



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

July 12, 2019

Via electronic mail

Mr. Stan Zegel
Executive Director
The Citizen Participation Institute
director@citizenparticipation.org

Via electronic mail

The Honorable Derrick Burgess
Mayor
Village of Sauk Village
21801 Torrence Avenue
Sauk Village, Illinois 60411
dburgess@saukvillage.org

RE: OMA Request for Review – 2019 PAC 58515

Dear Mr. Zegel and Mr. Burgess:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons explained below, the Public Access Bureau concludes that the Village of Sauk Village Board of Trustees (Board) violated OMA in connection with its June 11, 2019, meeting.

BACKGROUND

In his Request for Review, Mr. Stan Zegel alleged that during its June 11, 2019, meeting, the Board did not adequately identify the subject of its closed session in a public recital before entering closed session, in violation of section 2a of OMA (5 ILCS 120/2a (West 2016)). On June 19, 2019, this office sent a copy of the Request for Review to the Board and requested that it provide a written response to Mr. Zegel's allegations and to provide copies of the June 11, 2019, meeting agenda and minutes, as well as any recordings of the open session of the meeting.

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On July 5, 2019, the Board responded. On July 8, 2019, this office forwarded the Board's written response to Mr. Zegel; he replied the same day.¹

DETERMINATION

Section 2a of OMA sets forth the procedure for a public body to enter closed session, including the requirement that:

The vote of each member on the question of holding a meeting closed to the public and a citation to the **specific exception contained in Section 2 of this Act** which authorizes the closing of the meeting to the public shall be publicly disclosed at the time of the vote and shall be recorded and entered into the minutes of the meeting. (Emphasis added.)

Thus, although a public body does not have to give notice of a closed session it intends to hold on a meeting agenda,² a public body does have to publicly disclose the specific exception on which it relies when it votes to close a portion of a meeting, and that exception needs to be documented in the meeting minutes.

In its response to this office, the Board stated that it adjourned to closed session to discuss personnel and possible litigation. This office's review of the video recording of the June 11, 2019, open session confirmed that Trustee Linda Todd made a motion to go into closed session "for personnel and pending litigation."³ The Attorney General has issued a binding opinion (Ill. Att'y Gen. Pub. Acc. Op. No. 15-007, issued September 16, 2015, at 4) concluding that "[a] mere reference to 'personnel' does not adequately identify any exception that authorizes a public body to close part of a meeting." This is because two of the OMA exceptions (5 ILCS 120/2(c)(8), (c)(14) (West 2017 Supp.), as amended by Public Act 100-646, effective July 27, 2018) contain the word "personnel," whereas the section 2(c)(1) (5 ILCS 120/2(c)(1) (West 2017 Supp.), as amended by Public Act 100-646, effective July 27, 2018) exception for "[t]he

¹In his reply, Mr. Zegel alleged for the first time that the Board did not make a verbatim recording of its June 11, 2019, closed session, in violation of section 2.06(a) of OMA (5 ILCS 120/2.06(a) (West 2016)). Because Mr. Zegel did not raise this allegation in his Request for Review, it is beyond the scope of this determination.

²Section 2a provides: "At any open meeting of a public body for which proper notice under this Act has been given, the body may, without additional notice under Section 2.02, hold a closed meeting in accordance with this Act."

³SV Regular Meeting 06 11 19, available at https://www.youtube.com/watch?v=_5tvutZZi3M, at 07:26.

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appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body," does not. It is not clear which of the section 2(c) exceptions referencing personnel or employees the Board intended to cite before entering closed session. Accordingly, the Board violated section 2a of OMA by failing to publicly cite the specific exception that authorized it to close its June 11, 2019, meeting.

While there is no remedial action that could rectify this violation, this office reminds the Board to adhere to section 2a and all of the other requirements of OMA. If the Board wishes to close a portion of a meeting to discuss specific employees in the future, it must in open session either announce that it intends to close the meeting pursuant to "section 2(c)(1)" or recite language from section 2(c)(1) that sufficiently identifies that exception. Ill. Att'y Gen. Pub. Acc. Op. No. 15-007, issued September 16, 2015, at 4-5.

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 the Springfield address on the first page of this letter, LHarter@atg.state.il.us, or (217) 524-7958. This letter serves to close this file.

Very truly yours,



LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

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cc: *Via electronic mail*
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FOIA Officer
Village of Sauk Village
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