



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

July 31, 2017

Via electronic mail

Mr. Kirk Allen



kirk@illinoisleaks.com

Via electronic mail

Ms. Elizabeth Pressler, Ph.D.

Part-time Superintendent

Neoga Community Unit School District #3

P.O. Box 280

Neoga, Illinois 62447

epressler@neogacUSD3.net

Via electronic mail

Mr. Ben Johnson

Assistant Superintendent/Jr.-Sr. High Principal

Neoga Community Unit School District #3

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Neoga, Illinois 62447

bjohnson@neogacUSD3.net

RE: OMA Request for Review – 2016 PAC 39850

Dear Mr. Allen, Ms. Pressler, and Mr. Johnson:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the Board of Education (Board) of Neoga Community Unit School District No. 3 (District) violated the requirements of OMA in connection with posting notice of its January 20, 2016, meeting on its website and posting an annual schedule of its regular meetings, but did not violate OMA with regard to posting Illinois Municipal Retirement Fund (IMRF) compensation information.

Mr. Kirk Allen
Ms. Elizabeth Pressler
Mr. Ben Johnson
July 31, 2017
Page 2

BACKGROUND

On January 27, 2016, Mr. Kirk Allen submitted a Request for Review to the Public Access Bureau alleging that the Board posted the agenda for its January 20, 2016, special meeting on its website less than 48 hours in advance of the meeting. He also alleged that while notice for the meeting was posted at the Board's principal office, it was not posted at the building where the meeting was held. Mr. Allen further alleged that the Board's website lacked both a schedule of regular meetings and compensation information for employees with total compensation packages exceeding \$75,000.

On February 8, 2016, this office forwarded a copy of the Request for Review to the Board and asked it to provide a written response to Mr. Allen's allegations. This office also asked the Board to clarify whether the District's website was maintained by a full-time District staff, and to provide a copy of any notice that was posted. On February 23, 2016, this office received the requested materials. That same day, this office forwarded a copy of the Board's response to Mr. Allen; he replied on February 29, 2016.

DETERMINATION

It is the "public policy of this State that its citizens shall be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 2016). "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).

Meeting Notice

Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016)) provides, in pertinent part:

An agenda for each **regular** meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting. * * * **Public notice of any special meeting * * * shall be given at least 48 hours before such meeting, which notice shall also include the agenda for the special, rescheduled, or reconvened meeting[.]** (Emphasis added.)

Mr. Kirk Allen
Ms. Elizabeth Pressler
Mr. Ben Johnson
July 31, 2017
Page 3

Additionally, section 2.02(b) of OMA (5 ILCS 120/2.02(a) (West 2016)) provides:

Public notice shall be given by posting a copy of the notice **at the principal office of the body holding the meeting or, if no such office exists, at the building in which the meeting is to be held.** In addition, a public body that has a website that the full-time staff of the public body maintains shall post notice on its website of all meetings of the governing body of the public body. (Emphasis added.)

Section 2.02(c) of OMA (5 ILCS 120/2.02(a) (West 2016)) further provides that "[t]he public body conducting a public meeting shall ensure that at least one copy of any requested notice and agenda for the meeting is continuously available for public review during the entire 48-hour period preceding the meeting."

In his Request for Review, Mr. Allen stated that the January 20, 2016, meeting was a special meeting and that the Board failed to post the agenda at the location of the meeting at least 48 hours before the meeting began. Under the plain language of section 2.02(a) of OMA, the requirement that the agenda be posted at both the public body's principal office and the meeting location applies only to regular meetings; under sections 2.02(a) and 2.02(b), the agenda for a special meeting only needs to be posted at a public body's principal office. Ill. Att'y Gen. PAC Req. Rev. Ltr. 18425, issued August 2, 2012, at 2. Because Mr. Allen acknowledged that the agenda was posted at the Board's principal office, the Board did not fail to post physical notice of the meeting in accordance with OMA. Although Mr. Allen claimed in his reply that this agenda was not continuously available in accordance with section 2.02(c) because "the location is not lighted and you cannot view what is posted when it is dark out[,]"¹ posting the agenda on the front door of a public body's principal office is sufficient to provide notice of a special meeting.

With respect to posting notice of the January 20, 2016, special meeting on its website, the Board first confirmed that its website was maintained by full-time staff, signifying that it was required to post notice of the meeting on its website. The Board then explained that the agenda was posted on the District's website on January 18, 2016, at approximately 5:00 p.m., but that when Mr. Allen contacted the District on January 19, 2016, and stated that he could not locate the agenda on the website, the employee who posts the agendas "took a look at the website

¹E-mail from Kirk Allen to [Public Access Bureau] (February 29, 2016).

Mr. Kirk Allen
Ms. Elizabeth Pressler
Mr. Ben Johnson
July 31, 2017
Page 4

and discovered that on the day prior, January 18, 2016, she had clicked on the wrong tab and inadvertently posted the meeting notice under the wrong heading on the website."² Specifically, she had posted the agenda on the website's "Board of Education Meeting Archives" section rather than the "Board of Education Meeting" section.³ The Board stated that the mistake was promptly corrected and that "[s]ince discovering [the] error on the morning of the 19th, the district technologist – Alicia Kessler – rearranged the tabs to make it less likely that such an error might occur in the future."⁴ Mr. Allen replied, in pertinent part: "I appreciate the matter has been addressed and corrected so that future meeting notices are properly shared with the public."⁵

While OMA does not specify where on a website an agenda must be posted, the public policy underlying OMA is to provide "advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 2016). Here, a member of the public could not have been expected to check the archives section of a public body's website for information about future scheduled meetings. Nonetheless, the available information indicates that the initial posting of the agenda in an inapplicable portion of the website was unintentional and that the Board corrected the error. Additionally, the revisions to the layout of the Board's website may help to prevent future misplaced postings. In light of these corrective measures, this office has determined that no further action is required to remedy this violation.

Annual Schedule of Regular Meetings

Section 2.02(a) of OMA provides: "Every public body shall give public notice of the schedule of regular meetings at the beginning of each calendar or fiscal year and shall state the regular dates, times, and places of such meetings." Likewise, section 2.03 of OMA (5 ILCS 120/2.03 (West 2016)) provides that "each body subject to this Act must, at the beginning of each calendar or fiscal year, prepare and make available a schedule of all its regular meetings for such calendar or fiscal year, listing the times and places of such meetings."

²Letter from Elizabeth Pressler, Part-time Superintendent, Neoga CUSD#3, and Ben Johnson, Assistant Superintendent/Jr.-Sr. High Principal, Neoga CUSD#3 (February 22, 2016), at 1.

³Letter from Elizabeth Pressler, Part-time Superintendent, Neoga CUSD#3, and Ben Johnson, Assistant Superintendent/Jr.-Sr. High Principal, Neoga CUSD#3 (February 22, 2016), at 1.

⁴Letter from Elizabeth Pressler, Part-time Superintendent, Neoga CUSD#3, and Ben Johnson, Assistant Superintendent/Jr.-Sr. High Principal, Neoga CUSD#3 (February 22, 2016), at 1.

⁵E-mail from Kirk Allen to [Public Access Bureau] (February 29, 2016).

Mr. Kirk Allen
Ms. Elizabeth Pressler
Mr. Ben Johnson
July 31, 2017
Page 5

In its response to this office, the Board acknowledged that it had maintained "a running record" of its regular meeting dates rather than posting a schedule of its regular meetings at the beginning of the calendar or fiscal year.⁶ The Board stated that the pertinent employees "were directed to post the regular board meeting schedule that was approved on June 11, 2015 for the 2015-2016 school year, as well as all future approved regular board meeting schedules in order that the District meet the intent of the law."⁷ Because it is undisputed that the Board had not given public notice of its schedule of regular meetings at the beginning of the calendar or fiscal year, this office concludes that the Board violated section 2.02(a) of OMA. However, given that the Board subsequently posted its annual regular meetings schedule on its website⁸ and communicated with the employees who maintain the website about OMA's posting requirements, no further corrective action is warranted

Section 7.3(a) of OMA

Section 7.3(a) of OMA (5 ILCS 120/7.3(a) (West 2016)) provides, in pertinent part:

Within 6 business days after an employer participating in [IMRF] approves a budget, that employer must post on its website the total compensation package for each employee having a total compensation package that exceeds \$75,000 per year. * * * If an employer maintains a website, it may choose to post a physical copy of this information at the principal office of the employer in lieu of posting the information directly on the website; however, the employer must post directions on the website on how to access that information.

In its response to this office, the Board stated:

⁶Letter from Elizabeth Pressler, Part-time Superintendent, Neoga CUSD#3, and Ben Johnson, Assistant Superintendent/Jr.-Sr. High Principal, Neoga CUSD#3 (February 22, 2016), at 2.

⁷Letter from Elizabeth Pressler, Part-time Superintendent, Neoga CUSD#3, and Ben Johnson, Assistant Superintendent/Jr.-Sr. High Principal, Neoga CUSD#3 (February 22, 2016), at 2.

⁸The Board included with its written response a snapshot of its current website to illustrate that an annual regular meeting schedule is now posted.

Mr. Kirk Allen
Ms. Elizabeth Pressler
Mr. Ben Johnson
July 31, 2017
Page 6

The District's practice has been to publish all salaries and benefits for all licensed employees, including those IMRF employees earning in excess of \$75,000 per year. At this time the District does not employ any IMRF employee earning in excess of \$75,000; therefore, no posting of this category was necessary.^[9]

Mr. Allen replied:

After review, I do find the salary information posted. Although I did not see it before I cannot state it was not there for sure during my first review. I concur the posting applies to IMRF benefits and the school district confirms they have no [personnel] meeting the requirements for posting.^[10]

The available information indicates that total compensation packages for all District employees were posted on the District's website. Accordingly, this office concludes that the Board did not violate section 7.3(a) of OMA.

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,



TERESA LIM
Assistant Attorney General
Public Access Bureau

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⁹Letter from Elizabeth Pressler, Part-time Superintendent, Neoga CUSD#3, and Ben Johnson, Assistant Superintendent/Jr.-Sr. High Principal, Neoga CUSD#3 (February 22, 2016), at 2.

¹⁰E-mail from Kirk Allen to [Public Access Bureau] (February 29, 2016).