



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 28, 2018

Via electronic mail

Mr. Kirk Allen



kirk@illinoisleaks.com

RE: OMA Request for Review – 2018 PAC 53636

Dear Mr. Allen:

The Public Access Bureau has received your Request for Review alleging a potential violation of the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2016)) by the Algonquin Township Board (Board). Your submission, however, does not include facts from which this office could conclude that the Board violated OMA.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides, in pertinent part:

A person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later 60 days after the alleged OMA violation. The request for review must be in writing, must be signed by the requester, and *must include a summary of the facts supporting the allegation.* (Emphasis added.)

Your Request for Review alleges that at its June 13, 2018, meeting the Board "adopted a resolution pertaining to their authority regarding the audit and payment of bills without placing that matter on the agenda as required by law."¹ (Emphasis in original.) Your submission included what appears to be an unsigned copy of the resolution, which is entitled:

¹E-mail from Kirk Allen to Public Access [Bureau, Office of the Attorney General] (June 18, 2018).

"Resolution Recognizing Board's Authorities [sic] Regarding the Audit and Payment of Bills." The resolution states that the Board has authority, pursuant to section 80-10 of the Township Code (60 ILCS 1/80-10 West 2016)) to audit the Township's and Township Road District's accounts before paying bills, and that the Board will not approve the payment of bills for attorneys unless they carry at least \$1 million in professional liability insurance and provide a release authorizing the Township to confirm their insurance coverage is in effect. You also provided a copy of the June 13, 2018, meeting agenda, which includes the following item: "Resolution requesting all attorney's [sic] doing business with the Algonquin Township and Hwy. Dept. must carry malpractice insurance."²

Section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2016)) provides, in pertinent part: "Any 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." The Public Access Bureau has 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." Ill. Att'y Gen. PAC Req. Rev. Ltr. 45667, issued February 16, 2017, at 4-5 (determining that agenda item "appointment of the city administrator" did not violate section 2.02(c) of OMA). Additionally, the Public Access Bureau has determined that the language of section 2.02(c) of OMA "requires a public body's agenda to identify the general subject matter of final action – not what particular action will be taken by a public body." Ill. Att'y Gen. PAC Req. Rev. Ltr. 39177, issued February 2, 2016, at 3-4 (determining that agenda item "Illinois Rt. 53/120 Project Environmental Impact Statement" did not violate section 2.02(c) of OMA because by inclusion on the agenda, it could be inferred that the Board anticipated taking final action on the matter).

The title of the resolution that the Board approved at its June 13, 2018, meeting, arguably, does not accurately reflect its substance. The resolution identifies the source of the Board's authority to audit and pay bills as section 80-10 of the Township Code, which provides that "[t]he township board shall meet at the township clerk's office for the purpose of examining and auditing the township and road district accounts before any bills * * * are paid[.] * * * The township board may consider and approve bills individually or in a summary statement of any number of bills." The substance of the resolution, however, concerns professional liability insurance, a type of which is malpractice insurance.³ The resolution requires the Board to verify that attorneys who provided legal services carry professional liability insurance of at least \$1 million before the Board exercises its statutory authority to approve the payment of bills for

²Algonquin Township Board, unnumbered Agenda Item under "New Business[.]" Meeting (June 13, 2018).

³Malpractice insurance is defined as a "[t]ype of liability insurance which protects professional people (e.g. doctors, lawyers, accountants) against claims of negligence brought against them. Black's Law Dictionary 723 (5th ed. 1979).

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those attorneys' services. Even though the title of the resolution does not refer to professional liability insurance or malpractice insurance, the Board's agenda item clearly identifies the intended effect of the resolution—that attorneys hired by the Township carry malpractice insurance. Because the Board provided sufficient advance notice of the general subject matter of the resolution under section 2.02(c) of OMA, this office has determined that no further action is warranted as to this matter.

This file is closed. If you have questions, please contact me at (312) 814-6756.

Very truly yours,



STEVE SLIVERMAN
Bureau Chief
Public Access Bureau

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cc: *Via electronic mail*
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