OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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December 19, 2017

Via electronic mail
[redacted]

Via electronic mail
The Honorable Brendan Kelly
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Via electronic mail
The Honorable Mark Kern, Chairman
St. Clair County Board of Trustees
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RE: OMA Request for Review – 2016 PAC 40515

Dear [redacted], Mr. Kelly, and Mr. Kern:

This determination 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 Trustees of St. Clair County (Board) violated OMA during its February 29, 2016, Board meeting by taking final action on eight resolutions without having described the general subject matter of each resolution on its agenda, and by failing to provide sufficient public recital of the nature of the matters being considered in connection with those votes.

On February 29, 2016, [redacted] filed a Request for Review alleging that during the Board meeting earlier that evening, the Board: (1) took final action to approve eight resolutions that were identified on the agenda only by resolution number; and (2) did not inform the public of the nature of these resolutions prior to voting during the meeting. On March 11, 2016, this office sent a copy of the Request for Review to the Board and requested that it provide a detailed written response to the allegations together with copies of the agenda, minutes, and any recording of its February 29, 2016, meeting. On April 11, 2016, the Public Access Bureau received 165 pages of records from the Board, including a copy of its agenda, but not the

requested minutes.[1] The Board also provided a letter in response to the Request for Review. On May 27, 2016, this office forwarded a copy of the Board's response letter to [redacted]; he did not reply.

DETERMINATION

The public policy of this State, as declared in section 1 of OMA (5 ILCS 120/1 (West 2016)), is that "public bodies exist to aid in the conduct of the people's business and that the people have a right to be informed as to the conduct of their business."

Section 2.02(c) of OMA

Section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2016)) provides that "[a]ny agenda required under this Section shall set forth the ***general subject matter of any resolution*** or ordinance that will be the subject of final action at the meeting." (Emphasis added.) The Senate debate on House Bill No. 4687, which was enacted as Public Act 97-827, effective January 1, 2013, adding section 2.02(c) of OMA, indicates that the General Assembly intended this provision to ensure that agendas provide sufficiently descriptive advance notice of the matters upon which a public body anticipates taking final action:

> [T]here was just no real requirement as to how specific [public bodies] needed to be to the public of what they were going to discuss that would be final action. And this just says that you have to have a * * * general notice if you're going to have and take final action, as to generally what's going to be discussed so that – that people who follow their units of local government know what they're going to be acting upon. Remarks of Sen. Dillard, May 16, 2012, Senate Debate on House Bill No. 4687, at 47.

In his Request for Review, [redacted] alleged that the Board violated OMA by failing to set forth the general subject matter of the following eight resolutions listed on its February 29, 2016, meeting agenda under item 9.f.:

> 9. Committee Reports
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> * * *

[1]This office obtained a copy of the February 29, 2016, Board minutes from the St. Clair County website at: http://co.st-clair.il.us/government/openMeetings/meetings/Documents/2016/February/countyBoard2-29-16.pdf (last visited September 9, 2017).

f. Transportation Committee:
1. Res. #2141-16-RT through #2148-16-RT[.][2]

The agenda provided no other information describing these resolutions. The meeting minutes document that, pursuant to this agenda item, the Board approved these eight resolutions.[3]

The Board contends that the agenda was sufficient because, in addition to posting a copy of the agenda in the county courthouse lobby and on the county's website, the Board had posted a copy of each of the resolutions on the website. The Board, however, did not indicate that it had posted copies of the resolutions in the county courthouse lobby where the agenda was posted. A member of the public reading the agenda in the courthouse lobby would have had no information describing the general subject matter of the Transportation Committee resolutions on which the Board would be voting during the meeting. Although posting copies of the resolutions on the county website is commendable and does increase transparency, because the agenda itself did not identify the general subject matter of these final actions, this office concludes that the Board violated section 2.02(c) of OMA.

Further, the Board did not provide any support for the assertion that an agenda posted on a public body's website need not set forth the general subject matter of a resolution on which the public body intends to vote during the meeting as long as a copy of the resolution is also posted on the public body's website. In the case cited by the Board, *Board of Education of Springfield School District No. 186 v. Attorney General of Illinois*, 2015 IL App (4th) 140941, 44 N.E.3d 1245 (2015), *aff'd*, 2017 IL 120343, 77 N.E.3d 625 (2017), the court discussed that a copy of the resolution at issue was posted on the public body's website together with the agenda, but the issue before the court was the sufficiency of that Board's public recital, as required by section 2(e) of OMA (5 ILCS 120/2(e) (West 2012)), before it took final action, rather than the notice required by section 2.02(c) to be on the agenda. *See Springfield School District*, 2015 IL App (4th) 140941, ¶36, 44 N.E.3d at 1252. Further, the agenda item at issue in that case, "Approval of a Resolution regarding the * * * Agreement * * * between * * * Milton and the Board," identified the general subject matter of that final action. *See Springfield School District*, 2015 IL App (4th) 140941, ¶39, 44 N.E.3d at 1252. Because the plain language of section 2.02(c) requires the agenda itself to set forth the general subject matter of each item on which the

[2]St. Clair County Board, Agenda Item 9.f., Transportation Committee: Res #2141-16-RT through #2148-16-RT (February 29, 2016).

[3]St. Clair County Board, Meeting, February 29, 2016, Minutes 10-13.

public body intends to take final action, and because the agenda posted on the county's website did not do so here, the Board violated section 2.02(c) of OMA.[4]

To prevent further violations of OMA, the Board should list on its meeting agendas the general subject matter of each resolution to be considered for final action, rather than merely using resolution numbers.

Section 2(e) of OMA

Section 2(e) of OMA (5 ILCS 120/2(e) (West 2015 Supp.)) provides that "[f]inal 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."

In *Springfield School District*, 2017 IL 120343, ¶64, 77 N.E.3d at 636, the Court held that "under section 2(e) of the Open Meetings Act, a public recital must take place at the open meeting before the matter is voted upon; the recital must announce the nature of the matter under consideration, with sufficient detail to identify the particular transaction or issue, but need not provide an explanation of its terms or its significance." In that case, the school board president had recited "'approval of a resolution regarding the separation agreement'" as well as the text of the resolution itself: "'The Board President recommends that the Board of Education of Springfield School District No. 186 vote to approve the separation agreement and release between Dr. Walter Milton, Jr., and the Board of Education.'" *Springfield School District*, 2017 IL 120343, ¶81, 77 N.E.3d at 638. The Court concluded that the school board's public recital was adequate: "The Board president recited the general nature of the matter under consideration—a separation agreement and release—and specific detail sufficient to identify the particular transaction—the separation agreement was between Dr. Milton and the Board." *Springfield School District*, 2017 IL 120343, ¶83, 77 N.E.3d at 638.

Further, the Court distinguished a recent decision in which the Illinois Appellate Court had concluded that "[w]hatever the standard might be for a public recital, the Board failed to meet it in this case." *Allen v. Clark County Park District Board of Commissioners*, 2016 IL App (4th) 150963, ¶31, 67 N.E.3d 536, 541 (2016). As explained by the Court in *Springfield School District*, the presiding officer of the public body in *Allen* had only "publicly recited the general nature of the two matters being considered: lease rates and revised covenants. He did not, however, provide sufficient other information to inform the public of the specific business being conducted: What type of real or personal property was being leased? What existing

[4]This office also notes that it is in contravention of the public policy of the State – that the public be informed regarding the conduct of the public's business –to require members of the public to review a packet containing over 100 pages of records to ascertain if there is an agenda item of interest.

covenants were being revised?" *Springfield School District*, 2017 IL 120343, ¶79, 77 N.E.3d at 638. In other words, a public body must identify both "the general nature of the matter under consideration" and "specific detail sufficient to identify the particular transaction" to satisfy the requirements of section 2(e) of OMA. *Springfield School District*, 2017 IL 120343, ¶83, 77 N.E.3d at 638.

Here, there is no dispute that the Board informed the public at its February 29, 2016, meeting that it was planning to vote to approve resolutions from its Transportation Committee. [redacted] Request for Review asserted that simply identifying the proposed action as resolutions by the Transportation Committee was not a sufficient public recital because the Board had not informed the public of either the subject matter or the general nature of each resolution. The minutes of the February 29, 2016, meeting provide:

> A motion was made by Mr. Roy Mosley Jr., seconded by Mr. C. Richard Vernier that the Highway Resolutions as submitted be adopted.
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> Discussion ensued with questions and comments from Mr. Frank Heiligenstein regarding Jefferson Road asking the Transportation Committee to come up with funds to correct the defects on Jefferson Road and others as there are funds for the Front Street project in East St. Louis. Chairman Kern responded stating that since the subsidence on Jefferson Road is now over, the problems can now be addressed. Chairman Kern further advised that Front Street project is a public private partnership and that St. Clair County has worked to bring in federal funds, state funds, and funds from the local industry in the area and there are no County dollars in it. Chairman Kern stated Front Street being improved will open up commercial development and real estate tax revenues derived from that commercial property will certainly help St. Clair County. Mr. C. Richard Vernier commented regarding distribution of funds being spent.
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> Motion Carried on roll call as follows:
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> * * *

The Chairman announced that the Resolutions were adopted unanimously.[5]

As explained above, section 2(e) requires that a public recital "announce the nature of the matter under consideration, with sufficient detail to identify the particular transaction or issue, but need not provide an explanation of its terms or its significance." *Springfield School District*, 2017 IL 120343, ¶64, 77 N.E.3d at 636. For example, with respect to resolution number 2141-16-RT (authorizing the Chairman of the Board to enter into a contract to repair Jefferson Road), at a minimum the Board was required to announce the general nature of the matter under consideration— a contract —and provide details sufficient to identify the particular transaction—to repair Jefferson Road.[6]

Although the minutes establish that the Board discussed the Front Street project, there is no indication that the Board publicly recited the general nature of each of the three resolutions pertaining to Front Street with detail sufficient to identify either the general nature of the matter or the particular transaction. The Board did not demonstrate that it publicly recited the general subject matter of the resolutions, which provided for: a portion of Front Street to be *added to the St. Clair County highway system* (2143-16-RT); a portion of Front Street to be *designated a Class III Truck Route* (2144-16-RT), and; entering into an *agreement with the Illinois Department of Transportation* (2145-16-RT). Additionally, the minutes do not establish

[5]St. Clair County Board, Meeting, February 29, 2016, Minutes 13. The eight resolutions were set forth in the minutes and are summarized as follows: (1) 2141-16-RT authorized the Chairman of the Board to enter into a contract to repair Jefferson Road with Hank's Excavating & Landscaping, Inc.; (2) 2142-16-RT authorized the Chairman of the Board to enter into a contract for construction of a left turn lane from Scott-Troy Road, C.H. 61, to Hilltop Drive with The Kilian Corporation; (3) 2143-16-RT resolved that the Front Street, from Trendley Avenue to 700 feet north of Winter Street, be added to the highway system of St. Clair County; (4) 2144-16-RT resolved that Front Street, from Trendley Avenue to 700 feet north of Winter Street, be designated a Class III Truck Route; (5) 2145-16-RT authorized the Chairman of the Board to execute the prepared agreement with the Illinois Department of Transportation for the division of costs and maintenance responsibilities for the Front Street construction; (6) 2146-16-RT authorized the Chairman of the Board to execute the prepared agreement with the City of Fairview Heights which provides for the costs and maintenance responsibilities for the construction of a Relief Storm Sewer located in the Fox Creek Subdivision; (7) 2147-16-RT authorized the Chairman of the Board to execute the prepared agreement with the Caseyville Township Sewer System for the costs and maintenance responsibilities for the removal and relocation of a sanitary sewer main; (8) 2148-16-RT authorized the Chairman of the Board to execute an agreement with Oates Associates, Inc. to perform the design and preparation of plans for the relocation of the sanitary sewer main.

[6]Although the minutes reflect a discussion in which a Board member asked the Transportation Committee to come up with funds for defects on Jefferson Road, this appears to be a request for future funding and there is no indication that this discussion related to resolution number 2141-16-RT.

that the Board engaged in any discussion regarding, or otherwise publicly recited the nature of, the resolutions numbered 2142-16-RT, 2146-16-RT, 2147-16-RT, and 2148-16-RT.

The Board maintains that because these resolutions were discussed at the Transportation Committee meeting, no further public recital was necessary at the Board meeting. The Board, however, has provided no legal support for the assertion that discussing the resolutions at a separate committee meeting relieved the Board of its obligation to make a proper public recital before voting to approve the resolutions. The plain language of section 2(e) requires final action to "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." If this requirement could be satisfied by a different public body providing a public recital at an earlier meeting, a public body voting on a matter would have the option of doing so without providing the public with any meaningful information about the subjects of final action. Such a construction would effectively negate the requirements of section 2(e), allowing public bodies to discuss matters only at committee meetings, and then vote at a later meeting without providing any information to the public about the business being conducted. *People v. Hunter*, 2013 IL 114100, ¶13, 986 N.E.2d 1185, 1189 (2013) (a reviewing body "presumes that the legislature did not intend to create absurd, inconvenient, or unjust results."). Accordingly, this office concludes that the Board violated section 2(e) of OMA.

In accordance with the conclusions in this determination, this office requests that the Board review its practices to ensure that agenda items set forth the "general subject matter" of any resolution or ordinance that will be the subject of final action and that the Board provide sufficient public recitals under section 2(e) of OMA in the future. The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, please contact me at (312) 814-5201.

Very truly yours,

[redacted]

EDIE STEINBERG
Assistant Attorney General
Public Access Bureau

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