

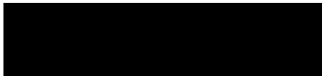


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

September 26, 2019

Via electronic mail



RE: OMA Request for Review – 2019 PAC 59813

Dear 

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (5 ILCS 120/3.5(b) (West 2018)). For the reasons stated below, the Public Access Bureau concludes that no further action is warranted as to this matter.

On September 23, 2019, this office received a Request for Review in which you alleged that the DuPage County Board's Stormwater Management Committee (Committee) violated section 2a of OMA (5 ILCS 120/2a (West 2018)) in connection with its vote to enter closed session at its September 3, 2019, meeting. Section 2a provides, in pertinent part:

A public body may hold a meeting closed to the public, or close a portion of a meeting to the public, upon a majority vote of a quorum present, taken at a meeting open to the public for which notice has been given as required by this Act. * * *. 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. Nothing in this Section or this Act shall be construed to require that any meeting be closed to the public.

You provided a link to a video recording of the meeting which shows the chairman of the Committee stated: "Is there a motion to go into executive session pursuant to 2 - c - IL - 11 to discuss pending litigation?" After a motion was made and seconded, the chairman asked, "all in

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favor?" Following a chorus of "ayes", the chairman stated, "Ok, we'll go into executive session."¹

First, you alleged that the vote to enter closed session was improper because the the Committee did not hold a roll call vote and did not give members of the Committee an opportunity to oppose the motion. You stated that "[i]t is possible that someone might have wished to vote 'no' and did not have an opportunity. Furthermore, it is possible that a member did not vote on the motion at all. Therefore, 'the vote of each member' was not 'publicly disclosed'."²

Section 2a of OMA does not set forth a specific procedure, such as a roll call vote, for entering closed session. It only requires a citation to the exception that is the basis for closing the meeting and that the vote of each member be publicly disclosed. A unanimous voice vote publicly discloses the vote of each member in attendance. It appears from the recording that the chairman was satisfied that the members attending the meeting unanimously voted to enter closed session, rendering unnecessary a separate vote of members who opposed the motion. If any Board members wished to oppose the motion, they could have indicated their opposition and asked for a separate vote. Your speculation that Board members may have stayed silent during the vote on the motion to enter closed session, or been denied an opportunity to oppose the motion, does not provide facts supporting the allegation that the Board violated section 2a of OMA. Although a roll call vote may be the best practice and most transparent procedure for entering closed session, the plain language of section 2a imposes no such requirement. OMA affords the chairman a degree of discretion to conduct the vote. Moreover, the meeting minutes that you referenced in your Request for Review show that the vote of each member on the question of entering closed session was recorded and entered into the minutes, as required by section 2a.³

With respect to the citation to the exception that authorized the Committee to enter closed session, you alleged that the chairman publicly cited "'2 - c - IL - 11' and then mumbled something that roughly resembles 'pending litigation'. Because the Chairman didn't clearly enunciate the words 'pending litigation', and because '2 - c - IL - 11' doesn't explicitly

¹DuPage County Stormwater Management Committee, Meeting, September 3, 2019, Video Recording, *available at* <http://dupage.igm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=8490&Format=Minutes>

²E-mail from [REDACTED] [Sarah] Pratt (September 21, 2019).

³DuPage County Stormwater Management Committee, Meeting, September 3, 2019, Minutes 4.

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refer to section 2(c)(11) of OMA, it is plausible that the public may have been confused when the Committee declared that it would go into executive session."⁴

Section 2(c)(11) of OMA (5 ILCS 120/2(c)(11) (West 2018), as amended by Public Acts 101-031, effective June 28, 2019; 101-459, effective August 23, 2019) permits a public body to enter closed session to discuss "[l]itigation, 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[.]" The video recording of the Committee's September 3, 2019, meeting confirms that the chairman referred to entering closed session pursuant to "2 - c - IL - 11" and then appeared to slightly stumble over the word "litigation" in the phrase "pending litigation." Nevertheless, the words "pending litigation" were discernable. "[S]ection 2a does not require a specific citation to the statute as long as the public body adequately identifies the exception." *Wyman v. Schweighart*, 385 Ill. App. 3d 1099, 1105 (4th Dist. 2008). The chairman of the Committee adequately identified section 2(c)(11) by referencing "pending litigation." Accordingly, this office has determined that no further action is warranted as to this matter.

If you have any questions, you may contact me at (312) 814-6756. This file is closed.

Very truly yours,

STEVE SILVERMAN
Bureau Chief
Public Access Bureau

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cc: *Via electronic mail*
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⁴E-mail from [REDACTED] to [Sarah] Pratt (September 21, 2019).