

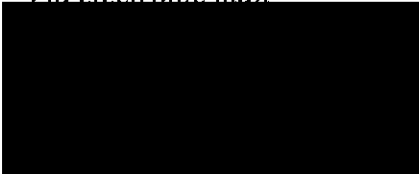


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 5, 2019

Via electronic mail



Via electronic mail

The Honorable Don Rage
President, Board of Trustees
Rutland-Dundee Fire Protection District
11 East Higgins Road
Gilberts, Illinois 60136
drage@rdfpd.org

Via electronic mail

Mr. Bernard K. Weiler
Attorney for Rutland-Dundee Fire Protection District
Mickey, Wilson, Weiler, Renzi & Andersson, P.C.
140 South Municipal Drive
Sugar Grove, Illinois 60554
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RE: OMA Request for Review – 2019 PAC 56805

Dear [REDACTED], Mr. Rage, and Mr. Weiler:

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 Trustees (Board) of the Rutland-Dundee Fire Protection District (District) did not provide proper notice on the agenda for its January 14, 2019, meeting of its vote on a resolution to place a referendum question on the ballot for the April 2, 2019, election.

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BACKGROUND

On February 11, 2019, [REDACTED] submitted a Request for Review to the Public Access Bureau alleging that the Board potentially violated OMA during its January 14, 2019, meeting by voting to place a referendum question on the ballot for the upcoming April 2, 2019, election without having listed that topic on the meeting's agenda. Specifically, he asserted:

The minutes state that the trustee asked the Attorney about the possibility of placing a non bi[n]ding referendum question on the ballot and the next line of the minutes had a trustee making a motion on a lengthy question that absolutely had to be pre-determined. This was the last night that a referendum question could be submitted to the County and it was filed shortly after.^[1]

He contended that the referendum question "was never disclosed to the Public, never listed as an Agenda item[.]"² This office construed [REDACTED] claim as alleging a violation of section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2016)).

On February 19, 2019, this office forwarded a copy of the Request for Review to the Board and asked it to provide this office with copies of its January 14, 2019, meeting agenda and minutes, together with a written response to [REDACTED] OMA allegation. In particular, this office asked the Board to address whether its vote on placing the referendum question on the ballot qualified as final action. On February 21, 2019, [REDACTED] sent this office an e-mail supplementing his Request for Review by stating that a named member of the audience had voiced an objection during the meeting to the lack of advance notice for the referendum question vote.³ On February 28, 2019, this office received a written response from the Board and meeting materials for this office's review. On March 5, 2019, this office forwarded a copy of the Board's response to [REDACTED] he replied that same day. On April 3, 2019, [REDACTED] informed this office that the three challengers for the three Board positions had won the election and that the

¹E-mail from [REDACTED] to Sarah [Pratt] (February 11, 2019).

²E-mail from [REDACTED] to Sarah [Pratt] (February 11, 2019).

³This office notes that although [REDACTED] questioned whether this individual's comment should have been included in the meeting minutes, the Public Access Bureau has determined that OMA generally does not require public comments to be documented in meeting minutes. See Ill. Att'y Gen. PAC Req. Rev. Ltr. 36909, issued September 2, 2015, at 2 (noting that section 2.06(a)(3) of OMA (5 ILCS 120/2.06(a)(3) (West 2016)) requires minutes to include "a summary of discussion on all matters proposed, deliberated, or decided" by the public body, rather than brief discussions initiated by a member of the public that do not rise to the level of deliberation).


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referendum question had been rejected by the voters, but that he still sought a determination from this office to provide guidance.

DETERMINATION

"It is the public policy of this State that * * * the people have a right to be informed as to the conduct of their business." 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).

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." OMA does not contain a definition of "general subject matter." However, the Senate debate on House Bill No. 4687, which, 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 general notice of all matters upon which a public body would be 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.** (Emphasis added.) Remarks of Sen. Dillard, May 16, 2012, Senate Debate on House Bill No. 4687, at 47.

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 voting to sign a new city administrator to a five year contract under the agenda item "Appointment of the City Administrator" did not violate section 2.02(c) of OMA).

The term "final action" generally does not encompass intermediate steps taken by a public body. *Gosnell*, 179 Ill. App. 3d at 176 (concluding that a board's decision to authorize a request for mediation as an alternative to the negotiations it had been conducting with a union


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was merely a step towards reaching final action on the union's contract, rather than final action itself). "Final action" generally must resolve a distinct matter. *Compare* Ill. Att'y Gen. PAC Req. Rev. Ltr. 32463, issued July 14, 2015, at 3 (council's vote directing staff to explore funding for a sporting event and report back with a recommendation only constituted a step in furtherance of reaching action rather than final action itself), *with* Ill. Att'y Gen. PAC Req. Rev. Ltr. 28933, issued March 6, 2018, at 3 (board took final action when it voted to extend superintendent's contract even though financial terms of contract were to be approved at a subsequent meeting).

In its response to this office, the Board asserted that "[a]n agenda item relating to the Certification of Ballots appeared under Item 8A of the agenda" and that "Item 9C was an item pertaining to a Joint Fire Management Services Concept."⁴ With regard to the first item, the Board contended:

Upon discussion of Item 8A, it was proposed that the Certification of the Ballots include a non-binding public question designed to gauge the public's interest in pursuing efficiencies and economies through the consolidation of services with an adjoining governmental entity. A motion was then made to place a public question to that effect on the ballot that was to be certified for the upcoming April 2019 election, along with the certification of candidates.^[5]

The Board further contended that "[t]he Joint Management Services Concept is a matter which the Board of Trustees was considering in an effort to consolidate services and the Board wished to have a broader base of public opinion with regard to such consolidation efforts."⁶ Additionally, the Board argued that the resolution that it approved did not constitute "a final action of the Board of Trustees to which the unit of government or its constituents would be

⁴Letter from Bernard K. Weiler, Mickey, Wilson, Weiler, Renzi & Andersson, P.C., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (February 28, 2019).

⁵Letter from Bernard K. Weiler, Mickey, Wilson, Weiler, Renzi & Andersson, P.C., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (February 28, 2019).

⁶Letter from Bernard K. Weiler, Mickey, Wilson, Weiler, Renzi & Andersson, P.C., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (February 28, 2019).

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bound."⁷ According to the Board, "the election law requires the adoption of a resolution" to place a public question on the ballot.⁸

In reply to that answer, [REDACTED] disputed the Board's claim that Agenda Item 9C indicated that the Board might place a referendum question on the April 2019 ballot and maintained that the Board took final action when it voted to place the referendum question on the ballot.

The relevant portion of the minutes provides:

Trustee Rage questioned Attorney Weiler about the possibility of putting a non-binding referendum question on the ballot regarding the efforts to consolidate fire services with other area fire departments/fire districts. Discussion was conducted regarding the matter.

A motion was made by Trustee Kilian to approve Resolution 2018-003, A Resolution to Place Public Question on the Ballot for the April 2, 2019 Consolidated Election as presented, with the following question:

"Shall the Rutland-Dundee Townships Fire Protection District proceed with efforts to effect the consolidation of fire and emergency medical services with the Village of West Dundee, and/or the Village of West Dundee and/or the East Dundee and Countryside Fire Protection District, and/or the Village of Carpentersville to maximize efficiency and reduce expenses."⁹

⁷Letter from Bernard K. Weiler, Mickey, Wilson, Weiler, Renzi & Andersson, P.C., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (February 28, 2019).

⁸Letter from Bernard K. Weiler, Mickey, Wilson, Weiler, Renzi & Andersson, P.C., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (February 28, 2019).

⁹Rutland-Dundee Fire Protection District Board of Trustees, Meeting, January 14, 2019, Minutes 2-3.


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The Board then passed the resolution, which provides, in pertinent part:

NOW, THEREFORE, Be It Resolved that the following public question be placed on the ballot for the April 2, 2019 consolidated election to be voted on by the voters of the Rutland-Dundee Townships Fire Protection District:

"Shall the Rutland-Dundee Townships Fire Protection District proceed with efforts to effect the consolidation of fire and emergency medical services with the Village of West Dundee, and/or the Village of West Dundee and/or the East Dundee and Countryside Fire Protection District, and/or the Village of Carpentersville to maximize efficiency and reduce expenses."

BE IT FU[R]THER RESOLVED, that the Secretary of the Board of Trustees, acting as the local election authority take all actions necessary to certify the foregoing public question to be placed upon the ballot for the April 2, 2019 Consolidated Election.

This Resolution shall be in full force and effect upon its passage and approval as required by law.^{10]}

The resolution, which was signed and dated January 14, 2019, contains specific recitals and affirmative language signaling the formality of the Board's action. Although the resolution did not resolve the consolidation issue, the vote on the resolution was a distinct final action that disposed of the matter of officially placing a referendum question before voters of the District. The non-binding nature of the public question does not exclude the Board's vote from the requirements of section 2.02(c) of OMA. Article 28 of the Election Code (10 ILCS 5/28-1 *et seq.* (West 2016)) provides specific procedures for submitting public questions—both those with legal effect and advisory questions of public policy—to referenda. As the Board noted, those procedures provide for the governing body of a unit of local government to pass a resolution to place a public question on a ballot. *See* 10 ILCS 5/28-7 (West 2016). This formal requirement for submitting a public question to referendum distinguishes the Board's vote from an optional, intermediate step in furtherance of final action that is not necessitated by a statutory provision mandating the approval of a resolution.

¹⁰Resolution No. FY2018-003, A Resolution to Place Public Question on the Ballot for the April 2, 2019 Consolidated [sic] Election (January 14, 2019).


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The plain language of section 2.02(c) requires a public body to include the general subject matter of such a resolution on the meeting agenda before taking final action. This office's review confirmed that no items set forth the general subject matter of submitting the public question to referendum. Agenda item 8A, "Certification of Ballot – Secretary Prusko," indicated that the Board planned to certify the ballot; it did not suggest that any public questions might be placed on that ballot.¹¹ While agenda item 9C, "Joint Fire Management Services Concept," indicated that the Board might discuss the subject of consolidation, it likewise did not reference any public questions.¹² The agenda did not reflect a connection between items 9C and 8A in a manner that could have conveyed to members of the public that a public question about consolidation would be subject to a vote during the meeting. Therefore, this office concludes that the Board did not provide proper advance notice under section 2.02(c) of OMA of its vote to adopt the resolution during its January 14, 2019, meeting. At this time, no corrective action can be taken to remedy this violation. However, this office advises the incoming Board that the agendas for its future meetings must identify the general subject matters of all items upon which the Board wishes to take final action.

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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¹¹Rutland-Dundee Fire Protection District Board of Trustees, Agenda Item 8A. Certification of Ballot – Secretary Prusko (January 14, 2019).

¹²Rutland-Dundee Fire Protection District Board of Trustees, Agenda Item 9C. Joint Fire Management Services Concept (January 14, 2019).