



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

May 11, 2023

Via electronic mail



Via electronic mail



Via electronic mail



Via electronic mail

The Honorable Sandra Ficke-Bradford
President
Barrington Community Unit School District No. 220
Board of Education
515 West Main Street
Barrington, Illinois 60010
sbradford@barrington220.org

RE: OMA Requests for Review – 2022 PAC 74763
2023 PAC 74885
2023 PAC 74985

Dear [REDACTED], and Ms. Ficke-Bradford:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2020)). This office has consolidated three matters concerning the same alleged violation. For the reasons explained below, the Public Access Bureau is unable to conclude that the Barrington Community Unit School District No. 220 (District) Board of Education (Board) complied with the requirements of OMA by allowing a member to attend its

[REDACTED]

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December 20, 2022, meeting via telephone without first demonstrating majority consent of the Board.

BACKGROUND

On December 21, 2022, [REDACTED] submitted a Request for Review (2022 PAC 74763) alleging that the Board violated section 7 of OMA (5 ILCS 120/7 (West 2020)) by allowing Board member Leah Collister Lazzari to attend its December 20, 2022, meeting via telephone without satisfying any of the three exceptions for remote attendance as outlined under section 7(a) of OMA (5 ILCS 120/7(a) (West 2020)). On January 3, 2023, and January 9, 2023, [REDACTED] and [REDACTED] submitted Requests for Review (2023 PAC 74885 and 2023 PAC 74985, respectively) alleging the same violation. [REDACTED] also alleged that the Board failed to vote to allow Ms. Collister Lazzari to attend the meeting remotely.

This office sent copies of the Requests for Review to the Board and asked it to furnish this office with copies of its December 20, 2022, meeting notice, agenda, and minutes, together with any rules adopted by the Board pursuant to section 7(c) of OMA (5 ILCS 120/7(c) (West 2020)). The Public Access Bureau also asked the Board to provide a written response to the allegations in the Requests for Review.

On January 18, 2023, the Board's legal counsel provided the requested materials in connection with Request for Review 2022 PAC 74763 and later provided the same written response for the remaining two Requests for Review. This office forwarded copies of the Board's response to [REDACTED], [REDACTED] and [REDACTED] individually submitted replies.

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).

In order for a member of a public body to attend a public meeting by means other than physical presence, the procedural requirements set forth below must first be met. Sections 7(a), 7(b), and 7(c) of OMA (5 ILCS 120/7(a), (b), (c) (West 2020)) provide, 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 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.

Under the plain language of these provisions, a public body with a quorum physically present has the discretion to permit a member to participate in the meeting by other means for any of the three purposes set forth in section 7(a) of OMA, and the public body's decision to permit a member's remote attendance will not be disturbed unless it is clearly unreasonable or contrary to the public body's remote attendance rules. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 33937, issued June 8, 2015, at 3.

The Board provided this office with a copy of its adopted rules allowing for remote attendance as required by section 7(c), which paraphrase sections 7(a) and 7(b) of OMA:

Provided a quorum is physically present, a Board member may attend a meeting by video or audio conference if he or she is prevented from physically attending because of: (1) personal illness or disability, (2) employment or District business, or (3) a family or other emergency. If a member wishes to attend a meeting

by video or audio means, he or she must notify the recording secretary or Superintendent at least 24 hours before the meeting unless advance notice is impractical. The recording secretary or Superintendent will inform the Board President and make appropriate arrangements. A Board member who attends a meeting by audio or video means, as provided in this policy, may participate in all aspects of the Board meeting including voting on any item.^[1]

Pursuant to section 7(b) of OMA and the Board's adopted rules, a Board member who wishes to attend a meeting by audio or video conference is required to notify the recording secretary or Superintendent at least 24 hours before the meeting, unless impractical. The Board's legal counsel provided a copy of an e-mail that Ms. Collister Lazzari sent the Superintendent and his executive assistant, who serves as the Board's recording secretary, on November 29, 2022, stating that she would participate in the December 6, 2022, meeting, and probably the December 20, 2022, meeting as well, by telephone because she would be "out of town on business."² The word "business" encompasses a variety of activities and subjects. Black's Law Dictionary 226 (9th ed. 2009) (defining "business" to include commercial enterprises, occupations or employment, commercial or noncommercial transactions, and "matters that come before a deliberative assembly for its consideration and action.") "Business" also is broadly and somewhat ambiguously defined to include "[o]ne's rightful or proper concern or interest[;]" "[s]erious work or endeavor[;]" and "[a]n affair or matter[.]" American Heritage Dictionary 220 (2d coll. ed. 1987).

Although it is undisputed that Ms. Collister Lazzari provided timely notice of her request to attend the December 20, 2022, meeting, remotely, it is unclear from the wording of that notification ("out of town on business[]") whether she was claiming to be physically unable to attend the meeting because of employment purposes or the business of the Board. Presumably, the Board would have been aware if she was unable to attend the meeting because of Board business, and there is no indication that the Board had independent knowledge that she was absent for that reason. Instead, the Board's response to this office states that "Ms. Collister-Lazzari represented to the Board that she would be out of town on business, which is a qualifying reason for remote participation under both Board policy 2:220 and the OMA. * * * The Board

¹Barrington Community Unit School District No. 220 Board of Education, Board Policy No. 2:220 – Board of Education Meeting Procedure, Quorum and Participation by Audio or Video Means (last revised March 1, 2022).

²E-mail from Leah Collister Lazzari to Robert Hunt and Jeanine Stark (November 29, 2022).

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received no information contradicting Ms. Collister-Lazzari's representation."³ Yet section 7(a) of OMA only permitted the Board to allow Ms. Collister Lazzari to attend the meeting remotely if she was out of town on *Board* business or business related to her *employment*. Her notification to the Recording Secretary that she was "out of town on business[]" did not specify either of those reasons.

[REDACTED] and [REDACTED] provided copies of e-mails obtained via FOIA that were sent among individual Board members and District staff and referenced Ms. Collister Lazzari's absence as being for both vacation *and* business. However, neither those internal correspondences or other information provided to this office clearly establishes whether Ms. Collister Lazzari's physical absence concerned her own employment purposes or Board business. Thus, it is unclear from the available information if a permissible reason for remote attendance applied under section 7(a) of OMA and the Board's rules.

Even assuming Ms. Collister Lazzari was eligible to attend the meeting remotely, the Board did not meet OMA's procedural requirements for allowing her to do so. Neither the plain language of sections 7(a)-(c) of OMA nor the Board's adopted rules on remote participation expressly require a roll call vote. Rather, the relevant statutory language specifies, and the Board's codified rules more generally provide, that a majority of Board members physically present "may allow" a member to remotely attend a meeting upon receipt of advanced notice and due to one of the three reasons outlined above.

The "primary objective" in construing statutory phrases such as "[a] majority of the public body may allow" "is to ascertain and give effect to legislative intent, the surest and most reliable indicator of which is the statutory language itself, given its plain and ordinary meaning." *People v. Perry*, 224 Ill. 2d 312, 323 (2007). "Words and phrases" in a statute "should not be construed in isolation but must be interpreted in light of other relevant provisions of the statute." *People ex rel. Madigan v. Wildermuth*, 2017 IL 120763, ¶17, 91 N.E.3d 865, 872 (2017). "In addition to the statutory language, [a reviewing body] may consider the purpose behind the law and the evils sought to be remedied, as well as the consequences that would result from construing the law one way or the other." *County of Du Page v. Illinois Labor Relations Bd.*, 231 Ill. 2d 593, 604 (2008).

As referenced above, the clear intent of OMA is "to ensure that the actions of public bodies be taken openly[.]" 5 ILCS 120/1 (West 2020). The statutory phrase "a majority of

³Letter from Brian P. Crowley, Franczek, to Christopher R. Boggs, Deputy Public Access Counselor, Public Access Bureau (January 18, 2023), at [2].



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the public body may allow" plainly refers to an action that may be taken by a public body. In particular, the word "majority" connotes a vote or other means of assessing whether more members of a public body approve of doing something than disapprove. Likewise, the phrase "may allow" signifies an action, even if procedural in nature, to authorize the physically absent member to participate in the meeting. This office has reviewed relevant portions of a publicly-available recording⁴ of the Board's December 20, 2022, meeting, which reflects Ms. Collister Lazzari's participation via telephone in an attendance roll call at the start of the meeting. However, at no point did the Board express some form of majority consent to permit Ms. Collister Lazzari to attend the meeting remotely. Accordingly, this office is unable to conclude that the Board established that a majority of the Board members physically present consented before allowing Ms. Collister Lazzari to remotely attend the December 20, 2022 meeting pursuant to section 7(a) of OMA.

Based on this office's review of the December 20, 2022, meeting minutes provided with the Board's response, Ms. Collister Lazzari's votes on various items of final action did not determine their outcome. Accordingly, no action is required by the Board under these circumstances to remedy its violation of OMA. However, the Board may avoid future violations of section 7(a) of OMA by altering its rules to require a majority vote or, at a minimum, asking if any of the physically present members object to allowing remote attendance. In addition, the Board should ensure that the notification to the Recording Secretary indicates that a Board member who asks to attend a meeting remotely clearly identifies a permissible reason for doing so under section 7(a). To be sure, a public body that does not have reason to believe it is receiving inaccurate information is not obligated to take measures to verify that a member has a legitimate reason for remotely attending a meeting. When a member provides an ambiguous reason for attending a meeting remotely, however, and it is unclear if the member is even eligible to attend the meeting remotely under section 7(a) of OMA and the Board's established and recorded rules, the Board may need to obtain additional clarification from the member before determining whether to consent to the member's remote attendance.

⁴https://www.youtube.com/watch?v=la4S_5TQJHM.



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The Public Access Counselor has determined that resolution of these matters does not require the issuance of a binding opinion. If you have any questions, please contact me at the Springfield address on the first page of this letter. This letter serves to close these files.

Very truly yours,



CHRISTOPHER R. BOGGS
Deputy Public Access Counselor
Public Access Bureau

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cc: *Via electronic mail*
Mr. Brian P. Crowley
Franczek P.C.
300 South Wacker Drive, Suite 3400
Chicago, Illinois 60606
bpc@franczek.com