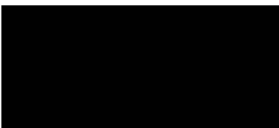




OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

November 8, 2023



Via electronic mail
Mr. W. Britton Isaly
Ancel Glink
140 South Dearborn Street – Suite 600
Chicago, Illinois 60603
bisaly@ancelglink.com

RE: OMA Request for Review – 2023 PAC 75844

Dear Mr. Isaly and 

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2022)). For the reasons that follow, the Public Access Bureau concludes that the Board of Trustees (Board) of the Gail Borden Public Library District violated the Open Meetings Act¹ (OMA) in connection with its January 10, 2023, meeting.

In his Request for Review,  alleges that the Board voted to appoint a trustee at its January 10, 2023, meeting without providing advance notice of that action on the meeting agenda. On March 21, 2023, and April 28, 2023, the Public Access Bureau sent copies of the Request for Review to the Board and asked it to provide copies of the agenda and minutes of the Board's January 10, 2023, meeting along with a written response to the allegation in the Request for Review. On May 8, 2023, counsel for the Board furnished those materials. On May 12, 2023, this office sent a copy of the written response to ; he did not reply.

¹5 ILCS 120/1 *et seq.* (West 2020).

DETERMINATION

Section 3.5(a) of OMA

As a threshold matter, section 3.5(a) of OMA provides, in pertinent part:

A person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General **not later than 60 days after the alleged violation**. If facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, by a person utilizing reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation. (Emphasis added.)

The Board's response to this office asserted that this office is precluded from reviewing whether the Board violated OMA because ██████████ Request for Review was untimely. Specifically, the Board noted that ██████████ attended the January 10, 2023, meeting, but did not file his Request for Review until March 11, 2023; the Board contended that the 60-day deadline for filing the Request for Review was March 10, 2023.

The calculation of the 60-day period is governed by section 1.11 of the Statute on Statutes (5 ILCS 70/1.11 (West 2022)):

The time within which any act provided by law is to be done shall be computed by **excluding the first day and including the last, unless the last day is Saturday or Sunday or is a holiday as defined or fixed in any statute now or hereafter in force in this State, and then it shall also be excluded**. If the day succeeding such Saturday, Sunday or holiday is also a holiday or a Saturday or Sunday then such succeeding day shall also be excluded. (Emphasis added.)

The 60-day period began running the day after the meeting in question, January 11, 2023, and the last day, Saturday March 11, 2023, as well as Sunday March 12, 2023, are excluded. The statutory deadline for filing the Request for Review, therefore, expired on March 13, 2023.

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Because ██████████ Request for Review is dated and postmarked² March 11, 2023, his submission is timely and section 3.5(a) authorizes this office to review his allegation that the Board violated OMA.

Section 2.02(a) of OMA

"The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (1989). Section 1 of OMA³ "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." Section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2022)) provides that "[a]ny agenda required under this Section shall set forth the **general subject matter of any resolution or ordinance that will be the subject of final action** at the meeting." (Emphasis added.)

The Board's response to this office did not substantively dispute that the Board appointed a trustee at its January 10, 2023, meeting without providing advance notice of that final action, but also stated that the Board did not concede it violated OMA. Instead, the Board asserted that the allegation in the Request for Review is now moot because the appointed trustee's election to the Board on April 4, 2023, "forecloses any prospective relief regarding her appointment in January."⁴

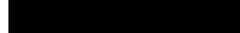
This office has reviewed the agenda and minutes of the Board's January 10, 2023, meeting. The minutes indicate that a trustee stated two members of the Board had reviewed applications to fill a vacancy on the Board and recommended Ms. Elisa Lara. The minutes state that the Board then approved a motion to administer the oath of office to Ms. Lara. The agenda includes an item that states "Oath of Office Administered"⁵ but does not identify any position or contain any reference to the Board appointing a trustee. That agenda item is too vague to provide advance notice of the general subject matter of the Board's final action on the appointment of a trustee to fill a vacancy. Accordingly, this office concludes that the Board

²Pursuant to section 1.25 of the Statute on Statutes (5 ILCS 70/1.25 (West 2022)), a writing sent by United States mail is deemed to be filed on the date of the postmark unless a statute specifically provides otherwise.

³5 ILCS 120/1 (West 2022).

⁴Letter from W. Britt Isaly, Ancel Glink, P.C., to Steven Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, State of Illinois (May 8, 2023), at 2.

⁵Gail Borden Public Library Board of Trustees, Meeting, Agenda Item No. 2 (January 10, 2023).


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violated section 2.02(c) of OMA. Because Trustee Lara was subsequently elected to serve as a trustee, there is no action the Board can take at this time to remedy its violation. This office cautions the Board to ensure that its future agendas provide sufficient advance notice of final actions in accordance with section 2.02(c) of OMA.

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, you may 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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cc: The Honorable Jean Bednar
President
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