



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 4, 2015

Via electronic mail

Mr. James W. Kopec
Trustee, Village of Campton Hills



Via electronic mail

Ms. Julie A. Tappendorf, Partner
Ancel, Glink, Diamond, Bush,
DiCianni & Krafthefer, P.C.
140 South Dearborn Street, 6th Floor
Chicago, Illinois 60603
jtappendorf@ancelglink.com

RE: OMA Request for Review – 2015 PAC 33732

Dear Mr. Kopec and Ms. Tappendorf:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2012)). For the reasons that follow, the Public Access Bureau concludes that the available information and documents do not demonstrate that the Board of Trustees of the Village of Campton Hills (Board) violated OMA by permitting a village trustee to participate in its February 18, 2015, meeting by telephone.

On February 20, 2015, the Public Access Bureau received a Request for Review from Village Trustee James W. Kopec alleging that the Board violated OMA by allowing Village Trustee Al Lenkaitis, Jr., to attend its February 18, 2015, meeting remotely by telephone without prior notification to the recording secretary or clerk as required by section 7(b) of OMA (5 ILCS 120/7(b) (West 2012), as amended by Public Act 98-992, effective August 18, 2014). On February 27, 2015, this office forwarded a copy of the Request for Review to the Board (via the village president) and asked for copies of the February 18, 2015, meeting minutes and agenda, together with a written response to Trustee Kopec's allegation. On March 10, 2015, the village president responded that she agreed with Trustee Kopec that the Board had violated

Mr. James W. Kopec
Ms. Julie A. Tappendorf
June 4, 2015
Page 2

OMA by allowing Trustee Lenkaitis to participate in the meeting by telephone because he had not notified the interim village clerk in advance. The village president enclosed: (1) a copy of the Village Code section on attendance by audio conferencing;¹ (2) a memorandum from the Board's special legislative counsel asserting that the authority to allow a trustee to participate by telephone rests solely with the Board; (3) a memorandum from the village attorney refuting the memorandum from the Board's special legislative counsel by claiming that the Board did not have the ability to approve of Trustee Lenkaitis's participation by telephone because he no longer principally resides within the Village; (4) past meeting minutes; and (5) materials from the internet indicating that Trustee Lenkaitis has moved his principal residence away from the Village for employment purposes.

On March 27, 2015, this office also received a response from the Board's special legislative counsel asserting that she represents the Board and that it deserved the opportunity to respond. The special legislative counsel stated that Trustee Lenkaitis had notified the village administrator by e-mail that he would be participating in future meetings by telephone and that the administrator had forwarded the message to the interim village clerk. The special legislative counsel enclosed an e-mail string in which the administrator forwarded Trustee Lenkaitis's December 15, 2014, notification to the interim village clerk on December 18, 2014.

On March 30, 2015, the village president replied to the special legislative counsel's response by claiming, in pertinent part: (1) Trustee Lenkaitis did not use the form that trustees are requested to complete when they wish to attend a meeting by telephone; (2) Trustee Lenkaitis was required to specify the reason why he would not physically attend meetings; and (3) OMA does not permit a blanket request to attend all future meetings by telephone.

Later that day, the special legislative counsel responded, in pertinent part, that neither a State statute nor the Village Code requires a trustee to submit a request for remote attendance on a particular form, and further asserted:

[I]t is up to the Village Board to determine whether one of its members is eligible to attend a meeting electronically based on the statutory standards for participating electronically. The Board discussed the eligibility issue at its meeting (as shown in the meeting minutes), and a majority determined that [Trustee Lenkaitis] was qualified to attend electronically because he was away on business. The allegations about his residency or non-residency are not relevant to the question of whether the Board followed the OMA in determining that he was eligible to attend a

¹Campton Hills, Ill., Village Code tit. 1, ch. 19 (February 19, 2013).

Mr. James W. Kopec
Ms. Julie A. Tappendorf
June 4, 2015
Page 3

meeting electronically based on his being away on business, nor are they within the PAC's authority under the OMA and FOIA statutes.²

On April 20, 2015, Trustee Kopec replied that he had not been aware of Trustee Lenkaitis's December 15, 2014, notification, but that the Board should nonetheless have denied Trustee Lenkaitis's participation based upon the interim clerk's statement during the February 18, 2015, meeting that he had not received Trustee Lenkaitis's notification.

DETERMINATION

Sections 7(a), 7(b), and 7(c) of OMA (5 ILCS 120/7(a), (b), (c) (West 2012), as amended by Public Act 98-992, effective August 18, 2014) provide, in pertinent part:

- (a) If a quorum of the members of the public body is physically present as required by Section 2.01, a majority of the public body may allow a member of that body to attend the meeting by other means if the member is prevented from physically attending because of: (i) personal illness or disability; (ii) employment purposes or the business of the public body; or (iii) a family or other emergency. "Other means" is by video or audio conference.
- (b) If a member wishes to attend a meeting by other means, the member must notify the recording secretary or clerk of the public body before the meeting unless advance notice is impractical.
- (c) A majority of the public body may allow a member to attend a meeting by other means only in accordance with and to the extent allowed by rules adopted by the public body. The rules must conform to the requirements and restrictions of this Section, may further limit the extent to which attendance by other means is allowed, and may provide for the giving of additional notice to the public or further facilitate public access to meetings.

²E-mail from Julie Tappendorf, Partner, Ancel Glink Diamond Bush DiCianni & Krafthefer, P.C., to [Josh] Jones (March 30, 2015).

Mr. James W. Kopec
Ms. Julie A. Tappendorf
June 4, 2015
Page 4

The Village has adopted rules allowing remote attendance as required by section 7(c), which paraphrase sections 7(a) and 7(b) of OMA and: (1) require all votes to be taken by roll call; (2) permit all persons present, including members of the public, to participate in the audio conference if the meeting is or includes a public hearing; and (3) make records subject to review, discussion, or adoption during the meeting available to the member attending by audio conference.

Under the plain language of section 7(b) of OMA, a village board member who wishes to attend a meeting by audio conference is required to notify the clerk and/or recording secretary in advance, unless that would be impractical. The Board's special legislative counsel has provided evidence that the interim village clerk received notice by e-mail in advance of the February 18, 2015, Board meeting that Trustee Lenkaitis would participate in future meetings by telephone. OMA does not specify that a member of a public body who wishes to attend a meeting via audio conference must contact the clerk or recording secretary directly, nor does it require notice to be given on a particular form. Further, OMA does not prohibit a board member from providing prospective notice for multiple meetings. We conclude that in these circumstances, sufficient notice of intent to participate electronically was provided by Trustee Lenkaitis.

Turning to the allegation that the Board did not have the authority to allow Trustee Lenkaitis to participate in meetings by telephone because he no longer maintains his primary residence in the Village, the plain language of section 7(a) specifies that a majority of the members of a public body "may allow" a member to attend a meeting remotely because of a personal illness or disability, employment purposes or the business of the public body, or a family or other emergency. The village attorney has contended that "employment purposes" refers to temporary business trips, and that because Trustee Lenkaitis is residing outside of the Village, his absence cannot be considered to be for employment purposes under section 7(a).³ However, as the Board's special legislative counsel notes, under section 7 of OMA the authority to permit a board member to attend a meeting by audio conference is vested in the Board. Moreover, with respect to the issue of whether a trustee is no longer eligible to serve on the Board, section 3.1-10-50(c)(1) of the Illinois Municipal Code (65 ILCS 5/3.1-10-50(c)(1) (West 2012)) provides: "A vacancy occurs in an office by reason of * * * more than temporary removal of residence from the municipality[.] * * * The corporate authorities have the authority to determine whether a vacancy under this subsection has occurred."⁴ Apparently, the Board had

³Memorandum from J. William Braithwaite/Village Attorney, Bazos, Freeman, Kramer, Schuster & Braithwaite, LLC, to Julie Tappendorf (February 18, 2015), at 1-2.

⁴We note that pursuant to section 7(c)(3) of the Attorney General Act (15 ILCS 205/7(c)(3) (West 2012)), the Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2012)).

Mr. James W. Kopec
Ms. Julie A. Tappendorf
June 4, 2015
Page 5

not, as of its February 18, 2015, meeting, taken action to determine whether Trustee Lenkaitis had vacated his office.

In fact, the minutes of the February 18, 2015, meeting state that Trustee Andersen reported that Trustee Lenkaitis was not sure whether his out-of-town employment would be temporary or permanent but that he was not putting his house in the Village up for sale.⁵ Subsequently, the Board voted to allow Trustee Lenkaitis to participate in the meeting via audio conference in accordance with its codified rule on remote attendance. The Board had discretion under section 7(a) of OMA to allow Trustee Lenkaitis to participate in the February 18, 2015, meeting via audio conference. Its decision to do so was not clearly unreasonable or contrary to its rules. Consequently, the evidence does not demonstrate that the Board violated OMA by allowing Trustee Lenkaitis to participate telephonically.

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 the Chicago address on the first page of this letter. This letter shall serve to close this matter.

Very truly yours,



JOSHUA M. JONES
Supervising Attorney
Public Access Bureau

33732 o 7 attendance proper mun

⁵Village of Campton Hills Board, Meeting, February 18, 2015, Minutes 2.