



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

January 19, 2022

Via electronic mail

Mr. Todd Thielmann, CIAO
Chief of Staff – Commissioner Tammy Wendt
Cook County Board of Review
118 North Clark Street, Room 601
Chicago, Illinois 60602
todd.thielmann@cookcountyil.gov

Via electronic mail

Ms. Keri-Lyn J. Krafthefer
Ancel Glink, A Professional Corporation
140 South Dearborn Street, Suite 600
Chicago, Illinois 60603
kkrafthefer@ancelglink.com

RE: OMA Request for Review – 2021-PAC-S-0135

Dear Mr. Thielmann 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)). For the reasons that follow, the Public Access Bureau concludes that the Cook County Board of Review (Board) held an improper closed meeting on March 10, 2021.

In his Request for Review, submitted May 10, 2021, Mr. Todd Thielmann alleged that the Board held an improper private meeting on March 10, 2021, to discuss recommendations made by the Cook County Office of the Independent Inspector General (Inspector General's Office). Mr. Thielmann submitted the complaint as Chief of Staff for Tammy Wendt, one of the three Commissioners on the Board. He stated that in addition to Ms. Wendt and the other two Commissioners—Larry Rogers, Jr. and Michael Cabonargi—the meeting included three named first assistants, Mr. Rogers' chief of staff, the Board secretary, and two Cook County Assistant

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State's Attorneys. Mr. Thielmann provided meeting scheduling documentation reflecting the meeting timing and participants.

On May 13, 2021, this office forwarded a copy of the Request for Review to Commissioners Rogers and Cabonargi and asked that the Board provide this office with copies of any notices, agendas, minutes, and recordings from its March 10, 2021, gathering for this office's confidential review. This office also asked the Board to respond in writing to the allegation that the gathering constituted an improper private meeting, explaining the extent to which the Board discussed the transaction of public business. On July 24, 2021, an attorney for a law firm appointed as Special Assistant State's Attorneys for Commissioners Rogers and Cabonargi (Board Majority), Ms. Keri-Lyn J. Krafthefer, provided a written response. On August 4, 2021, Mr. Thielmann submitted a reply. On September 6, 2021, Ms. Krafthefer stated that the Board Majority wished to provide this office with new information about this matter. Ms. Krafthefer provided that supplemental argument on November 16, 2021. On November 23, 2021, Mr. Thielmann submitted a supplemental reply to that supplemental submission.

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 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 "meeting held on March 10, 2021 was not an improperly closed meeting in violation of the OMA because the meeting was held to discuss purely administrative matters unrelated to the transaction of public business by the Board."¹ Acknowledging that the Board "is a public body entrusted with performing certain public duties, including receiving evidence, conducting hearings, and issuing decisions concerning residential and commercial tax assessment appeals, tax exemptions and the property rights of others in Cook County[,]" the Board Majority claimed that "[a]t the March 10, 2021 meeting at issue, the Board did not discuss any of those matters pertaining to its public business."² The Board Majority's attorney continued:

Instead of discussing public business pertaining to the Board, the meeting at issue was held to discuss matters purely administrative in nature, such as establishing job descriptions for Board of Review employees, discussions concerning whether certain staff members should be allowed to go home, and whether the Board of Review needed to hire outside counsel for certain labor matters. All of these conversations took place with the attorneys for the Board of Review, which were the designated Assistant State's Attorneys. There are many administrative matters that the Board members provide direction to staff about that do not require a vote of the Board of Review. Conversations occur regularly about whether the Board should order more pencils, or whether staff should be allowed to go home early on a holiday weekend, and all sorts of related issues. These daily administrative decisions do not constitute public business of the Board of Review because they are unrelated to the Board's ultimate functions.^[3]

In his reply, Mr. Thielmann disputed the Board Majority's depiction of the substance of the March 10, 2021, meeting, which he attended. He argued:

¹Letter from Keri-Lyn J. Krafthefer, Ancel Glink, to Joshua Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (July 24, 2021), at 1.

²Letter from Keri-Lyn J. Krafthefer, Ancel Glink, to Joshua Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (July 24, 2021), at 2.

³Letter from Keri-Lyn J. Krafthefer, Ancel Glink, to Joshua Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (July 24, 2021), at 2.

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The meeting was requested to address recommendations outlined by the Cook County Inspector General concerning many policies at the Cook County Board of Review. Most of these policies are public business and not purely administrative as defended by counsel. How the Cook County Board of Review describes the jobs that public employees engage in, is public business. It defines their role and delegates their responsibilities within the Cook County Board of Review.^[4]

Addressing the Board Majority's argument that ordering pencils is purely administrative, Mr. Thielmann argued that as a public body the Board "needs to be transparent about who the pencils are ordered from, how much they cost and if a request for bid was submitted, if required."⁵

In its supplemental response, the Board Majority argued that "[t]wo issues are critical to the resolution of this matter."⁶ Addressing the first issue—discussion of public business—Ms. Krafthefer asserted:

It is the position of Commissioners Rogers and Cabonargi that "public business" would mean anything that the Board of Review would be called upon to ultimately vote on at a public meeting. The matters that were discussed at the March 10, 2021 staff meeting were not matters that the Board of Review would ever vote on.^[7]

The second critical issue, according to the Board Majority, is that "the Board of Review is a quasi-adjudicative body that only comes in existence to consider property tax complaints. Unlike most public bodies which are not quasi-adjudicative in nature, it does not have the ability or power to hold a 'meeting' for any other purpose."⁸ Stating that the Board's powers are set forth in

⁴Letter from Todd Thielmann to Deputy Bureau Chief Jones (August 4, 2021).

⁵Letter from Todd Thielmann to Deputy Bureau Chief Jones (August 4, 2021).

⁶Letter from Keri-Lyn J. Krafthefer, Ancel Glink, to Joshua Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (November 16, 2021), at 1.

⁷Letter from Keri-Lyn J. Krafthefer, Ancel Glink, to Joshua Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (November 16, 2021), at 1.

⁸Letter from Keri-Lyn J. Krafthefer, Ancel Glink, to Joshua Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (November 16, 2021), at 1.

section 16-95 of the Property Tax Code (35 ILCS 200/16-95 (West 2020)), the Board Majority argued that:

As this section of the Property Tax Code shows, boards of review are statutory creatures with very narrow functions. While the hearings they hold must be open and are subject to the Open Meetings Act, the Board has no statutory power to decide it is going to hold a general "meeting" to discuss how its office will operate, just like judges do not have open meetings to discuss staffing issues behind courtroom doors.^[9]

Ms. Krafthefer additionally quoted sections 16-105, 16-110, and 16-125 of the Property Tax Code, (35 ILCS 200/16-105, 16-110, 16-125 (West 2020)), which concern the Board's "Time of meeting," "Notice of meetings," and "Hearings," respectively. She further argued:

If one reviews the entirety of the Illinois Property Tax Code, one would find that there the Board of Review does not possess authority to have meetings for any other purpose other than its statutory functions. This is unlike, for example, Illinois municipalities which have power conferred upon them by the Illinois Municipal Code to call and hold public meetings. There is no requirement that the Board of Review meet in open session to discuss the administrative operations of its office; it has no statutory authority to have such meetings. It has an opening session and a closing session for each tax year; and then hearings on complaints.

If there is going to be a requirement that the Board meet in open session to discuss its office operations unrelated to the public business of the Board, the Property Tax Code will need to be amended to allow the Board of Review to meet for that purpose. It was not the intention of the Open Meetings Act for adjudicative bodies to have public meetings for purposes that do not related [sic] to the public business those bodies transact.^[10]

⁹Letter from Keri-Lyn J. Krafthefer, Ancel Glink, to Joshua Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (November 16, 2021), at 2.

¹⁰Letter from Keri-Lyn J. Krafthefer, Ancel Glink, to Joshua Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General (November 16, 2021), at 4.

In his supplemental reply, Mr. Thielmann stated: "I won't bore you with citation of the property tax statute as the other 101 Boards of Review within Illinois do operate within the framework of the Open Meetings Act."¹¹ He enclosed an opinion from the Cook County State's Attorney's Office concluding that the Board is a public body subject to OMA.¹² Mr. Thielmann additionally argued that it is immaterial that the Board did not conduct public business in the form of taking final action during the gathering on March 10, 2021, because deliberation about public business is within the scope of the Act.

Addressing the critical issues Ms. Krafthefer raises in turn, the meaning of "public business" for purposes of OMA is not limited to items on which the Board necessarily intends to vote. Under the Open Meetings Act, "meeting" is defined 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 2020)) 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). Whether formal policy changes are a matter of public business is not a close call. Mr. Thielmann described his firsthand knowledge of the substantive policy discussion the commissioners engaged in on March 10, 2021.

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 is to narrowly define "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

¹¹Letter from Todd Thielmann to Deputy Bureau Chief Jones (November 23, 2021), at [1].

¹²Letter from Amy Crawford, Deputy Chief, Civil Actions Bureau, Cook County State's Attorney's Office, to Commissioner Wendt (March 31, 2021).

would undermine the intent of the General Assembly articulated in section 1 of OMA:¹³ "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.) As the Deputy Chief of the Civil Actions Bureau for the Cook County State's Attorney's Office, Amy Crawford, stated in her written legal opinion to Commissioner Wendt:

Although the term "public business" is not defined in OMA, case law indicates that OMA's provisions are to be construed in favor of openness. We are unaware of any case law that would support an interpretation that OMA only applies to certain "core" decisions of the public body, but not to discussions and decisions about the body's policies. Moreover, whether a gathering of Board of Review members is formal or informal is irrelevant to the OMA analysis. [Citation.]^[14]

Ms. Crawford cited *People ex rel. Difanis v. Barr*, 83 Ill. 2d 191, 200 (1980), in which the Illinois Supreme Court explained that the General Assembly "intended to include unofficial or informal meetings within the coverage of the Act." Ms. Crawford's legal opinion concluded that "meetings to discuss Board of Review policy should be treated as subject to OMA."¹⁵

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, 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." 5 ILCS 120/2(d) (West 2020), as amended by Public Acts 102-558, effective August 20, 2021; 102-237, effective January 1, 2022. 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. 5 ILCS 120/2(c)(4) (West 2020), as amended by Public Acts 102-558, effective August 20, 2021; 102-237, effective January 1, 2022. OMA does not contain any other provisions that address quasi-adjudicative bodies or limit the requirements of OMA for quasi-

¹³5 ILCS 120/1 (West 2020).

¹⁴E-mail from Amy Crawford, Deputy Chief, Civil Actions Bureau, Cook County State's Attorney's Office, to Commissioner Wendt (March 31, 2021).

¹⁵E-mail from Amy Crawford, Deputy Chief, Civil Actions Bureau, Cook County State's Attorney's Office, to Commissioner Wendt (March 31, 2021).

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adjudicative bodies compared to other public bodies subject to the Act. Notably, section 2(c)(1) of OMA (5 ILCS 120/2(c)(1) (West 2020), as amended by Public Acts 102-558, effective August 20, 2021; 102-237, effective January 1, 2022) authorizes public bodies to discuss the hiring of an attorney in closed session, but such discussions are permissible only if the public body complies with the statutory procedure for entering closed session¹⁶ and the other requirements of the Act. It is undisputed that the Board did not comply with those requirements in connection with the March 10, 2021, private discussion concerning the hiring of outside counsel and other matters of public business.

Lastly, this office notes that the Board's June 29, 2021, meeting agenda contained an item for an "Amendment to Cook County Board of Review Ethics Policy."¹⁷ The Board Majority's argument about the restrictions of the Property Tax Code does not reconcile why the Board was able to conduct that open meeting discussion if it was not authorized to hold an open meeting discussion concerning the recommended policy changes outlined by the Inspector General's Office.

Under the circumstances at issue here—all three commissioners gathering to discuss matters of public business such as hiring outside counsel and job descriptions for employees related to the Inspector General's Office's recommended policy changes—the Public Access Bureau concludes that the Board held an improper private meeting on March 10, 2021. This office asks the Board to refrain from deliberating about Board policy changes 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 joshua.jones@ilag.gov.

Very truly yours,



JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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¹⁶5 ILCS 120/2a (West 2020).

¹⁷Cook County Board of Review, Agenda Item V, Motion 2, New Business, Motion 2: Amendment to Cook County Board of Review Ethics Policy (June 29, 2021).