



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 10, 2022

Via electronic mail
The Honorable Gary Bell
Trustee
Board of Trustees
Village of Sauk Village
[REDACTED]

RE: OMA Request for Review – 2022 PAC 69969

Dear Mr. Bell:

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2020)). On February 17, 2022, the Public Access Bureau received your Request for Review alleging that the Village of Sauk Village (Village) Board of Trustees (Board) violated OMA by declining to permit you to participate remotely in the closed session of its February 15, 2022, Committee of the Whole meeting.¹ For the reasons set forth below, the Public Access Bureau concludes that no further action is warranted as to this matter.

In your Request for Review, you explained that you are a member of the Board. You stated that you were permitted to attend remotely the open session of the Board's in-person Committee of the Whole meeting, but that despite your request, you were not permitted to attend remotely the closed session.

Section 7 of OMA describes, among other things, when a public body member may attend a public body's meeting by a means other than physical presence. It states, in relevant 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

¹Although you stated that the Committee of the Whole meeting occurred on February 16, 2022, the agenda for the meeting stated that it occurred on February 15, 2022. Village of Sauk Village, Committee of the Whole, Agenda (February 15, 2022), https://www.saukvillage.org/Agendas/2022/2022_Agendas.pdf.

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. 5 ILCS 120/7(a), (b), (c) (West 2020). (Emphasis added.)

Notably, the language in sections 7(a) and 7(c) that "a majority of the public body **may allow** a member" to attend by other means is permissive, not mandatory. Therefore, a public body is not required to permit a member to attend a meeting remotely even if that member is unable to attend the meeting in person because of one of the reasons enumerated in section 7(a). *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 69602, issued February 9, 2022, at 2-3 (OMA gives public bodies discretion on whether to permit members to participate remotely). Further, section 7(c) allows a public body to create its own rules that may further restrict the extent to which remote attendance is permitted beyond the limitations described in OMA. Section 2-555 of the Village's Code of Ordinances provides the Board's remote attendance rules of procedure.² It states, in relevant part, that "[a] member of the board of trustees attending a meeting by remote means shall * * * [n]ot participate in or observe a closed session."³

²Village of Saul Village, Code of Ordinances, § 2-555, https://library.municode.com/il/sauk_village/codes/code_of_ordinances?nodeId=MUCO_CH2AD_ARTVIIREATPO_S2-555RUPRWHREATUT.

³Village of Saul Village, Code of Ordinances, § 2-555(b)(4), https://library.municode.com/il/sauk_village/codes/code_of_ordinances?nodeId=MUCO_CH2AD_ARTVIIREATPO_S2-555RUPRWHREATUT.

In your Request for Review, you contend that section 2.01 of OMA (5 ILCS 120/2.01 (West 2020)) allows for remote participation in closed sessions and is in conflict with section 2-555(b)(4) of the Village Code. Section 2.01 is permissive, however, stating that "[o]ther members who are not physically present at a closed meeting of such a public body **may** participate in the meeting by means of a video or audio conference." (Emphasis added.) Accordingly, a public body is permitted to allow a member to attend a closed session remotely, but is not required to do so. Because OMA gives public bodies discretion on whether to permit members to participate remotely, the Board was not required to allow you to attend the February 15, 2022, closed session meeting by video or audio conference.

You also alleged that "the Village Board was apparently 'polled' or effectively voted in closed session regarding an employment matter. No votes or polling is permitted to take place in closed session under Illinois law."⁴ Section 2(e) of OMA (5 ILCS 120/2(e) (West 2020)) provides: "No final action may be taken at a closed meeting. Final action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted." It does not violate OMA for a public body to take a preliminary vote in closed session followed by a final vote in open session. *See Board of Education of Springfield School District No. 186 v. Attorney General of Illinois*, 2017 IL 120343, ¶73, 77 N.E.3d at 637 (2017) ("[T]he statute contains no bar to a public body's taking a preliminary vote at a closed meeting."). Although you alleged that the Board took a poll on an employment matter during the February 15, 2022, closed session, you did not allege that the Board took final action on that employment matter. Accordingly, your contention does not provide facts supporting the allegation that the Board violated OMA. *See* 5 ILCS 120/3.5(a) (West 2020) ("[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[,] and that the submission "must include a summary of the facts supporting the allegation.").

Therefore, this office has determined that no further action is warranted in this matter. This letter closes this file. If you have any questions, you may contact me at the Springfield address on the first page of this letter or Laura.Harter@ilag.gov.

Very truly yours,



LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

⁴E-mail from Gary Bell, Sauk Village Trustee, to Public Access Counselor, Illinois Attorney General (February 17, 2022).

The Honorable Gary Bell
March 10, 2022
Page 4

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cc: *Via electronic mail*
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