



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 11, 2023

Via electronic mail

Via electronic mail

The Honorable Rickie Hicks
President, Board of Directors
Madison County Veterans' Assistance Commission
157 North Main Street, Suite 115
Edwardsville, Illinois 62025
mcvac@madisoncountyl.gov

RE: OMA Request for Review – 2022 PAC 74521

Dear [REDACTED] and Mr. Hicks:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2020)). For the reasons that follow, the Public Access Bureau concludes that the Board of Directors (Board) of the Madison County Veterans' Assistance Commission (Commission) improperly permitted two members to attend its November 2, 2022, meeting remotely.

BACKGROUND

On December 5, 2022, [REDACTED] submitted a Request for Review to the Public Access Bureau alleging that the Board improperly permitted two of its members to vote remotely at its monthly November meeting without meeting the requirements of section 7 of OMA (5 ILCS 120/7 (West 2020)). In particular, two Board members voted by phone to approve past meeting minutes. [REDACTED] asserted that the Board's bylaws only recognize in-person voting, and that no resolutions addressed remote attendance by Board members. She also contended that section 7(a) permits remote attendance by only one member. In subsequent

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correspondence to this office, [REDACTED] clarified that the meeting took place on November 2, 2022.

On December 14, 2022, this office forwarded a copy of the Request for Review to the President of the Board and asked the Board to provide this office with copies of its November 2, 2022, meeting agenda, minutes, and any Board rules governing remote attendance, together with a written response to [REDACTED] OMA allegations. On December 23, 2022, this office received the requested response, an Executive Order issued by the Commission's Superintendent, and links to posted copies of meeting materials. On December 30, 2022, this office forwarded a copy of the Board's response to [REDACTED] she replied on January 8, 2023.

DETERMINATION

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 (5th Dist. 1989).

As an initial matter, [REDACTED] reply to this office contended that the attorney, Thomas Burkart, who submitted the Board's response, was not counsel for the Board. Specifically, she asserted:

As stated in Mr. Burkart's response, he represents the Veterans Assistance Commission of Madison County, Inc which is a 501c 19. The Veterans Assistance Commission of Madison County, VACMC, (local government) and the Veterans Assistance Commission of Madison County, 501c19, are two separate entities. I do not believe Mr. Burkart represents the Veterans Assistance Commission of Madison County, the unit of local government. I believe this because the commission of the VAC has not voted to hire an attorney to represent the VACMC local government.^[1]

Based on this office's review of the Board's August 25, 2022, meeting minutes, the Board voted to retain Mr. Burkart as counsel for the Commission. The minutes state:

Motion was made by Larry Meisenheimer and seconded by Ken Morales to ratify the retention of Thomas W. Burkart and Burkart Law Offices as legal counsel for the VAC in

¹E-mail from [REDACTED] to AAG Lim (January 8, 2023).

accordance with, and to permit the President to execute, the retainer agreement tendered to the Board. President Hicks directed the Secretary to take a roll call vote on the motion. Upon roll call the vote was 11 in favor and 0 against. President Hicks announced the motion carried.^[2] (Emphasis added.)

Further, as discussed above, this office sent a copy of the Request for Review to the Board President and subsequently received a response to the letter from Mr. Burkart. There is no indication that the Board President did not intend for Mr. Burkart to respond, and OMA does not contain any requirements or restrictions concerning who responds to a Request for Review on behalf of a public body. Accordingly, this office will consider Mr. Burkart's response to the allegation that Board improperly permitted two members to attend the November 2, 2022, meeting remotely.

Section 7 of OMA (5 ILCS 120/7 (West 2020)) sets forth the procedure and requirements for allowing a member of the public body to attend a meeting by video or audio conference, as follows:

(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.

* * *

(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. (Emphasis added.)

²Veterans' Assistance Commission of Madison County, Special Meeting, August 25, 2022, 3. Re-Opened Meeting 2.

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The Board's answer to this office denied that it violated the requirements of section 7 when it permitted two members to attend remotely. The Board provided this office with a copy of an Executive Order, dated October 27, 2022, that the Commission's Superintendent had signed and published prior to the meeting. The Executive Order states, in pertinent part:

Pursuant to the authority invested in the Superintendent under section 10 of the Illinois Military Veterans Assistance Act (330 ILCS 45/10), by Executive Order, the following are made the rules of this Commission to permit a member of the Executive Board to attend a meeting of that Board by "other means" as those terms are defined in section 7 of the Open Meetings Act[.]"³

The Executive Order then enumerates those rules. On March 15, 2023, this office asked the Board to describe the reasons for the two Board members' remote attendance. In response, the Board explained that the two members could not attend in person due to illnesses, and that they had notified the Superintendent ahead of the meeting of the need to attend remotely. The Board also asserted that it had noted the two members' planned remote attendance in the agenda.

This office's review of the Board's November 2, 2022, meeting minutes confirmed that a quorum of the Board's members was physically present at the meeting. The minutes further reflect that the Board approved unanimously by roll call vote the two members' remote attendance. [REDACTED] argued that only one member of a public body is permitted to attend remotely, but section 7(a) does not provide that limitation. That provision simply states that "a majority of the public body may allow a member of that body" to attend by means other than physical attendance for one of three reasons. The Board explained that the two members were prevented from physically attending because they were ill, which is one of the three permitted reasons for remote attendance of an in-person meeting under section 7(a) of OMA.

However, the Board did not demonstrate that it had adopted rules that permitted the two members to attend the meeting remotely. The plain language of section 7(c) only permits members of public bodies to attend in-person meetings by means other than physical presence "in accordance with and to the extent allowed by rules **adopted by the public body.**" (Emphasis added.) While the Superintendent is vested with the executive powers of the Commission (330 ILCS 45/10 (West 2020)), he is not a "public body." The Executive Board is

³Bradley Lavite, Superintendent, Veterans' Assistance Commission of Madison County, Inc., Executive Order (October 27, 2022).

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the governing body of the Commission. The Executive Board's duties as the Corporate Board of Directors include "the conduct, the management, and the control of the affairs, the property, and the personnel of the Veterans' Assistance Commission of Madison County Inc."⁴ Because it is undisputed that the Board had not voted to approve the rules issued by the Superintendent or otherwise adopted any rules on remote attendance at the time of the November 2, 2022, meeting, this office concludes that the Board violated section 7(c) of OMA by permitting two members to attend the meeting by phone.

The minutes of the Board's November 2, 2022, meeting indicate that the agenda items upon which the Board took action were unanimously approved. Because the votes of the two Board members who attended remotely were not decisive, they did not substantively affect the actions taken, and there are no means by which the Board can remedy its violation of section 7(c) at this time. If the Board wishes to allow members to attend future meetings remotely, the Board must formally adopt rules on remote attendance.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,

[REDACTED]
TERESA LIM
Supervising Attorney
Public Access Bureau

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cc: *Via electronic mail*
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⁴Veterans' Assistance Commission of Madison County Inc., Bylaws, Article VI – Executive Board, Section 6 (adopted June 15, 2017), *available at* <https://cms4files.revize.com/madisoncountyilus/VAC/Records%20and%20Documents/06152017%20VAC%20Bylaws.pdf>.