that the requirements of OMA are not so limited and apply to the Board whenever at least two of its three members gather for the purpose of discussing public business:

OMA defines "[q]uasi-adjudicative body" as "an administrative body charged by law or ordinance with the responsibility to conduct hearings, receive evidence or testimony and make determinations based thereon, but does not include local electoral boards when such bodies are considering petition challenges." [Citation.] OMA permits quasi-adjudicative bodies to discuss evidence or testimony in closed session provided they make publicly available written decisions setting forth the determinative reasoning. [Citation.] OMA does not contain any other provisions that address quasi-adjudicative bodies or limit the requirements of OMA for quasi-adjudicative bodies compared to

¹⁰5 ILCS 120/1 (West 2020).

other public bodies subject to the Act. Ill. Att'y Gen. PAC Req.
Rev. Ltr. S-0135, at 7-8.

Lastly, the Board Majority argued that "the two Commissioners, as individuals, were engaging in their protected First Amendment right to endorse legislation. This action was not an action of the Cook County Board of Review. Had the Board held a meeting to discuss legislation, it would have been inappropriate."¹¹ The Board asserted that the two commissioners were acting as individuals rather than in an official capacity. The memorandum that endorses the proposed amendment appears on a letterhead that identifies all three Board commissioners; it indicates that it is from "Hon. Larry Rogers Jr., Commissioner, Cook County Board of Review" and "Hon. Michael Cabonargi, Commissioner Cook County Board of Review" and states, in pertinent part: "For the following reasons, **we support the below amendment** and respectfully request the Illinois Property Tax Code be amended to further professionalize the Cook County Board of Review by adding the requirement that a Commissioner be a licensed attorney."¹² (Emphasis in original.)

Although the memorandum does not present itself as a recommendation by the full Board, it plainly was submitted by the two Commissioners in their capacities as members of the Board—not as private individuals. To be sure, OMA would not be implicated if an individual Board member independently composed and submitted a recommendation about proposed legislation. But the memorandum at issue was submitted by two of the three members of the Board and it is undisputed that they discussed it. For the reasons explained above, such discussions constituted meetings subject to the requirements of OMA because they involved a quorum of the members of the Board and directly pertain to the public business of the Board and community interests. OMA cannot be reasonably construed to permit members of public bodies to circumvent the requirements of the Act by characterizing their discussions of public business as discussions by individuals rather than discussions by public officials. *People ex rel. Difanis v. Barr*, 83 Ill. 2d 191, 200 (1980) (General Assembly "intended to include unofficial or informal meetings within the coverage of the Act."); *see also Acker v. Texas Water Commission*, 790 S.W.2d 299, 300 (Tex. 1990) ("When a majority of a public decisionmaking body is considering a pending issue, there can be no 'informal' discussion. There is either formal consideration of a matter in compliance with the Open Meetings Act or an illegal meeting."). Violations of OMA are not protected by the Constitution. *See St. Cloud Newspaper, Inc., v. District 742 Community Schools*, 332 N.W.2d 1, 7 (Minn. 1983) ("The Open Meeting Law does not violate the rights of

¹¹Letter from Keri-Lyn Krafthefer, Ancel Glink, to Steven Silverman, Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (April 6, 2022), at 1.

¹²Memorandum by Hon. Larry Rogers, Jr., Commissioner, Cook County Board of Review and Hon. Michael Cabonargi, Commissioner, Cook County Board of Review (undated), at 1.


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free speech or free assembly under the First Amendment of the United States Constitution. These rights protect expression of ideas, not the right to conduct public business in closed meetings.").

For the reasons stated above, this office concludes that two Commissioners' discussions related to the memorandum violated OMA and requests that members of the Board refrain from discussing proposed legislative amendments and any other matters of public business outside of a properly-noticed open meeting. 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 (312) 814-6756 or steven.silverman@ilag.gov.

Very truly yours,


STEVE SILVERMAN
Bureau Chief
Public Access Bureau

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