



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 26, 2017

Via electronic mail

Via electronic mail

Ms. Elaine Karpus-Komada
Administrative Assistant
Coles County Board
651 Jackson Avenue, Room 326
Charleston, Illinois 61920
ekomada@co.coles.il.us

RE: OMA Request for Review – 2017 PAC 47357

Dear [REDACTED] and Ms. Karpus-Komada:

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 Coles County Board (Board) did not set out on the agenda for its April 11, 2017, regular meeting the general subject matter of several items on which it took final action. This office also concludes that the Board failed to post the agenda for the meeting in a place where it was continuously available to the public for at least 48 hours in advance of the meeting.

On April 12, 2017, [REDACTED] submitted this Request for Review alleging that the Board failed to post the agenda for its April 11, 2017, regular meeting both on its website and at the meeting location at least 48 hours before the meeting began. Specifically, he alleged that "[t]he agenda link [on the County's website] for that meeting was not functioning until a few hours prior to the meeting[.]" and that "[t]here was no agenda posted at the location of the meeting, the courthouse, that was available for view for 48 continuous hours prior to the meeting. The only notice posted was a statement that the board meeting was on the second floor.

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No agenda was posted."¹ ██████████ also alleged that the agenda did not provide the public with sufficient notice for the Board's votes on the six items listed under the heading "Committee Reports."²

On April 21, 2017, this office sent a copy of the Request for Review to the Board and requested that it provide a detailed response to ██████████'s allegations, together with copies of the notice, agenda, and meeting minutes for the April 11, 2017, meeting. On April 24, 2017, the Board responded, providing copies of the agenda and minutes and an e-mail from its Information Technology (IT) Department stating that the agenda was posted on the County's website on April 5, 2017, but acknowledging that the link to the agenda was not working during a portion of the 48 hours preceding the meeting. On May 10, 2017, ██████████ submitted a reply stating that the Board's acknowledgement that the link to the agenda was not working validated his claim about the website posting. He also noted that the Board had not addressed his allegation concerning the sufficiency of the notice for the "Committee Reports" action items.

On August 17, 2017, an Assistant Attorney General in the Public Access Bureau asked the Board whether it wished to provide a written response addressing ██████████ allegations. Later that same day, the Board provided the following:

The notice of meeting was sent February 22, 2017 and put on the County's website. The Agenda was sent April 5, 2017 and put on the website. Coles County has a full time IT person that updates the website daily. The Agenda was also displayed on the County Board Office's door across the hall from the County Board meeting room on April 5, 2017.³

On August 21, 2017, this office forwarded a copy of the Board's supplemental response to ██████████. ██████████ did not submit a further reply.

DETERMINATION

The intent of OMA is to "ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly" and to ensure that individuals are "given

¹E-mail from ██████████ to Public Access [Bureau] (April 12, 2017).

²Coles County Board, Agenda Item (unnumbered), Committee Reports (April 11, 2017).

³E-mail from Elaine Karpus-Komada, Administrative Assistant, Coles County Board, to Christopher Boggs (August 17, 2017).

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).

Posting of Meeting Agenda

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. A public body that has a website that the full-time staff of the public body maintains shall also post on its website the agenda of any regular meetings of the governing body of that public body.

Section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2016)) further provides:

The 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. Posting of the notice and agenda on a website that is maintained by the public body satisfies the requirement for continuous posting under this subsection (c). (Emphasis added.)

The Board's August 17, 2017, response to this office asserted that the agenda was displayed on the Board's office door across the hall from the Board meeting room six days before the meeting. However, the Board did not address [REDACTED]'s allegation that the agenda was not "available for view for 48 continuous hours prior to the meeting." The Board's response indicated that the agenda was posted in an internal area of the building where the Board has its principal office and where the meeting was to be held. Presumably, the building is not open 24 hours a day. In light of that and the Board's acknowledgment that the link to the agenda on the County's website was not working during a portion of the 48 hours preceding the meeting, the available information indicates that the agenda for the Board's April 11, 2017, regular meeting was not continuously available for public review during the entire 48-hour period preceding the meeting. Accordingly, this office concludes that the Board violated sections 2.02(a) and 2.02(c) of OMA. The website posting violation appears to have resulted from an unintentional technical error or malfunction, but this office recommends that the Board physically post its future meeting agendas in locations to which the public has unrestricted access, such as the front door

of the building or an adjacent window facing outside, to ensure at least one copy of the agenda remains continuously available. *See, e.g.,* Ill. Att'y Gen. PAC Req. Rev. Ltr. 29886, issued September 16, 2014, at 2-3 (determining that a public body "should post meeting notices in a location where they may be continuously viewable from the outside of [the meeting location], such as on or near the front door or facing outward from a window.").

Notice of Final Action

Section 2.02(c) of OMA 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, added 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 they 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.

While OMA does not define the term "general subject matter," the Public Access Bureau has previously determined that the General Assembly's use of the term "general subject matter" "signifies that a meeting agenda must ***set forth the main element(s), rather than the specific details***, of an item on which the public body intends to take final action." (Emphasis added.) Ill. Att'y Gen. PAC Req. Rev. Ltr 46368, issued April 13, 2017, at 3.

██████████ alleged that the action items under the "Committee Reports" section of the agenda did not provide the public with sufficient advance notice of the final actions to be taken, and the Board's responses to this office did not address that allegation. Nonetheless, this office's review of the agenda provided in the Board's initial response indicated that four of the six agenda items – "Res. for Participation of Elected Officials in IMRF"; "Resolution to Borrow Funds"; "Tax Sale Resolutions (2)" and "Resolution of Indemnity"⁴ – did identify the general

⁴Coles County Board, Agenda, Committee Reports 1, 2, 3, 4 (April 11, 2017).

subject matter of the Board's final actions. Pursuant to these agenda items, the Board voted to (1) approve the participation of elected officials in the Illinois Municipal Retirement Fund, which is a public pension system commonly known by its acronym "IMRF,"⁵ (2) authorize the County Treasurer to transfer funds from other County funds to the County general fund as a loan and to issue anticipation warrants,⁶ (3) indemnify the former Coles County State's Attorney for the lawful actions taken by his office during his tenure,⁷ and (4) approve a resolution selling two properties that the County acquired an interest in due to delinquent taxes.⁸ While greater detail may have been helpful to interested members of the public, these agenda items did identify the general subject matters of the Board's final actions. Accordingly, this office is unable to conclude that the Board violated the advance notice requirement of section 2.02(c) of OMA with respect to those agenda items.

However, the remaining two referenced agenda items – "Res. re: Dial-A-Ride Grant" and "County Bridge Fund Petition"⁹ – were simply too vague to provide the public with adequate advance notice of any final action to be taken. Pursuant to these agenda items, the Board approved a resolution authorizing the County to provide public transportation within county limits,¹⁰ and appropriated funds towards a proposed bridge/drainage project.¹¹ While the Board was not required to provide specific details concerning each of these action items, the notice provided did not adequately set forth the main elements of the final actions taken. These agenda items were simply too vague to provide the public with advance notice of the Board's disbursement of County funds towards transportation service and a construction project. Accordingly, this office concludes that the Board did not provide sufficient notice under section 2.02(c) of OMA with respect to those three agenda items.

To remedy these violations, this office requests that the Board reconsider and revote on the two matters for which it failed to provide sufficient advance notice after posting an agenda that adequately informs the public of the general nature of each final action.

⁵Coles County Board, Regular Meeting, April 11, 2017, Minutes 3482, 3550.

⁶Coles County Board, Regular Meeting, April 11, 2017, Minutes 3483, 3551.

⁷Coles County Board, Regular Meeting, April 11, 2017, Minutes 3483, 3554.

⁸Coles County Board, Regular Meeting, April 11, 2017, Minutes 3483, 3552-53.

⁹Coles County Board, Agenda, Committee Reports 5, 6 (April 11, 2017).

¹⁰Coles County Board, Regular Meeting, April 11, 2017, Minutes 3483, 3555.

¹¹Coles County Board, Regular Meeting, April 11, 2017, Minutes 3484, 3556.


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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, please contact me at (217) 785-7438 or at the Springfield address on the first page of this letter.

Very truly yours,


CHRISTOPHER R. BOGGS
Assistant Attorney General
Public Access Bureau

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