

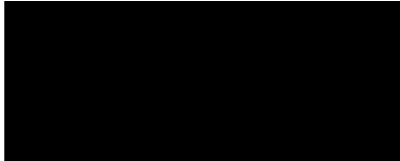


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

October 3, 2019

Via electronic mail



Via electronic mail

Mr. Mark Schuster
Bazos, Freeman, Schuster & Pope LLC
1250 Larkin Avenue, Suite 100
Elgin, Illinois 60123
mschuster@bazosfreeman.com

RE: OMA Request for Review – 2018 PAC 55553

Dear [REDACTED] and Mr. Schuster:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2018)). For the reasons stated below, the Public Access Bureau concludes that the Board of Trustees of the Village of Sleepy Hollow (Board) improperly took final action outside of an open meeting.

On October 30, 2018, [REDACTED], a member of the Board, submitted a Request for Review alleging that on or about September 5, 2018, the Board violated OMA by voting on three matters of public business through a series of e-mails, rather than at a public meeting. On November 9, 2018, this office forwarded a copy of [REDACTED] Request for Review to the Board and asked it to provide this office with a detailed written response to [REDACTED] allegations, as well as with copies of the e-mails and any records of the final approval of these matters. On November 21, 2018, counsel for the Board mailed this office a response as well as the requested records. [REDACTED] submitted a reply.

OMA is intended "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2018). Section 2(e) of OMA

(5 ILCS 120/2(e) (West 2018)) provides that "[n]o final action may be taken at a closed meeting. Final 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." While a public body may take a preliminary vote in a closed session, a public body must take all final actions in an open meeting. *Board of Education of Springfield School District No. 186 v. Attorney General of Illinois*, 2017 IL 120343, ¶¶ 73-74, 77 N.E.3d 625, 637 (2017).

The Board does not dispute that it voted on three matters of public business through e-mail communication rather than at an open meeting. The Board asserted that it did not intend to circumvent OMA, but it had a new Village Clerk who was attempting to pursue matters that were listed on its agenda for its September 4, 2018, meeting, which was cancelled due to a lack of a quorum. The Board stated that it voted by e-mail to approve (1) accounts payable, (2) a request by a not-for-profit organization to solicit funds for charity, (3) the final version of the Fall newsletter in order "to comply with imminent deadlines, including payment of Village payroll for its employees[.]"¹ The Board also confirmed that it ratified each of the e-mail votes at its September 17, 2018, open meeting, and provided this office a copy of those minutes. [REDACTED] replied that conducting public business by e-mail is an ongoing problem of the Board and not just a one-time occurrence.

When a public body finalizes a decision, that final action must be taken openly. *See Howe v. Retirement Bd. of Firemen's Annuity & Benefit Fund of Chicago*, 2013 IL App (1st) 122446, ¶26, 996 N.E.2d 664, 974-75 (2013) (finding board's written denial of benefits invalid because the board had circulated the decision for signatures privately rather than voting on it in open session). It appears that the Board took action by e-mail because upcoming deadlines required the underlying decisions to be implemented before the Board's next meeting. For example, the Board's response to this office stated that payroll had to be approved in order to meet September 7, 2018, payroll obligations for Village employees. Because those underlying decisions took effect before they were ratified at the September 17, 2018, meeting, the Board's e-mail votes do not merely constitute preliminary votes reflecting a tentative consensus. Accordingly, this office concludes that the Council violated OMA by taking final action by voting on public business through e-mail exchanges rather than at an open meeting.

Because the Board already voted to ratify each of the votes at its September 17, 2018, open meeting, no further remedial action is required. This office cautions the Board to take steps to ensure that it votes on matters of public business at an open meeting, rather than conducting business through e-mail exchanges or in any other manner outside of an open meeting.

¹Letter from Mark Schuster, Bazos, Freeman, Schuster & Pope LLC, to Office of the Illinois Attorney General, Public Access Bureau, Edie Steinberg (November 21, 2018), at 2.

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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 file is closed. If you have any questions, you may contact me at (312) 814-5201 or at the Chicago address on the bottom of the first page of this letter.

Very truly yours,

[REDACTED]
EDIE STEINBERG
Assistant Attorney General
Public Access Bureau [REDACTED]

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