

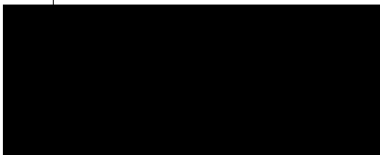


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

February 22, 2017

Via electronic mail



RE: OMA Request for Review – 2017 PAC 46182

Dear [REDACTED]

The Public Access Bureau has received your Request for Review alleging violations of the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2014)) by the Midland Community Unit School District #7 (District) Board of Education (Board). For the reasons discussed below, this office has determined that no further action is warranted in this matter.

Your Request for Review alleged that the Board did not post the minutes of its August 15, 2016, and September 19, 2016, meetings on the District's website within 10 days of approving the minutes. You stated that the minutes for the August 15, 2016, meeting were approved on September 19, 2016, and the minutes for the September 19, 2016, meeting were approved on October 17, 2016. Your Request for Review alleged that the minutes for both meetings were posted on the District's website sometime between November 30, 2016, and early December 2016.

Section 2.06(b) of OMA (5 ILCS 140/2.06(b) (West 2014), as amended by Public Act 99-515, effective June 30, 2016) states:

A public body shall approve the minutes of its open meeting within 30 days after that meeting or at the public body's second subsequent regular meeting, whichever is later. The minutes of meetings open to the public shall be available for public inspection within 10 days after the approval of such minutes by the public body. Beginning July 1, 2006, at the time it complies with the other requirements of this subsection, ***a public body that has a website that the full-time staff of the public body maintains shall***

post the minutes of a regular meeting of its governing body open to the public on the public body's website within 10 days after the approval of the minutes by the public body. (Emphasis added.)

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2015 Supp.)) further provides:

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 60 days after the alleged OMA 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.*** The request for review must be in writing, must be signed by the requester, and must include a summary of the facts supporting the allegation. The changes made by this amendatory Act of the 99th General Assembly apply to violations alleged to have occurred at meetings held on or after the effective date of this amendatory Act of the 99th General Assembly. (Emphasis added.)

On February 7, 2017, this office sent you a letter asking you to explain why you submitted your Request for Review more than 60 days after the alleged violations occurred. Specifically, this office requested that you clarify when and how you discovered the alleged violations. On February 16, 2017, you responded to this office by stating that you checked the Board's website "around Dec. 7, 2016 and found that the minutes had been posted. * * * After reading the minutes[,] I determined that the minutes had been approved in a timely manner but had not been posted as required. 60 days from that time would have been Feb. 7, 2017 as I understood the wording in OMA."¹

Section 3.5(a) of OMA permits a person using reasonable diligence who discovers an alleged violation of OMA after the 60-day period has expired to submit a Request for Review within 60 days of the date that the violation was discovered. A person who discovers an alleged violation of OMA within the 60-day period of when the violation occurred does not have 60 days from the date the violation was discovered to submit a Request for Review. Rather, the plain language of section 3.5(a) of OMA requires a person to submit a Request for Review not later than 60 days after the date the violation occurred. Further, a person who discovers a violation of

¹E-mail from [REDACTED] to Matt Hartman, [Assistant Attorney General], [Public Access Bureau] (February 16, 2017).

February 22, 2017

Page 3

OMA more than 60 days after a violation occurred, but did not utilize reasonable diligence in discovering the violation, may not submit a Request for Review.

Your Request for Review, which was sent by e-mail on January 31, 2017, alleged that the Board violated section 2.06(b) of OMA by failing to post the minutes for the August 15, 2016, and September 19, 2016, meetings on the District's website within 10 days of approving those minutes. You asserted that you discovered these alleged violations of OMA on December 7, 2016. To determine whether your Request for Review was submitted timely, we must first determine when the Board violated OMA. You stated the minutes for the August 15, 2016, meeting were approved on September 19, 2016; thus the Board had to post the minutes to the District's website within 10 days of that date – September 29, 2016. If the minutes were not posted on the website on September 30, 2016, the Board would have violated section 2.06(b) of OMA. Likewise, when the Board approved the minutes for the September 19, 2016, meeting on October 17, 2017, the Board would have violated OMA on October 28, 2017, if the minutes were not posted by that date.

December 7, 2016, the day you state that you discovered the alleged violations, was the 40th day after the Board allegedly violated OMA by failing to post the minutes of the September 19, 2016, meeting. Because you discovered the Board's alleged failure to post the minutes of its September 19, 2016, meeting on its website within 60 days of the date of the violation, you only had until December 27, 2016, the 60th day after the alleged violation occurred, to submit a Request for Review to the Public Access Counselor. You submitted your Request for Review on January 31, 2017. Because your Request for Review was not timely, the Public Access Counselor does not have authority to review your allegation concerning the minutes of the September 19, 2016, meeting.

In contrast, December 7, 2016, is 68 days after the Board allegedly violated OMA by failing to post minutes of the August 15, 2016, meeting within 10 days of approving those minutes on September 19, 2016. As discussed above, section 3.5(a) of OMA allows a person who, using reasonable diligence, discovers an alleged violation of OMA after the 60-day period but not more than two years after the alleged violation occurred, to submit a Request for Review within 60 days of the date the violation was discovered. Whether your Request for Review of the Board's failure to post the minutes of the August 15, 2016, meeting was timely hinges on whether you exercised reasonable diligence in discovering the violation. "Reasonable diligence" is defined as "a fair degree of diligence expected from someone of ordinary prudence under circumstances like those at issue." *Black's Law Dictionary* (10th ed. 2014), available at Westlaw BLACKS.

Your Request for Review stated that you checked the Board's website on November 30, 2016, and December 7, 2016, to see if the minutes had been posted. You asserted that before you saw the August 15, 2016, minutes you "did not know * * * if the problem was

February 22, 2017

Page 4

posting the minutes or * * * approving the minutes[.]”² However, in a February 16, 2016, e-mail to this office, you stated that you attended the September 19, 2016, meeting in which the minutes for the August 15, 2016, meeting were approved. Therefore, you knew or should have known that the problem was that the minutes allegedly had not been timely posted to the District's website. Likewise, you either knew or should have known that the Board had 10 days from September 19, 2016, to post the minutes. A person of ordinary prudence who attended the meeting in which the minutes were approved would have known that the minutes had to be posted on the website before September 30, 2016, and would have submitted a Request for Review within 60 days of that date if the minutes were not posted. You did not do so. Accordingly, this office concludes that you did not exercise reasonable diligence in discovering the Board's violation of section 2.06(b) of OMA, and therefore the office is unable to review your Request for Review because it was not timely submitted under section 3.5(a) of OMA. This office does, however, encourage the Board to review its procedures for timely posting meeting minutes to its website to ensure compliance with the requirements of OMA.

Accordingly, this office will take no further action in this matter, and this file is closed. If you have any questions, please contact me at (217) 782-9054.

Very truly yours,

MATT HARTMAN
Assistant Attorney General
Public Access Bureau

46182 o no fi war sd

cc: Mr. Bill Wrenn
Superintendent
Midland Community Unit School District #7
901 Hilltop Drive
Sparland, Illinois 61565

²E-mail from [REDACTED] to Matt Hartman, [Assistant Attorney General], [Public Access Bureau] (February 16, 2017).